23 April 2021

The Manager
Strategic Policy Section, Resources Division
Department of Industry, Science Energy and Resources
Submitted via email: [redacted]

Submission from the Australian Petroleum Production and Exploration Association on the Offshore Petroleum and Greenhouse Gas Storage Amendment (Titles Administration and Other Measures) Bill 2021

APPEA welcomes the opportunity to provide detailed feedback to the Department of Industry, Science, Energy and Resources (DISER) on the Offshore Petroleum and Greenhouse Gas Storage Amendment (Titles Administration and Other Measures) Bill 2021 (the Bill).

APPEA and its members recognise the importance of decommissioning for the community, the government, the environment and the Australian oil and gas industry. It is an issue that we simply must 'get right' to operate responsibly, sustainably, and commercially.

It is essential for APPEA and industry to engage unreservedly and fully with government and other stakeholders to develop a decommissioning framework that delivers the right outcomes and a clear, workable regulatory path forward. To this end we have engaged constructively with the government over almost two years as the policy framework has been developed. This constructive collaboration has been important, recognising the complexity of the issues, the significance of decommissioning as part of industry operations and given the long-term impact of both policy and legislation.

It is therefore not surprising that the complexity of the decommissioning task is reflected in the substantial nature of the Exposure Draft of the Bill, but we would note the timeframes for the review of have been extremely tight given its complexity and significance.

We would request the government not rush to finalise the Bill and instead continue consultation with industry and other stakeholders to ensure all views and feedback are fully considered. The objective must be a policy and legislative framework that is world-class, and which will best serve Australia over the coming decades.

The attached submission has been developed by APPEA in consultation with members and is presented as a basis for further consultation prior to the Bill being finalised.

Yours sincerely

Andrew McConville
Chief Executive

Offshore Petroleum and Greenhouse Gas Storage Amendment (Titles Administration and Other Measures) Bill 2021

Consultation
April 2021

Submission from the Australian Petroleum Production and Exploration Association

Key Points

- APPEA supports in principle, changes to the OPGGS Act to deliver improved government oversight of financial/technical capability throughout the life of an asset which includes ensuring companies have the financial capacity to complete necessary decommissioning activities.

- We are concerned that proposed changes in the Bill rely heavily on "subsidiary legislation", guidelines and policy that are yet to be drafted and determined.

- A whole of government approach to decommissioning policy and legislation is required to avoid unintended consequences on future investment into the offshore oil and gas industry.

- APPEA has consistently stated it does not support trailing liability as a general principle for decommissioning in Australia. A more effective approach is to have in place a robust Financial Assurance Framework which requires titleholders to establish their financial capacity to appropriately conduct decommissioning activities when required.

- In the event a trailing liability framework is put in place by the government it should only apply to transactions made from a date after the amendments under the Bill come into force.

- A titleholder should not be liable for costs associated with wells drilled or facilities installed *after* the relevant entity has ceased to be the titleholder.

- The power to apply decommissioning liability to 'any person capable of benefiting financially' from title operations or in a position 'to influence compliance' or acts 'jointly with' titleholder in relation to title operations' is too broad, vague, forward looking and speculative and limited to direct influence to conduct and compliance.

- APPEA does not support the inclusion of a trailing liability to areas that have been lawfully transferred or surrendered, or where decommissioning activities have been undertaken in an approved manner.

- We would draw the government's attention to recommendations made in previous APPEA submissions in relation to decommissioning planning, taxation treatment of decommissioning liability and possible models of financial assurance. The Bill as drafted does not adequately address these issues.

Contents

1. Introduction

Petroleum decommissioning is a technically complex and costly exercise that requires strong alignment between the objectives of government as the owner of the resource and industry as the developer of the resource. Decommissioning is an absolute priority for APPEA and its members.

This paper is the third submission APPEA has provided to government on decommissioning reform in offshore areas in Australia since 2018. While many of the issues raised in previous APPEA submissions are evident in the Bill we would note there are still gaps in relation to decommissioning planning, taxation treatment of decommissioning liability and possible models of financial assurance that do not appear to be evident in the Draft Bill. We request the further consultation with government to ensure these matters are also adequately addressed as the decommissioning policy and legislative framework is finalized.

There are several key principles on which any decommissioning policy and legislative framework should be based. A decommissioning framework should:

- Enable efficient and effective access to Australia's oil and gas resources for development that can benefit the Australian economy in terms of investment, jobs and taxation revenue;
- Support energy security for the nation through the responsible development of Australia's substantial energy resources;
- Enable the sale and purchase of oil and gas assets which provide opportunity for the optimum recovery of the oil and gas resources;
- Ensure the right behaviours and risk allocation between asset owners and former owners;
- Ensure that the impacts of resource extraction on the environment and other users of the sea are responsibly managed;
- Minimise financial exposure to the Australian government for decommissioning costs;
- Ensure, at the end of asset life, that the asset is decommissioned in a manner which:
    - is fully funded by the owner(s) of the asset;
    - has a proper regard for safety, the environment and potential socioeconomic impacts to other users of the sea or land, including host communities;
    - is flexible to allow the implementation of decommissioning solutions that are technically feasible, cost effective, suitably paced and socio-economically prudent; and
    - ensures that risks to the environment are reduced to As Low As Reasonably Practicable (ALARP) and acceptable so that the environment in which the activity is undertaken is maintained and / or enhanced for the benefit of future generations.
- Ensure the decommissioning solutions implemented provide confidence to all relevant stakeholders in relation to the safety of asset management;
- Ensure new, safe and cost-effective decommissioning technologies and strategies can be applied in the future; and

- Ensure that all decommissioning activities are undertaken in a manner consistent with Australia's international environmental obligations.

The accompanying guidance with the release of the Bill notes that details missing in the Bill and further clarity will be provided at a later date through guidance. Given the importance of the Bill and the far-reaching consequences to the Australian offshore petroleum industry, there is a substantial risk that important aspects of the legislative reform will fall to guidance, which does not have the force of law and which will result in substantial discretion being exercised by regulators. Such discretion will increase uncertainty for all parties and will result in either decreased investment or the higher pricing of risks associated with investment. The net result in either case will be less development of Australia's offshore oil and gas resources.

1.1 About APPEA

The Australian Petroleum Production & Exploration Association (APPEA) is the peak body representing Australia's oil and gas explorers and producers. Our members account for nearly all of Australia's upstream oil and gas exploration and production.

APPEA is committed to the development and implementation of a world-class decommissioning framework that adequately reflects the objectives of all stakeholders including federal and state governments, oil and gas exploration and production companies, marine users and communities in which the industry operates.

APPEA and its members are committed to responsible environmental management and effective decommissioning is an integral part of this commitment. Effective environmental management is also crucial in preserving the industry's reputation and maintaining a social licence to operate.

2 Commentary and Feedback on the Offshore Petroleum and Greenhouse Gas Storage Amendment (Titles Administration and Other Measures) Bill 2021

The following section provides overarching commentary of schedules 1 to 4 of the Bill. Attachment 1 provides more detailed and specific feedback on various sections of the Bill.

2.1 Schedule 1. - Change in Control of Registered Titleholders

APPEA supports in principle, changes to the OPGGS Act that support improved government oversight of financial/technical capability throughout the life of an asset, including the financial capacity to complete necessary decommissioning activities.

In this context however, APPEA has general concerns with provisions included in this section of the Bill:

i) The threshold for a 'change of control' is set at a much lower level than what is normally considered to constitute an actual 'change of control'. As currently drafted the Bill would cover a large number of transactions that do not, in

substance change who is actually in control. For example, a person acquiring 20% would not normally be in a position to exert control and would not materially impact on a titleholder's technical or financial capacity. The provisions may also lead to unintended consequences, particularly (but not limited to) the case of listed transactions including forced public take overs. A better approach would be to use the 'change in control' tests in the *Corporations Act 2001* to determine financial and technical capacity. These tests have already been used to good effect in some resources legislation.

ii) The provisions that apply an *approval period* of six months, wherein an approval for a title transaction can be revoked by the Titles Administrator. These provisions would increase uncertainty and may result in delays on commercial transactions without any tangible benefit accruing to the Titles Administrator in terms of reduced risk. We would further note that a six month period within which to complete a change in control is too short for many transactions.

APPEA notes the absence of any time limits in the decision-making process to be undertaken by the Titles Administrator as set out in Schedule 1 of the Bill. The absence of time limits for decisions will increase uncertainty and delays for change in control and direct interest title transactions. Noting that the Joint Authority Operating Protocols (2015)[1] seek to make decisions on a consensus basis and within a reasonable timeframe, APPEA considers this protocol may constitute a sound starting point in determining appropriate time-limits to decision making.

In Annex 1 of the DISER Regulatory Impact Statement[2], costing assumptions are explained as part of the introduction of regulatory reforms to decommissioning. Item 6 provides for the average time for a single organisation to undertake requirements (based on NOPTA advice) viz-:

a. technical and financial report application – 6 hours for 1 technical financial / administration employee to source and compile information, 1 hour for 2 directors required to execute application.
b. A fit and proper person declaration and appropriateness criteria application – 2 hours for 1 technical financial / administration employee to liaise and compile information, 1 hour for 1 director required to execute declaration.
c. A change of ownership and control application – 1 hour for 1 technical financial / administration employee to source and compile information, 1 hour for 2 directors required to execute application.

These assumptions are at odds with the Walker Review findings[3] which note:

[1] Operating Protocols available here: Operating protocols for offshore petroleum Joint Authorities and supporting institutions (nopta.gov.au)
[2] Regulatory Impact Statement available here: https://consult.industry.gov.au/offshore-resources-branch/opggs-amendment/user_uploads/diser-regulatory-impact-statement---improvements-to-title-administration.pdf
[3] Walker Review available at: https://www.industry.gov.au/sites/default/files/2020-09/disclosure-log-20-036.pdf

"NOPTA explained (to me) that its financial assessment for two recent transfers of titles for mid to late life assets took in the region of 8-10 months to complete."

Based on advice from the Titles Administrator and assessment of time inputs from the Regulatory Impact Statement, there appears to be a serious and substantial discrepancy between what is proposed and the reality of what does occur. It is important that the Bill more closely reflect reality to avoid creating false expectations and increasing uncertainty around an such an important process is Additionally, The Bill should provide for a firm time limit in the decision-making process, similar to that for example set down for the Foreign Investment Review Board of 30 days for its decisions to be made.

The lack of specific criteria for decision-making by the regulator in approving and revoking 'change in control' as well as wide discretion through non-specific criteria for decision-making in relation to direct interests in titles will result in significant uncertainty for commercial transactions. In addition there is no clarity or control around the information or documents that will be required for applications, with current drafting only referencing an application to be in an approved form and to be accompanied by information or documents "required by the form". This will create significant delays in assessment and make review by the regulator subject to wide interpretation leading to uncertainty and the adverse pricing of risk and investment.

2.2 Schedule 2. – Trailing Liability

Retrospective Application

The Bill provides for transitional provisions from 1 January 2021. APPEA does not support backdating particularly given that the measures and changes contained in the Bill are not sufficiently detailed to enable operators to have a clear understanding of requirements. Given the lack of detail contained in the Bill there is also a risk of future change which would be further complicated by seemingly arbitrary backdating.

If trailing liability is to be applied, it should ideally not apply retrospectively and should only apply to transactions made after a date after the amendments are in force.

APPEA is concerned at the lack of information on changes to the planning and reporting for decommissioning, which will arguably be central to ensuring that trailing liability should it be implemented is never exercised. This is discussed further in Section 3 below.

Trailing Liability

APPEA acknowledges that Government seeks to taxpayers and the broader community in situations where a titleholder is unable to fulfil its decommissioning obligations. However, the duty to maintain a financial assurance by a title holder (OPGGS Act s 571) without corresponding provisions to ensure the effectiveness of a titleholder's financial assurance and the effectiveness of the regulator's assessment of the same will, result in titleholders being more inclined to cease production rather than sell to lower cost operators. This is because of the enduring nature of risk in being a previous titleholder. It is entirely reasonable to expect that the existence of this risk would result in a reduction of recovered resources in an area.

APPEA has consistently maintained it does not support trailing liability as a principle of decommissioning in Australia. A far more effective approach is the implementation of a robust Financial Assurance Framework to ensure titleholders demonstrate their financial capacity to meet their decommissioning liabilities when they need to be met. There is also risk that a trailing liability regime may fail in circumstances where existing titleholder(s) progress into financial default and previous holders and persons are either in default or no longer located within Australian jurisdiction.

It is not reasonable for former titleholders to be liable for the actions of subsequent titleholders following a title transfer, as they cannot control future maintenance practices, other operational decisions. Additionally, a titleholder should not be liable for costs associated with wells drilled or facilities installed after the relevant entity has ceased to be the titleholder. Furthermore, the proposed approach may result in substantial accounting liabilities being recognized by the seller on or post divestment of an asset and as a consequence, operators may choose to cease activity rather than sell an asset to another operator and in so doing fail to ensure maximum utilization of Australia's oil and gas resources.

The power to apply decommissioning liability to 'any person capable of benefiting financially' from title operations or in a position 'to influence compliance' or acts 'jointly with' titleholder in relation to title operations' is too broad, vague, forward looking and speculative. Current provisions in the Bill may unintentionally capture employees and contractors (individuals or companies), royalty holders, financiers, property equity direct interest holders, parent companies of investment funds/trustees or even suppliers or purchasers of commodities or capacity. In the event trailing liability is preferred by government, a better definition is needed so the extent of reach of the liability is absolutely clear and includes elements limited only to direct influence of conduct and compliance.

This point is further compounded by the Bill extending trailing liability where NOPSEMA and or the responsible Commonwealth Minister can make remedial directions to any prior registered holder or persons in areas (permits, leases, licences and authorities) that have wholly or partly ceased to be in force, i.e., vacated areas. the wide nature of the provisions contained in the Bill introduce an unacceptable level of risk for investors and operators. In addition, proposed changes to sections 587 and 587A could also include areas that were lawfully transferred or surrendered, or where decommissioning activities had been undertaken in an approved manner.

It is concerning that no guidance or information has been included to stipulate what would trigger a remedial action and how this is to be assessed by the regulator or responsible Minister. There is also no ability, even after a remedial action has been satisfied, to discharge all obligations. With reference to the discussion above on the timing of legislative change, given that investment decisions are made on the basis of legislation and regulatory frameworks that exist at the time investment is made and plans are approved, it would be unwelcome to have legislation effectively back date liabilities and expenses.

It is also questionable whether NOPSEMA as the operational regulator can make decisions in relation to the holder of a trailing liability. This responsibility should rest entirely with the responsible Minister due to the significance of any such decision. Furthermore, NOPSEMA

as the primary approvals body, would be in a position to direct work and actions (trailing liability), to fix issues on areas that were previously approved by NOPSEMA.

Trailing liability, if preferred as a policy approach by government should exist only as an option of "last resort" after all options available to the regulator have been exhausted. Given this, the following matters need to be addressed in greater detail to ensure there are no unintended consequences and / or differences in interpretation:

- Any liability of a former titleholder should be limited to its previous participating interest and should only apply for infrastructure that was installed before the transfer took place. There is currently no such provision in legislation.
- The Bill should clearly state that trailing liability is a "last resort" and will only to be exercised in the most extraordinary of circumstances after all avenues of redress have been pursued.
- The 'chain' of liability should start with the current titleholder and proceed sequentially backwards on a reverse chronological basis, with each titleholder only being liable for the work they completed and on an equity basis.

2.3 Schedule 3. – Applications in Decision Making

APPEA notes the Bill enables the regulator to accept or refuse a title applicant on the grounds of technical and financial capability to undertake work and other obligations in a title area. However, decision-making criteria need to be specific and not provide unlimited discretion – for example, whether technical or financial resources available to titleholder pursuant to transfer are "sufficient" and "may have regard to any other matters" the regulator "considers relevant" without additional detail may lead to uncertainty for any divestments or investments.

We also question the need to give notice for certain events, as described by 695YC – as soon as practicable after the event occurs, as well as at the time of a grant, renewal, or approval of a transfer of a title. A better outcome would be that written notice is provided to the Titles Administrator and NOPSEMA following an event that affects those certain events as described in 695YC (2) and that a declaration is provided by an applicant at the time of renewal.

It is also necessary to clearly establish what specific information that will be collected and addressed.

2.4 Schedule 4. – Information Gathering Powers

The application of greater information gathering powers by the Titles Administrator and NOPSEMA should provide for more timely titles administration and approvals processes. These expanded powers should facilitate a more streamlined and informed administrative process and a more robust demonstration of a titleholders duty to maintain financial assurance (OPGGS Act s 571).

It is also noted that the avoidance of "ad hoc" information requests by the regulator should be a priority.

3 Other Related Items

There are a number of matters that have been raised by APPEA in previous submissions, specifically APPEA's submission on the government's paper, "Enhancing Australia's decommissioning framework for offshore oil and gas activities", that have not been addressed in the Bill.

Addressing these issues remains important to ensuring Australia has a world class decommissioning regime in place. We would request further consultation with government in relation to the following:

- **Financial Assurance** - The form of financial assurance utilised should be at the discretion of the titleholder and managed within a JVOA and agreed with the regulator based on Government's financial assurance standards and expectations and could include a combination of:
  - An acceptable credit rating from an acceptable financial rating provider (i.e. Standard & Poors) to demonstrate financial capacity;
  - Provision of financial statements demonstrating net worth or some other specified financial measure relative to the decommissioning obligation;
    - i.e. Net assets (excluding goodwill, intangibles and deferred taxation assets), of a suitable multiple of the decommissioning cost estimate, to ensure sufficient funds would be available under potential future price or cost scenarios.
  - Related party corporate guarantee from an entity with an acceptable credit rating and or provision of group financial statements demonstrating net worth or some other specified financial measure relative to the decommissioning obligation;
  - Bank guarantee from an acceptably rated bank or financial institution;
  - Cash Deposit; and
  - Insurance Surety Bond from an acceptably rated provider.

  Financial assurance should be applied in a flexible manner to limit the administrative burden and complexity of a title by title approach.
- **Availability of PRRT credits or other instruments** - In the event a prior titleholder is "called back" to fulfil decommissioning obligations of the existing titleholder, they should have full access to any financial security that has been provided, as well as Petroleum Resource Rent Tax benefits accrued during ownership. The regulator should also provide documentation to the prior titleholder of the relevant financial and technical assessments conducted prior to the trailing liability determination being made.
- **Public comment and transparent reporting** - Clarification is needed on the public reporting and public comment periods contemplated, with a need to define what decommissioning activities it will be applied to. APPEA supports the existing requirements (Environment Regulation 25A and 26C) for titleholders to provide notice to the regulator of completion of an activity and environmental reporting, to give clarity and assurance that decommissioning has been fully completed in accordance

with the terms of the title and Environmental Plan and should link to the satisfaction of decommissioning obligations.

- It is not clear what objectives are being met to issue close-out reports to the public if the regulator (NOPSEMA) has already determined that the activity has been acceptably closed-out. These reports are currently very detailed and technical in nature and may contain confidential information. Redacted or modified versions are likely to cause public concern.
- **Decommissioning planning and management** - the most recent DISER Consultation Paper presented changes, at a very high level to the inclusion of Field Development Plans (FDP's) as an instrument of planning and reporting for decommissioning. The ongoing lack of detail available for a titleholder to fully understand how these changes will be applied in practice is concerning.
- **Taxation** – Although amendments to tax law would not be implemented via the OPGGS act, taxation implications need to be further considered and require greater consultation with industry:
    - **Financial Assurances** - Taxpayers should be allowed an income tax and PRRT deduction for the cost of providing financial assurance.
    - **Remedial Directions** - Remedial directions that force operating projects into PRRT losses may incentivise project participants to shut-in early. This is because the ATO has ruled that decommissioning losses incurred prior to a project closing do not give rise to a refundable PRRT credit – an approach that is inconsistent with the overall intent of the PRRT regime.
    - **Trailing Liability** - Trailing liabilities paid by a "related person" may not be deductible for either corporate income tax or PRRT purposes and are therefore unlikely to give rise to a refundable PRRT credit. The non-refundability of PRRT credits and the denial of a deduction for corporate income tax will impact the overall viability of a project and impact significantly on project economics.
    - **Commencement of Proposals** - Where mechanisms are introduced that impact taxation policies, these recommendations should only apply to transactions made after an agreed date established by government.

Attachment 1

APPEA response matrix - Offshore Petroleum and Greenhouse Gas Storage Amendment (Titles Administration and Other Measures) Bill 2021[4]

Schedule	Exposure draft amendments	APPEA response to amendments
1 – Change in control of registered titleholders	566A – Definitions ***Approval period***, for a change in control of a registered holder of a title, means the period: (a) starting on the day the notice of approval for the change in control is given; and (b) ending at the earliest of the following: (i) immediately after the change in control takes effect; (ii) if the approval of a change in control is revoked—when the notice of revocation is given; (iii) 6 months after the day the notice of approval is given.	▪ An application of an approval period, where the Titles Administrator is able to revoke the approval of an applicant and that too, with very wide discretion to do so, and without specific criteria under s.566J, would likely significantly enhance risk and uncertainty for change in control transactions. ▪ Additionally, larger change in control transactions may take longer and the six months' period limit may lead to requiring an approval again.
	566A – Definitions Meaning of ***control*** and ***change in control*** of registered holder (1) A person controls the registered holder of a title if the person (whether alone or together with one or more other persons the person acts jointly with): (a) holds the power to exercise, or control the exercise of, 20% or more of the voting rights in the registered holder; or (b) holds, or holds an interest in, 20% or more of the issued securities in the registered holder. (3) The regulations may prescribe a different percentage, or different 12 percentages, to the percentage specified in paragraph (1)(a) or (b). (4) There is a ***change in control*** of a registered holder of a title if: (a) one or more persons (an ***original controller***) control the registered holder of a title at a particular time; and (b) either: (i) one or more other persons begin to control the registered holder (whether alone or together with one or more other persons the person acts jointly with) after that time; or (ii) an original controller (whether alone or together with one or more other persons the person acts jointly with) ceases to control the registered holder after that time.	▪ The 'change in control' threshold level of 20% is too low and would likely unnecessarily cover a large number of transactions that do not, in substance, have any material impact on titleholder's technical or financial capacity. ▪ That Bill also introduced provisions to allow gradual acquisitions / transfer of control (no more than 3 per cent in each six-month period). ▪ The provisions also capture listed transactions and public take overs which will lead to unintended consequences particularly if the timelines taken by the regulators are long. ▪ Ability to change the percentage of the threshold via regulations being the subordinate instrument is inappropriate and leads to uncertainty.
	566C Application for approval 28 (1) A person who: (a) proposes to begin to control a registered holder of a title; or (b) proposes to cease to control a registered holder of a title;	▪ The rationale of separate applications from the person who will be controlling and person who is ceasing control is not clear. A simpler deal would require two applications one from the seller and other from the buyer. ▪ If there is change in control that impacts multiple titles that should be subject of a single application ▪ 'begin to' control or 'cease to' control not defined expressions and no definition, considering the serious prescribed consequences concerning breach of these provisions, will lead to a lot of uncertainty.
	566D - Titles Administrator must decide whether to approve change in control 566D(3) Before deciding whether to approve or refuse to approve a change in control, the Titles Administrator may consult with one or more of the following: (a) the Cross-boundary Authority; (b) the Joint Authority; (c) NOPSEMA; (d) the responsible Commonwealth Minister.	▪ What is the timeframe for consultation / concurrence? (Noting that the JA Operating Protocols (2015) seek to make decisions on a consensus basis and within a reasonable timeframe (page 4) - https://www.nopta.gov.au/_documents/JA-operating-protocols-july2015.pdf)
	566D(4) and (5) (4) In deciding whether to approve or refuse to approve a change in control, the Titles Administrator: (a) must have regard to the matters specified in subsection (5); and (b) may have regard to the following matters: (i) matters raised in consultations (if any) under subsection (3); (ii) any other matters the Titles Administrator considers relevant.	▪ NOPTA decision-making for approval to "change of control" should be subject to specific criteria, e.g., whether technical or financial resources available to titleholder pursuant to change in control are "sufficient" and "may have regard to any other matters" "NOPTA considers relevant" without detail may lead to uncertainty for any "change of control" forms of divestments including as the applicant is to monitor and notify to NOPTA for any change in circumstances as also NOPTA has ability to revoke approval within the approval period having regard to the very same matters relevant for such decision-making.

[4] https://consult.industry.gov.au/offshore-resources-branch/opggs-amendment/
https://consult.industry.gov.au/offshore-resources-branch/opggs-amendment/user_uploads/overview---opggs-amendment-titles-administration-and-other-measures-bill-2021-pdf.pdf
https://consult.industry.gov.au/offshore-resources-branch/opggs-amendment/user_uploads/offshore-petroleum-and-greenhouse-gas-storage-amendment-titles-administration-and-other-measures-bill-2021.pdf

	(5) The matters are as follows: (a) whether the technical advice and financial resources available to the registered holder after the change in control takes effect are sufficient to: (i) carry out the operations and works that are authorised by the titles held by the registered holder; and (ii) discharge the obligations that are imposed under this Act, or a legislative instrument under this Act, in relation to those titles; (b) the matters specified in section 695YB as they apply to a person who will begin to control the registered holder; (c) if a person who will begin to control the registered holder is a body corporate—the matters specified in section 695YB as they apply to an officer of the body corporate; (d) any other matters prescribed by the regulations.	▪ The criteria for assessment of suitability is too vague and broad. It not only includes technical and financial ability, but other matters such as governance of companies, history of compliance is not captured. ▪ The assessment of the suitability seems to be open for the regulator to make this periodically and from time to time, not only on a party entering a permit. For example, the suitability may be re-assessed at FDP/PL grant/development stage. This cuts across the fundamental principle of the act that if a titleholder acquires a permit and explores, invests, then there is a right to apply to exploit through obtaining a production licence and develop. It seems tantamount to an expropriation type of provision that then allows the regulator to take away a permit for suitability reasons later after investment is made.
	566J - (1) The Titles Administrator may revoke an approval of a change in control of a registered holder of a title in the approval period for the change in control if: (a) there is a change in the circumstances of a person who is approved to: (i) begin to control the registered holder; or (ii) cease to control the registered holder; and (b) the Titles Administrator considers it appropriate to revoke the approval.	See above references to ***approval period***.
	566Z - Tracing	▪ It is not clear whether parent company or company in which the control changes, files for approval. ▪ These provisions may be seen negatively by and reduce investments by infrastructure funds or private equity funds
	Part 2 – Consequential amendments The consequential amendments link the new Chapter 5A to titles applications: Section 125 – Renewal of petroleum exploration permit Section 154 – Renewal of petroleum retention lease Section 185 – Renewal of fixed term petroleum production licence Section 221 – Grant of petroleum pipeline Section 270 – Consent to surrender Section 274 – Grounds for cancellation Section 275 – Cancellation of title Section 277 – Cancellation of title not affected by other provisions 32 – After subsection 478(2) – insert: (3) Before deciding whether to approve or refuse to approve a transfer, the Titles Administrator may consult with one or more of the following: (a) the Joint Authority; (b) NOPSEMA; (c) the responsible Commonwealth Minister. (3A) In deciding whether to approve or refuse to approve a transfer, the Titles Administrator may have regard to the following matters: (a) matters raised in consultations (if any) under subsection (3); (b) any other matters the Titles Administrator considers relevant.	▪ How will titles applications listed here be streamlined – if the matters prescribed under 695YB have not occurred? E.g., there is no notification of events under 695YC and the applicant is a current compliant title holder. ▪ What is the timeframe for consultation / concurrence? Annex 1 of the RIS[5] sets out the costing assumptions – (from NOTPA) , under paragraph / clause 6: 6. Average time for a single organisation to undertake requirements (based on NOPTA advice): a. A technical and financial report application – 6 hours for 1 technical financial / administration employee to source and compile information, 1 hour for 2 directors required to execute application. b. A fit and proper person declaration and appropriateness criteria application – 2 hours for 1 technical financial / administration employee to liaise and compile information, 1 hour for 1 director required to execute declaration. c. A change of ownership and control application – 1 hour for 1 technical financial / administration employee to source and compile information, 1 hour for 2 directors required to execute application ▪ These assumptions seem inconsistent with the Walker Review findings (see page 35/56)[6]: At footnote 46 - NOPTA explained to me that its financial assessment for two recent transfers of titles for mid to late life assets took in the region of 8-10 months to complete.
2 – Trailing liability	14 Vacated area for a permit, lease, licence or authority 14(1) - ... ***vacated area*** for a permit, lease, licence, or authority that has ceased to be in force, either in whole or in part.	▪ The Bill doesn't reflect that the government is a party to the consent to surrender process – in part and in full. ▪ Release from liability should occur in respect of titles, for which the decommissioning arrangements have gone through regulated surrender/expiry of title process but with flexibility especially in relation to derogations during such processes where the regulator and the titleholder may agree at the time as to who bears the residual risk. If this is not removed from the trailing liability, then the surrender process is worthless and the Government will have imposed a perpetual liability exposure on every titleholder.
	Concept of related persons 13 – new subsection before 586(3) (2A) The persons are:	▪ Trailing liability should not apply to transactions with retrospective effect, to be exercised only as an option of "last resort" and with an order of priority for determining trailing liability to be clearly set out in the Act itself, ie. , first

[5] https://consult.industry.gov.au/offshore-resources-branch/opggs-amendment/user_uploads/diser-regulatory-impact-statement---improvements-to-title-administration.pdf
[6] https://www.industry.gov.au/sites/default/files/2020-09/disclosure-log-20-036.pdf

	(a) the registered holder of the permit, lease or licence; or (b) a related body corporate of the registered holder of the permit, lease or licence; or (c) any former registered holder of the permit, lease or licence; or (d) a person who was a related body corporate of any former registered holder of the permit, lease or licence at the time the permit, lease or licence was in force; or (e) a person to whom a determination under subsection (2B) applies. (2B) NOPSEMA may make a written determination that this subsection applies to a person if, having regard to the following matters, it is satisfied on reasonable grounds that it is appropriate to do so: (a) whether the person is capable of significantly benefiting financially, or has significantly benefited financially, from the operations authorised by the permit, lease or licence; (b) whether the person is, or has been at any time, in a position to influence the way in which, or the extent to which, a person is complying, or has complied, with the person's obligations under this Act; (c) whether the person acts or acted jointly with the registered holder, or a former holder, of the permit, lease or licence in relation to the operations authorised by the permit, lease or licence	current titleholders, then exhaust all available "financial assurance" from current titleholders, then related persons of current titleholders and then only look to former titleholders in reverse chronological order and thereafter their related parties. Specifically: ○ any liability of a former titleholder is limited to its previous participating interest and should only apply for infrastructure that was installed before the transfer took place; and ○ the 'chain' of liability should start with the current titleholder and proceed reverse chronological order, with each titleholder only being liable for the work they completed. ▪ The power to apply decommissioning liability to "any person" based on criteria including anyone who may have significantly "benefited financially" from title operations or in a position "to influence compliance" or acts "jointly with" titleholder in relation to title operations" is too broad and may unintentionally capture employees/contractors(individuals or companies), royalty holders, financiers, direct interest holders, parent companies of investment funds/trustees or even suppliers or purchasers. ▪ Concern that in the event that the Government's own financial assurance assessment and monitoring is inadequate a former titleholder is liable for the cost. ▪ A NOPSEMA written determination (2C) should have regard to: ○ Intentional, knowing or reckless conduct. ○ Corporate culture e.g.: ▪ Culture that encourages or tolerated non-compliance; or ▪ Alternatively, a body corporate that failed to create a culture that promoted or required compliance. ▪ If the directions are applied to individuals – e.g. decision makers – then a defence that all reasonable steps / reasonable or practicable measures were taken to ensure compliance (this defence is provided under section 578 of the OPGGS Act).
	21 - 587A – Remedial direction in relation to permits, lease, licences and authorities that have wholly or partly ceased to be in force – responsible Commonwealth Minister 587A(2) Direction (2) The responsible Commonwealth Minister may, by written notice given to a person referred to in subsection (2A), direct the person to do one or more of the following things within the period specified in the notice: (a) to plug or close off, to the satisfaction of the responsible Commonwealth Minister, all wells made in the vacated area by any person engaged or concerned in the operations authorised by the title; (b) to provide, to the satisfaction of the responsible Commonwealth Minister, for the conservation and protection of the natural resources in the vacated area; (c) to make good, to the satisfaction of the responsible Commonwealth Minister, any damage to the seabed or subsoil in the vacated area caused by any person engaged or concerned in the operations authorised by the title; so long as the direction is given for the purposes of: (d) resource management; or (e) resource security	DISER to clarify: • Is this a reference to a direction to recover petroleum e.g. under section 189 of the OPGGS Act? • What are examples of remedial directions for resource management or resource security if the title ceases to be in force? • In other words if there was a commercial resource available wouldn't government consider cash bidding?
	43 – At the end of Part 6.4 of Chapter 6 (Restoration of the environment) - Add: 598A – Obligations etc. if remedial direction is in force (1) This section applies if: (a) a direction (a petroleum remedial direction) is in force under section 586, 586A, 587 or 587A; or (b) a direction (a greenhouse gas remedial direction) is in force under section 591B, 592, 594A or 595. (2) The following provisions apply as if a reference to a registered holder of a title, or to a titleholder, included a reference to a person who is subject to a petroleum remedial direction: (a) section 569; (work practices / manner / good oilfield practice etc). (b) section 571; (financial assurance) (c) Part 6.1A; (polluter pays) (d) Part 6.2; (directions re petroleum) (e) Part 6.5; (NOPSEMA compliance and enforcement powers) (f) Schedule 2A; (NOPSEMA environment management inspection powers) (g) Schedule 2B; (NOPSEMA well integrity inspection powers) (h) clause 13A of Schedule 3; (well integrity duty) (i) Part 4 of Schedule 3 (OSH inspections)	

	(3) The following provisions apply as if a reference to a petroleum activity included a reference to an activity carried out for the purpose of complying with a petroleum remedial direction: (a) section 571, other than subsection 571(1); (financial assurance) (b) section 572C; (escape of petroleum titleholder's duty) (c) Schedule 2A. (NOPSEMA environment management inspection powers	
	Table - Page 51- 64 Modifications of specified provisions if remedial direction is in force Item 1 – section 280 (interference with other rights) Item 3 – section 571 (financial assurance) Item 5 – section 572C (escape of petroleum titleholder's duty) Item 6 – section 572J (escape of petroleum – migration) Item 7 – section 574B (directions outside of the title area) Item 8 – section 576A (directions for significant offshore petroleum incidents- definitions for Division 2A) Item 9 – section 576B (directions for significant offshore petroleum incidents--NOPSEMA power to give directions) Item 10 – section 576G (additional operation of this division – constitutional basis) Item 13 - Clause 2 of Schedule 2A (definition of ***regulated business premises***) Item 14 - Clause 2A of Schedule 2A (declared oil pollution emergency) Item 15 - Clause 5 of Schedule 2A (Environmental inspections--regulated business premises - Power to enter and search) Item 16 – Clause 7 of Schedule 2A (Environmental inspections - Requirement to provide assistance) Item 17 – Clause 8 of Schedule 2A (Environmental inspections--powers to require information, and the production of documents and things - Requirement to answer questions) Item 18 – Clause 9 of Schedule 2A (Environmental inspections--power to take possession of plant and samples etc.- Power to take possession or samples) Item 19 – Subclause 11(1) of Schedule 2A (Environmental do not disturb notices) Item 20 – Subclause 11B(2) of Schedule 2A (Environmental prohibition notices) Item 21 – Clause 13 of Schedule 2A (NOPSEMA report on inspection) Item 22 – Clause 2 of Schedule 2B (definition of ***regulated business premises***) Item 23 – Clause 5 of Schedule 2B (well integrity inspections - power to search and enter) Item 24 – Clause 7 of Schedule 2B (well integrity inspections power to require assistance) Item 25 - Clause 8 of Schedule 2B (well integrity inspections - powers to require information, and the production of documents and things - Requirement to answer questions) Item 26 – Clause 9 of Schedule 2B (well integrity inspections power to take possession of plant and samples etc.- Power to take possession or samples) Item 27 – Subclause 11(1) of Schedule 2B (well integrity inspections--well integrity do not disturb notices) Item 28 – Clause 13 of Schedule 2B (well integrity inspections--well integrity prohibition notices) Item 29 – Clause 18 of Schedule 2B (reports on inspections concerning well integrity laws) Item 30 – Clause 13A of Schedule 3 (OSH requirement – duty re wells) Item 32 – Subclause 76A(2) of Schedule 3 (OHS inspections--OHS do not disturb notices (notification and display) Item 33 – Subclause 77A(2) of Schedule 3 (OHS inspections--OHS prohibition notices (notification, display and compliance)	
	46 Application and transitional provisions (1 January 2021) (2) The amendment of section 14 of the Act made by this Schedule applies in relation to permits, leases, licences and authorities that ceased to be in force, in whole or in part, on or after 1 January 2021.	
3 – Applications and decision making	695YB - Matters to which a decision-maker must have regard.	
	Notification of events 695YC – Requirement to give notice if certain events occur. This section applies to applicants, a registered holder of a relevant title and a body corporate.	▪ Notification + additional scrutiny at certain titles applications stage – e.g. renewal, why have both? ▪ Why not have notification – then declaration at renewal? ▪ The appropriate timing and frequency of this requirement where possible should be linked to existing regulatory requirements. ▪ It should be recognized that the concern relating to suitability and security risk only arises as the remaining production in proportion to the liability goes down.

4 – Information gathering powers	Titles Administrator may require further information – re application for grant / renewal.	
	(Information gathering) for - variation, suspension and exemption – conditions on title.	DISER to clarify: • APPEA understand the need for the decision-making criteria to be a relevant line of enquiry on a variation, suspension, and exemption? • Will the fit and proper person test and ***approval period*** apply to variations, suspensions and exemptions? • Would a point in time assessment during a title period – be unreasonable considering the cyclical nature of commodity prices? ○ Could an adverse decision impact work program flexibility; will this precipitate more good standing arrangement – monies?
	Titles Administrator or NOPSEMA inspector may obtain information and documents.	