



Australian Government

Department of Industry

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Dear Mr McNamara,

Details-stage Regulation Impact Statement – for assessment

I am writing in relation to the attached final details-stage Regulation Impact Statement (RIS) prepared by the Department of Industry for the implementation of the Government's election commitment to streamline petroleum offshore environmental approvals (OBPR Ref: 16191).

I would like to thank your officers in the OBPR for their assistance in working with officers in the Department of Industry to finalise the RIS in accordance with your letter.

I note that OBPR has agreed to the costings and estimated average annual compliance cost saving to business from this reform, as set out at table 2 of the RIS, and advise that I am satisfied that the final details-stage RIS addresses the concerns raised in your letter of 10 January 2014. Specifically, I have provided a detailed response to matters raised in your letter, including references and descriptions of amendments to the RIS and other actions taken (**Attachment A** refers).

I can also confirm that I have sighted evidence of the consultation referred to in the RIS, which indicates that APPEA, the Bureau of Resources and Energy Economics, industry members who have provided data and other stakeholders broadly support the logic, assumptions, and outcomes underpinning the costings, as well as the cost estimates themselves.

Accordingly, I am satisfied that the final details-stage RIS now meets the Government's best practice regulation requirements.

I note that the Department of Industry has prepared a single-stage RIS, and as no decision has been previously announced, an options-stage RIS was not required.

I submit the RIS to the Office of Best Practice Regulation for formal assessment.

Yours sincerely

Martin Hoffman
Deputy Secretary
23 January 2014

**Detailed response to matters raised in the letter dated 10 January 2014 in relation to
Regulatory Impact Statement OBPR Reference: 16191.**

Particular concerns:

- **The RIS does not clearly outline the problem in terms of the nature and extent of approvals duplication under the status quo.**

Additional information on the nature and extent of approvals duplication is provided in the RIS, supported by information supplied by regulators and industry (Paragraphs 1.11-1.17.3).

- **The RIS does not adequately assess the scope of the problem of duplication.**

Additional information on the scope of the problem of duplication is provided in the RIS. The 2009 Productivity Commission Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector was pivotal in identifying and describing the overlap between the EPBC Act and OPGGS Act regimes for environmental protection. These findings have subsequently been supported by information the Hawke Review of the EPBC Act and the Montara Commission of Inquiry. Paragraphs 1.18-1.24.2 refer.

- **The RIS must quote the relevant election commitment and explain how this proposal is in line with that commitment.**

The RIS quotes the election commitment the Government made to streamline environmental approvals by delivering a 'one-stop-shop' at paragraphs 1.1-1.1.3. A description of how the proposal is in line with, and delivers on the election commitment is provided at paragraphs 1.3-1.5.2.

- **The RIS must explain why a single-stage RIS is being undertaken; why an options-stage RIS was not completed; and include a completed checklist from page 7.86 in the Best Practice Regulation Handbook (July 2013).**

The RIS describes why a single-stage RIS is being undertaken in paragraphs 1.31-1.35. A statement in accordance with section 7.86 of the OBPR Handbook (July 2013) is at paragraph 1.35.1. As this is a single-stage RIS, the check-list (which is in relation to an options-stage RIS) is not relevant and has not been included (paragraph 1.35 refers). OBPR agreed to this approach on Wednesday 15 January 2014.

- **The RIS lacks depth in the discussion of the impacts and needs to be supported by evidence and stakeholder feedback.**

Additional information on impacts and stakeholder feedback in support of this discussion is provided in the RIS (Paragraph 1.46-1.53.4; 1.58-1.61.1). In summary, the proposal:

- Ensures one regulatory point of contact (instead of two government agencies) for industry.
- Delivers consistency in decision making by removing differing regulatory expectations.
- Provides single timeline for assessments.
- Removes the risk of conflicting requirements
- Reduces costs to industry and government in providing for a single regulator.

- **The RIS does not explain what the major issues raised by stakeholders were, provide an assessment of the veracity of these views, or explain how consultation has informed the final proposal. We understand further work will be undertaken on the Attachment to the RIS in this regard; this needs to inform the RIS.**

Additional information on the major issues raised by stakeholders is included at a high level in the RIS (Paragraphs 1.76-1.84.1). In summary, the major issues raised included:

- Environmental protection under the Program.
- NOPSEMA's capacity to undertake the commitments under the Program.
- The decision making process for OPPs and EPs.
- Consultation and transparency provisions.
- Compliance and enforcement provisions.

Appendix B has been updated to provide detailed issue-by-issue analysis of stakeholder comments and responses to these comments. OBPR advised this was an appropriate approach to respond to this matter on Wednesday 15 January 2014.

Detailed advice on how to address these points:

Problem

- 1. The status quo is not clearly defined and this has the effect of preventing a clear understanding of the problem and the nature of the proposed changes. To address this issue the RIS should identify what is being duplicated, not just what the ordinary approvals processes require. In particular, if a business were today seeking approval for a project and needed to satisfy both the OPGGS Act and Regulations and Part 3 of the EPBC Act what requirements would be duplicated?**

Additional information on the duplication in the development, assessment, approval, compliance, monitoring, reporting and enforcement of the two separate, but overlapping schemes, for offshore petroleum activities in Commonwealth waters has been included in the RIS, as per the advice from OBPR. The additional information includes specific detail on the steps required for each regulatory process that would be duplicated if a project was to be undertaken in accordance with the current regulatory Process. Refer to paragraphs 1.11-1.17.3.

- 2. A revised problem section with much greater depth of analysis should be drafted. First, the RIS should consider the scale and scope of the problem. For example:**
 - a. How many operations per year are subjected to both approvals processes? Of all the operations commencing in a year what proportion are subject to both processes?**

Additional and specific information on the current problem is provided at paragraphs 1.8-1.9.1, 1.18.1-1.18.2, and 1.21.1. As it is difficult to quantify the number of petroleum activities that take place every year, information has been provided on indicative number of activities a year, and is supported by evidence of submissions of environment plans and referrals to NOPSEMA and the Department of the Environment respectively. These findings have been supported by additional evidence from the 2009 Productivity Commission Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector and information from industry.

- b. What is the nature of the duplicated requirements? Is it mostly reporting?**

Additional information detailing the extent of the overlapping and duplicative requirements of the two regulatory process is provided (refer to paragraphs

1.11-1.17.3). This provides detail on the duplication at all stages of the process, from development and assessment to approval and compliance, as well as duplication in content, reporting and monitoring requirements. This is supported with evidence from industry of the duplication and, at times, inconsistency in regulatory requirements and conditions.

c. What type of operation is typically subject to both approvals processes?

The RIS now has additional information on the scope of activities affected by the duplication at paragraph 1.11.3. This includes, but is not limited to, seismic surveys, exploration and production drilling, facility construction and operation, and decommissioning. The implications of this duplication evidenced further with information provided by industry at paragraph 1.16.

d. What type of entity is subject to both approvals processes? Are these mostly smaller or larger entities? Are they multinational or solely domestic?

The Australian offshore oil and gas comprises companies ranging from small local and regional exploration companies, to large Australian companies and medium to large international companies. All firms undertaking exploration and development activities which may involve issues of national environmental significance will be subjected to both regulatory processes.

Further information on the composition of the offshore petroleum industry in Australia and the types of entities impacted by the duplicative approvals process is provided at paragraphs 1.10.1-1.10.2.

e. Have operations been abandoned because of regulatory duplication? The RIS should provide an indication of how often this has occurred.

The RIS does not make the claim that operations will not proceed because of regulatory duplication, although the regulatory compliance costs associated with the duplicative process are potentially a contributing factor to the problem (Paragraph 1.21.3 refers).

It is difficult to determine whether operations have been abandoned as regulators may not have been aware of them. It is also difficult to determine whether they have been abandoned because of regulatory duplication as there may be various reasons (for instance, financial constraints, regulatory conditions) that contributed to such a decision. Therefore, as the RIS does not claim operations have been abandoned due to regulatory duplication, the RIS does not indicate how often it has occurred.

f. Have there been instances of conflicting regulatory requirements? What were these? How frequent were they? What impact did they have?

Evidence of conflicting and inconsistent regulatory requirements and conditions resulting from regulation under both the OPGGS(E) Regulations and the EPBC Act is provided at paragraphs 1.16-1.16.4. Information provided by industry of inconsistency with regulatory requirements, specifically for oil spill contingency planning has also been set out within these paragraphs.

g. Paragraph 1.12 refers to unnecessary approval costs adding to market barriers. What approval costs are unnecessary? Do you have evidence, anecdotal or otherwise, of smaller entities being excluded from the market because of duplication?

Changes have been made to the content of paragraph 1.21.3 which now includes information formerly at paragraph 1.12 of the first draft RIS. As noted in 1.21.3, the statement in relation to unnecessary approval costs and smaller entities being excluded due to duplication is a finding of the 2009 Productivity Commission Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector. Further information and evidence (including a submission from industry peak body APPEA), is in this Productivity Commission report, which is referenced in footnotes to that paragraph.

3. The RIS should provide an indication of the depth of the problem on operations. For example:

- a. What are the costs that can be directly attributed to the two assessment processes? This could be broken down in terms of time delays and other costs of duplicative regulatory approval.**

The Business Cost Calculator and Appendix A provides the breakdown of this information. Information on the cost of delay in the offshore oil and gas sector are discussed in detail in the RIS at paragraphs 1.52-1.52.4 and 1.62-1.71. This discussion is supported by the findings of the 2009 Productivity Commission Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector, the 2013 Productivity Research Report: Major Project Development Assessment Process and the 2011 Deloitte Access Economics Cost Benefit Analysis of Environmental Impact Assessments under the EPBC Act.

- b. What did stakeholders say about these costs?**

In addition to the Business Cost Calculator and information at Appendix A, an assessment of the impacts on industry and the non-for-profit sector has been included at paragraphs 1.58.1-1.58.2 and paragraph 1.61.1 respectively. This assessment has been evidenced by information from industry participants.

4. The RIS should provide an assessment of the efficiency and effectiveness of the current regulations. For example:

- a. Are there any benefits, such as to the environment, from having the two approvals processes?**

Additional information on the current regulatory regime has been included in the RIS at paragraphs 1.27-1.27.4 and 1.43-1.43. The Strategic Assessment, and Strategic Assessment Report identifies in detail how the OPGGS(E) Regulations provide for the protection of the relevant matters identified in the EPBC Act to ensure that the streamlining exercise improves the efficiency of the regime while maintaining the same environmental outcomes.

- b. Is it considered that the current regulations do provide benefits, but at too great a cost? Or is it considered that the dual assessment process is superfluous?**

Additional information on the current regulatory regime is provided in the RIS at paragraphs 1.27-1.27.4. This includes reference to information provided by industry that suggests that conditions applied under EPBC Act approvals or decisions impose unnecessary regulatory obligations without an improvement in environmental outcomes.

- 5. The objectives need to clearly outline what outcomes, goals or targets of government action are sought in relation to the identified problem. This may involve identifying the Government's objectives as stated in the election commitment.**

The Objectives of Government Action, paragraphs 1.28-1.30, has been amended, with reference to the election commitment to deliver a 'one-stop-shop for environmental approvals' where NOPSEMA is the sole, designated assessor for environmental approvals within its jurisdiction.

- 6. Currently the objectives section presents the proposed action (para 1.13) and asserts the expected outcomes (paras 1.14 and 1.15). Paragraph 1.14 could be re-phrased to read as an objective, for example by beginning with: *This proposal aims to ...* . Otherwise that paragraph should be moved to the impacts section and the claims will need to be substantiated (see comments below).**

Paragraphs 1.28-1.29 now reflect the objectives of Government Action and the content of 1.13-1.15 from the first draft RIS. A reference to the proposal's objective to contribute to the Government's deregulation policy agenda has been included at paragraph 1.30.

Impact Analysis

- 7. More depth in the analysis of the expected impacts is required. This includes providing a thorough and balanced analysis of the range of impacts, both positive and negative. Much of this can be qualitative, but the impacts need to be clearly explained, with risks assessed, including the risks of not achieving the benefits.**

Additional information on the expected impacts is provided in the RIS (Paragraphs 1.47-1.54; 1.60-1.61.1). This assessment demonstrates the benefit to industry and other stakeholders in ensuring there is one regulator for environmental management in the offshore petroleum industry. Information provided by industry has been included to evidence the assessment.

- 8. In terms of expected impacts on the environment the RIS could consider:**
a. What are the environmental safeguards referred to at paragraph 1.20.1?

Note the former paragraph 1.20.1 has been removed. Paragraph 1.26 refers to and explains the Government's election commitment to "maintain environmental safeguards" and ensure the same level of environmental protection will be achieved. Paragraphs 1.27-1.27.4 provides further information.

- b. What concerns were raised about environmental impacts from stakeholders? Are these concerns valid? How did feedback inform the development of the proposal?**

Additional information on stakeholder views in relation to environmental impacts is included at paragraphs 1.25, 1.79.3, 1.81-1.84.1 of the RIS. Appendix B now contains detailed information on these views and the Taskforce's response (including any proposed action).

9. In terms of impacts on entities seeking environmental approval, the RIS could consider:

a. How many entities and operations could benefit from the streamlining?

This will benefit over 60 oil and gas companies, as well as all other stakeholders who interact with those companies in relation to the petroleum activities in Australia (refer to paragraph 1.36.1). Information is also provided in Appendix A and the Business Cost Calculator.

b. How many operations could be expected to proceed that previously would not have as a result of the streamlining?

Refer to the response to issue 2c above. The RIS does not make the claim that operations will not proceed because of regulatory duplication, although the regulatory compliance costs associated with the duplicative process are potentially a contributing factor to the problem (Paragraph 1.21.3 refers).

Similarly, the RIS does not make a claim in relation to the number of operations that could be expected to proceed that would not have, although there is potential for benefit to Australia's profile as an attractive investment destination (refer to paragraph 1.54). The RIS clearly states the costs are higher with two sets of regulatory requirements as opposed to one.

c. What are the expected broader economic benefits that can be directly attributed to the removal of duplication, rather than the removal of approvals more generally? To our reading the discussion at paragraph 1.25 relates to costs incurred from applications more generally, rather than from duplication.

Note the former paragraph 1.25 has been amended and additional information is now provided in the RIS at paragraphs 1.43-1.43.4 and 1.47-1.54. These paragraphs detail the benefits to industry and other stakeholders by ensuring there is one regulatory point of contact, with broader economic benefits including reduced compliance costs to industry, reduced cost and imposition on the community including the not-for-profit sector, reduced administrative costs to government and increased business certainty and confidence which will enhance Australia's profile as an attractive investment destination.

10. The assertion at paragraph 1.19 that significant economic and social benefits will be derived from streamlining the regimes needs to be substantiated. For example:

a. What are the economic and social benefits referred to?

Note the content of paragraph 1.19 has been removed from the RIS. However, broader information on benefits is now included in the RIS at paragraphs 1.43-1.43.4 and 1.47-1.54. These paragraphs detail the benefits to industry and other stakeholders. Benefits include a single point of contact for industry and other stakeholders, consistency in decision making reduced compliance costs and regulatory duplication for industry, government and the community, reduced cost and imposition on the community, including the not-for-profit sector, reduced administrative costs to government leading to increased business certainty and confidence which will enhance Australia's profile as an attractive investment destination.

b. What is the magnitude of these benefits?

Note the content of paragraph 1.19 has been removed from the RIS. Broader information on the benefits is now included in the RIS at paragraphs 1.47-1.54.

c. Do stakeholders support this view and the magnitude of the estimates?

Additional information has been included in several places in the RIS to reflect stakeholder views in relation to the proposal and estimated impacts. (Refer to paragraphs 1.21-1.25; 1.45-1.54.1; 1.58.1-1.59; 1.61.1; 1.68; 1.76-1.84).

d. Were there any dissenting views? What are they? Are they considered valid? Have these views been addressed? Why or Why not?

Additional information has been included in several places in the RIS to reflect stakeholder views in relation to the proposal and estimated impacts (refer to paragraphs 1.22-1.25; 1.45-1.54; 1.58.1-1.59; 1.61.1; 1.68; 1.76-1.84). In addition, Appendix B provides detailed analysis of stakeholder views in the course of consultation on the proposal.

11. Paragraph 1.20 is not clear. To clarify, the RIS should explain:

Note the content of paragraph 1.20 is now addressed in paragraphs 1.43-1.43.4.

a. What is meant by 'comprehensive'? And, however defined, is it considered more comprehensive than current arrangements?

Note the RIS no longer refers to 'comprehensive' arrangements. As a result, no qualification of the term is required.

b. How is 'objective-based' defined? What is the alternative to objective-based?

Refer to paragraphs 1.43.1-1.43.4. Objective-based regulation places the onus and duty of care for environmental protection on proponents seeking to undertake an offshore petroleum activity. Proponents must consider and identify the acceptable outcomes for all environmental matters, and demonstrate how those outcomes are appropriate, and how they will be met. This is in contrast to requirements under a prescriptive regulatory regime, where the proponent only takes into consideration those matters specifically identified by the regulation.

c. What is involved with systematic environmental management authorisation?

Note the RIS no longer refers to 'systematic environmental management authorisation'. As a result, no qualification of the term is required.

d. What is involved with compliance monitoring and enforcement?

Compliance, monitoring and enforcement are no longer referenced in this context. As a result, no qualification of the term is required.

- 12. The RIS should explain the mechanism by which the assumed benefits identified at paragraph 1.24 will arise and provide some evidence, including from stakeholder feedback, that they are reasonable.**

Note the content of paragraph 1.24 is now addressed in paragraph 1.45. The RIS has been amended to clarify that the impact analysis of costs in 1.45 was developed in consultation with industry and NOPSEMA. Further information on assumptions are also at Appendix A.

- 13. You need to provide us with information about how the compliance costs estimates were arrived at. Specifically you should:**
- a. Provide us with the Business Cost Calculator file.**

The final Business Cost Calculator file was provided on Friday 17 January 2014.

- b. Provide us with relevant supporting information which could be achieved by elaborating on the costing assumptions provided at Appendix A. For example you could include a break-down of how each of the cost categories is accounted for.**

Relevant documentation, including the excel file holding data and workings, was provided to OBPR on Friday 17 January. Additional information on costing assumptions and workings has been added to paragraph 1.59 and Appendix A of the RIS.

- c. Include evidence that stakeholders were consulted about the cost estimates and considered the estimates reasonable.**

Additional information on stakeholder consultation and views on the cost estimates are in the RIS (Paragraphs 1.58.1-1.58.2 and 1.68 in particular) and at Appendix A. The Taskforce has had ongoing discussions with individual companies, the peak industry organisation, APPEA, the not-for-profit sector, and independent sources, such as the Australian Bureau of Statistics. Some industry data and communications is provided in-confidence. As such, references to consultation and industry views are provided in the RIS and Appendix A describing industry views and consultation. Specific data and communications records from industry participants are not provided.

- d. The updated RBCO table should be included in the RIS (see Attachment B).**

The updated RBCO table has been inserted between paragraph 1.72 and 1.73.

- 14. In the assessment of the impacts on the not-for profit sector, the RIS should explain who this comprises.**

Information on the composition of key stakeholders who interact with the oil and gas industry is now included in the RIS at paragraph 1.23.

- 15. Overall, any uncertainties in the document's ability to detail expected costs and benefits should be made transparent.**

The RIS has been amended to flag uncertainties and clarify the nature of estimations of all information, including expected costs and benefits. Paragraphs 1.9-1.10; 1.46; and 1.60 refer.

Consultation

16. We note that you have undertaken fairly extensive consultation and have an attached document that sets out the range of stakeholder feedback. However, this needs to be summarised in the body of the RIS and the following points addressed:

The RIS includes a high level summary of stakeholder feedback (Paragraphs 1.76-1.84.1). Appendix B has been updated to provide detailed issue-by-issue analysis of stakeholder comments and responses to these comments. OBPR advised this was an appropriate approach to respond to this matter on Wednesday 15 January 2014.

a. What were the main areas of support and contention?

Broadly, industry stakeholders were broadly supportive of the policy and proposal, with most submissions seeking clarification of matters of detail within the proposed model. Environmental stakeholder raised concerns surrounding the policy and proposed amendments, but also expressed ‘consultation fatigue’ over the burden of being consultation under both regulatory processes.

Paragraphs 1.81-1.81.4 provide an overview of the issues raised through the consultation process. The major issues raised included:

- Environmental protection under the Program
- NOPSEMA’s capacity to undertake the commitments under the Program
- The decision making process for OPPs and EPs
- Consultation and transparency provisions
- Compliance and enforcement provisions

The table at Appendix B describes and responds to all key issues raised in submissions.

b. How were different stakeholder views taken into consideration in the development of the proposal?

Consultation on the proposal was undertaken with industry, fishery organisations, government officials and environmental stakeholders through face to face discussions and a four week formal consultation process. Information on the consultation process is included in the RIS at paragraphs 1.76-1.81.

c. Are there likely to be any particularly sensitive matters that decision makers should be aware of? What are they? How can they be managed?

EPs and OPPs are developed under an objective based regime that placed the onus and duty of care on proponents to ensure environmental impacts are reduced to as low as reasonable practicable. These risks and impacts must be of an acceptable level. Refer to paragraphs 1.43-1.43.4.

17. Consistent with the new Best Practice Regulation Requirements, the RIS must include one of the statements and a completed checklist at paragraph 7.86 of the Best Practice Regulation Handbook (July 2013).

A statement in accordance with section 7.86 of the OBPR Handbook (July 2013) is at paragraph 1.35.1. As this is a single-stage RIS, the check-list (which is in relation to an options-stage RIS) is not relevant and has not been included (paragraph 1.35.2 refers).

Implementation and Review

- 18. If there is discretion in how the election commitment can be implemented then the different approaches should be canvassed, for instance, stakeholders suggest various activities that could be covered by the proposed Offshore Project Proposal process. Otherwise, it should be explicitly stated that there is only one way to implement the commitment.**

Consultation was undertaken regarding how to streamline activities currently assessed under the EPBC Act into the OPGGS(E) Regulations. This included the OPP process which will be mandatory for development projects. The OPP provides an assessment and approval for development projects which may impact on matters protected under Part 3 of the EPBC Act (paragraph 1.39 refers).

Compliance Costing Requirements:

- **Provide the Business Cost Calculator file.**

The final version of the Business Cost Calculator file, revised to reflect discussions, was provided to OBPR on Friday 17 January.

- **Provide relevant documentation of costing assumptions and workings (such as an Excel file).**

Relevant documentation, in particular the excel file holding data and workings, was provided on Thursday 16 January. Additional information on costing assumptions and workings was added to Appendix A of the RIS.

- **Provide Evidence that stakeholders were consulted about the cost estimates and considered the estimates reasonable.**

Additional information on stakeholder consultation and views on the cost estimates are in the RIS (Paragraphs 1.58.1-1.58.2 in particular) and at Appendix A. Targeted and ongoing consultation occurred between the Taskforce and individual companies, the peak industry organisation, APPEA, the not-for-profit sector, and independent sources such as the Australian Bureau of Statistics. Industry data and communications is provided in-confidence. As such, references to consultation and industry views are provided in the RIS and Appendix A describing industry views and consultation, but specific data and communications records are not provided.

- **Provide a detailed breakdown of how all of the costs were accounted for.**

Detailed information on cost breakdowns was provided in the spreadsheet and information has been added to Appendix A (“4. Detailed Business Cost Calculator explanations”).