Please direct all responses/queries to:
Michael Abbott

Our reference: 10383516

Woodside Petroleum Ltd.
ACN 004 898 962
Woodside Plaza
240 St Georges Terrace
Perth WA 6000
Australia
T: +61 8 9348 4000
F: +61 8 9214 2777

www.woodside.com.au

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Committee Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600
By email: economics.sen@aph.gov.au

Dear Committee Secretary

SENATE ECONOMICS REFERENCES COMMITTEE - INQUIRY INTO FOREIGN BRIBERY

Thank you for your email dated 14 July 2015 to our Chief Executive Officer, Peter Coleman, inviting Woodside Petroleum Limited ('Woodside') to make a submission to the Senate Economics References Committee Inquiry into Foreign Bribery ('Inquiry').

Australia's foreign bribery laws play a vital role in helping to ensure that host communities and economies derive genuine and lasting benefit from foreign investment by Australian business. The corrosive and distortive impacts of bribery and corruption on people, communities, economies, markets and the rule of law are well-known. It is equally well-known that the victims of foreign bribery are often amongst the poorest people and communities in the world.

As our Code of Conduct and Anti-Bribery and Corruption Policy set out, Woodside adopts a zero-tolerance stance on bribery and corruption, whether in the private sector or the public sector, anywhere in the world. Guided and strengthened by our Compass Values of Integrity, Respect, Working Sustainably, Working Together, Discipline and Excellence, Woodside also seeks positively to influence all those with whom it does business to adopt a similar approach.

Woodside is therefore pleased to have this opportunity to make the following submissions to the Inquiry:

1. Woodside welcomes the efforts made by the Australian Government to strengthen the country's foreign bribery legislative regime, such as through the establishment of the Fraud and Anti-corruption Centre in July 2014 and the measures announced by the Minister for Justice on 12 August 2015 to close the loophole allowing a defendant to avoid prosecution by arguing that they did not intend to bribe a foreign official because they did not know the identity of that official, even though a bribe was paid.

2. Woodside also welcomes and supports increased efforts of the Australian Federal Police to investigate and prosecute companies and individuals who have committed foreign bribery offences, and to provide and receive mutual legal assistance from regulators overseas to the same end.

3. Woodside nevertheless considers that the following further steps should be taken by government to strengthen Australia's foreign bribery legislative framework:

    a. The 'facilitation payments' defence under Section 70.4 of the *Criminal Code Act 1995* (Cth) ('Criminal Code') should be abolished, with consequential changes to other legislation (for example the *Income Tax Assessment Act 1997* (Cth)) which condones making facilitation payments.

The availability of the facilitation payment defence under Section 70.4 aligns the Criminal Code with the US *Foreign Corrupt Practices Act 1977* ('FCPA'), which creates an exception for these payments from the general prohibition on bribing foreign public officials. You will also be aware that in contrast with Australian and US law, the United Kingdom's *Bribery Act 2010* ('Bribery Act') makes no distinction between bribes and payments which would otherwise be classified as 'facilitation payments'.

In Woodside's view, the permissibility of facilitation payments under Australian law not only helps to maintain an environment in which bribery can take root and flourish, but often does so in the face of local laws which seek to prohibit these payments.

Guidance published by government (such as through the Department of Foreign Affairs and Trade), which discourages the making of facilitation payments despite Australian law condoning them, suggests that government already understands the broader adverse consequences to which they can give rise.

Woodside considers that it will be difficult, if not impossible, to comprehensively stamp out bribery of foreign public officials whilst Australian laws continue to condone the making of facilitation payments. Removal of the facilitation payment defence will also support a level playing field for Australian businesses operating internationally, some of which may be subject to laws such as the Bribery Act.

For all of the above reasons, Woodside considers that Australia's foreign bribery legislative regime is best served by the removal of the facilitation payment defence.

b. Government should look to introduce a specific corporate offence of 'failing to prevent bribery', and a statutory defence of 'adequate procedures' to prevent bribery, to align the Criminal Code with the Bribery Act. In Woodside's view, the introduction of these measures would further serve to dissuade Australian companies and individuals from engaging in bribery overseas, and provide additional incentive to develop and implement robust governance processes for the prevention and detection of bribery.

c. Government should publish official guidance to companies and individuals as to what it considers are the indicators of a corporate 'culture of compliance', and the hallmarks of a good anti-bribery compliance program. From Woodside's perspective, many Australian businesses are still developing an awareness of foreign bribery risks and the controls which need to be implemented to manage those risks. Woodside sees proactive guidance by government as playing an important role in supporting the business community to develop that awareness. The UK Ministry of Justice's official guidance as to the principles informing 'adequate procedures' to prevent bribery, and the US Department of Justice's *'Resource Guide to the U.S. Foreign Corrupt Practices Act'*, are examples of the sort of guidance from which Australian businesses could benefit through equivalent guidance by the Australian government.

4. In Woodside's view the Commonwealth foreign bribery legislative and enforcement regime plays a dual role in both deterring offenders but also in supporting companies which seek to do business overseas in a legal and ethical way. It is very important therefore that Australian companies and individuals continue to be able to undertake legitimate and appropriate engagements, relationship building, skills transfer and knowledge sharing with local communities (including indigenous stakeholders), governments and regulators abroad, provided these are supported by appropriate governance processes. Australia's foreign bribery laws should be clear, understandable and not inadvertently serve to stifle responsible Australian investment overseas (which is ultimately in Australia's national interest as well) or have unintended adverse consequences for companies and individuals who seek to conduct their business in a legal and ethical way.

In Woodside's view, efforts by Australian businesses to conduct themselves ethically and in accordance with the law will inevitably be weakened by a legislative framework which is ambiguous, misunderstood and/or not effectively and consistently enforced by government. Woodside therefore supports the Inquiry's important work and looks forward to its Report, and any recommendations, making a milestone contribution to the further development and effectiveness of Australia's foreign bribery regulatory framework.

Thank you once again for the opportunity to make this submission.

Yours faithfully

Michael Abbott
Senior Vice President, Corporate & Legal
General Counsel