

# Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016

australian petroleum production & exploration association limited

Submission | April 2016

the voice of Australia's oil and gas industry

## Introduction

The Australian Petroleum Production and Exploration Association (**APPEA**) is the peak national body representing the upstream oil and gas exploration and production industry. APPEA has more than 80 full member companies comprising oil and gas explorers and producers in Australia.

APPEA members produce an estimated 98 per cent of the nation's petroleum. APPEA also represents more than 250 associate member companies providing goods and services to the oil and gas industry. Further information about APPEA can be found at [www.appea.com.au](http://www.appea.com.au).

APPEA is pleased to provide the following submission regarding the Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016 (**the Bill**) to the Agriculture and Environment Committee (**the Committee**).

## Importance of a Regulatory Impact Statement and appropriate consultation

APPEA understands that a Regulatory Impact Statement (RIS) was not conducted for the Bill. This is a serious omission for legislation that will have significant financial impacts on a broad range of groups and individuals.

Of further concern is that the Bill was introduced to Parliament with no stakeholder consultation. APPEA is strongly of the view that early and thorough consultation on proposed legislation is essential in the making of good law.

The Bill in its current form could impose considerable additional regulatory cost and associated expense which may not result in significant environmental benefit.

*Inconsistency with fundamental legislative principles.*

The Explanatory Notes for the Bill list several breaches of fundamental legislative principles and the *Legislative Standards Act 1992*. The Bill:

- Retrospectively impacts property rights without compensation
- Retrospectively impacts the right to have certain applications considered or amended without compensation
- Reverses the onus-of-proof for offences
- Removes the 'mistake of fact' defence for offences

APPEA submits that the Committee recommend that an appropriate consultation process be coordinated and a detailed RIS be completed before further Parliamentary consideration of the Bill.

## Amendments to the Environmental Offsets Act

Amendments to remove the 'significance' test for all residual impacts will considerably increase compliance costs and delay development timeframes for environmental outcomes that are, by definition, 'not significant'.

### *Case study - Potential impact -*

The following case study is based on real data from a detailed assessment for a proposed pipeline development.

This project involves the installation of a 480 kilometre long main transmission pipeline. Land disturbance include clearing activities for a 40 meter right of way for a pipeline with a total footprint of 23 square kilometres. All construction related disturbance would be fully rehabilitated post installation of the pipeline. Rehabilitation would be undertaken in accordance with best practice and ensure that topsoil cover is re-established and land is returned as close as possible to its previous productivity.

The full pipeline route was ecologically surveyed to determine what matters of state environmental significance (**MSES**) were found on the ground versus species that were mapped. Through ecological surveys, ecologists were able to determine the areas and level of impact on MSES, which were then used to determine whether the impact was significant using the *Significant Residual Impact Guideline, Dec 2014*.

The additional regulatory cost associated with the Bill were calculated using EHP's Financial Settlement Offset Calculator. Table 1 summarises the costs for impacts determined as 'significant' and the 'not significant' classification as introduced by the Bill.

By including MSES that have a current impact determination of 'not significant', the additional regulatory cost is \$24.5 million, resulting in a \$33.6 million overall payment\*. This equates to a 370 per cent potential increase in compliance costs for a single project. Despite this significant potential expense it has been determined there was no requirement to consult or conduct a RIS on this Bill.

*Table 1 Summary of Costs of Significant Impacts and inclusion of not significant impacts (i.e. removal of 'significant').*

| Impact type                   | Area (ha)   | Cost (\$AU)         |
|-------------------------------|-------------|---------------------|
| Significant impacts           | 478         | \$9,084,874         |
| Not significant impacts       | 1407        | \$24,560,788        |
| <b>Total payment required</b> | <b>1885</b> | <b>\$33,645,662</b> |

\*Estimate calculated using the Department of Environment Heritage Protection (**DEHP**) online Financial Settlement calculator and could be considered a conservative assessment.

APPEA understands that a 'significant' threshold in the Act will be replaced with a 'non-trivial' threshold in a statutory guideline. It is, however, unclear how this will be defined and what outcome is served by attempting to distinguish between 'significant' and 'non-trivial' impacts. Given the potentially significant ramifications these and other components of the Bill should be the subject of detailed consultations prior to introduction.

### **Recommendations**

APPEA recommends that the Committee:

1. Request a detailed Regulatory Impact Statement and appropriate consultation with relevant stakeholders. Both are considered essential to ensuring that unintended consequences are mitigated.
2. Consider the impact of retrospectivity and assess the need for compensation for landowners and operators.
3. Recommend that the reverse onus-of-proof in respect to alleged offences be removed from the Bill.
4. Ensure that 'mistake of fact' is maintained as a defence in any prosecution.

APPEA thanks the Committee for the opportunity to make this submission.