Chapter 4

Views on the proposed national regulators

4.1 The Minister, in his Second Reading Speech on the National Regulator Bill, made a number of observations about the effectiveness of the current Designated Authority system. The Minister stated that the model:

> ...made sense when established, particularly bearing in mind that at that time the two key jurisdictions, Victoria and Western Australia, both had well-established regulators more familiar with day-to-day offshore petroleum operations than was the Commonwealth. As Commonwealth expertise and involvement in regulating offshore operations has developed, in particular following the establishment of NOPSA, the inefficiencies and limitations inherent in the DA model has become more apparent.[1]

4.2 In its evidence to the committee, the Department of Energy, Resources and Tourism (DRET) emphasised that the proposed arrangements were about removing unnecessary regulatory burden at a national level, and not because of criticisms about the performance of any particular state or territory agency:

> They are removing unnecessary duplication that is inherent in the existing regimes. This is not just being critical of any particular state. Those existing arrangements also involve the Commonwealth, so they also address our own regulatory shortcomings. They also significantly address shortcomings that were identified in the Montara inquiry.[2]

4.3 It is important to recognise that, with the majority of offshore oil and gas extraction activity in Australia taking place off the Western Australian coast, any concerns raised by the Western Australian authorities need to be carefully examined and considered. At the same time, however, DRET's evidence that the remaining jurisdictions involved do not oppose the proposal is similarly significant:

> CHAIR:...Is it only Western Australia that has difficulty with this proposal?
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> Mr Livingston: The principal concerns have been raised by Western Australia. I would say that all of the other states either support or do not oppose the reforms. At the ministerial council meeting, Victoria said that they support the NOPSEMA component of these reforms. They believe that is a very good idea. But they did raise some concerns about whether the titles administration through NOPTA was the most efficient means of

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1 The Hon. Martin Ferguson AM MP, Minister for Resources and Energy, *Proof House of Representatives Hansard*, 25 May 2011, p. 3.

2 Mr Peter Livingston, Manager, Petroleum Regulatory Reform, Department of Resources, Energy and Tourism, *Proof Committee Hansard*, 7 June 2011, p. 7.

> administering titles. But they, from my recollection, were the only other concerns raised.[3]

Overall efficiencies and best regulatory practice

4.4 As discussed in chapter 2, the Productivity Commission recommended in 2009 that a new national offshore petroleum regulator for Commonwealth waters with regulatory responsibility for resource management should be established, but that a separate authority with responsibility for occupational health and safety issues should remain. The Montara Commission of Inquiry also called for the Productivity Commission's recommendation to establish a national offshore petroleum regulator to be pursued.

4.5 DRET suggested that best practice for offshore petroleum issues, affirmed by both the Montara incident and the 2010 Deepwater Horizon oil spill in the Gulf of Mexico, is for the government department involved in resources development to be separate from bodies which have responsibility for regulatory oversight of the industry.[4]

4.6 The WA Department of Mines and Petroleum advised that the division of these functions at the state level was an 'arms-length separation', consisting of different branches within the department.[5]

4.7 It is also apparent that, from both the report of the Productivity Commission and evidence presented to the committee during this and previous inquiries, there is significant unnecessary regulatory burden on the sector regarding titles administration. At present:

> ...you have the state department do an initial assessment of an application, assess it and send it to the Commonwealth. The Commonwealth then seeks to have its technical advisers and Geoscience Australia review it and basically everything gets duplicated.[6]

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3 Mr Peter Livingston, Manager, Petroleum Regulatory Reform, Department of Resources, Energy and Tourism, *Proof Committee Hansard*, 7 June 2011, p. 5.

4 Ms Fiona Brotherton, Australian Government Solicitor; on secondment to the Department of Resources, Energy and Tourism, *Proof Committee Hansard*, 7 June 2011, p. 8.

5 Mr Bill Tinapple, Executive Director, Petroleum, Western Australian Department of Mines and Petroleum, *Proof Committee Hansard*, 7 June 2011, p. 13.

6 Mr Peter Livingston, Manager, Petroleum Regulatory Reform, Department of Resources, Energy and Tourism, *Proof Committee Hansard*, 7 June 2011, p. 10.

4.8 The Productivity Commission considers:

> Project approvals are taking longer than a streamlined approval process would allow, potentially diminishing the present value of petroleum resource extraction in Australia by billions of dollars each year.[7]

4.9 On the regulation side, DRET also argued that the recent trend in the sector has been for the Commonwealth to increase its share of regulatory responsibilities, in response to specific deficiencies in the system and requests from the States:

> In 2005, NOPSA commenced operations because an international team of reviewers had done a study in Australia of occupational health and safety regulation at the request of the Australian government as a consequence of the Piper Alpha disaster in the North Sea. That review of expert safety regulators concluded that the safety culture, as it was being administered by the designated authorities at that time, was very unsatisfactory and they recommended the establishment of an independent safety regulator as a matter of urgency, and that was carried out. Safety, as a regulatory function, has already been transferred from the designated authorities to an independent regulator.[8]

4.10 DRET suggested that as a consequence of the transfer to NOPSA of regulatory functions related to the structural integrity of facilities, wells and well operations completed earlier this year, most major areas of regulatory responsibility have now been transferred:

> The environment plan function is simply the last of those three major subject areas of regulation to be transferred to the independent regulator.[9]

4.11 Moves towards minimising regulatory differences across jurisdictions have been welcomed by industry. The Australian Petroleum Production and Exploration Association (APPEA), who represents the upstream oil and gas industry in Australia and considers the Productivity Commission 'made a compelling case for setting up a single integrated offshore regulatory authority', described the introduction of these bills as 'a big step forward' towards developing:

> ...new regulatory frameworks that comprehensively address efficiency, safety and environmental concerns.[10]

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7 Productivity Commission, *Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector*, April 2009, p. cc.

8 Ms Fiona Brotherton, Australian Government Solicitor; on secondment to the Department of Resources, Energy and Tourism, *Proof Committee Hansard*, 7 June 2011, p. 8.

9 Ms Fiona Brotherton, Australian Government Solicitor; on secondment to the Department of Resources, Energy and Tourism, *Proof Committee Hansard*, 7 June 2011, p.9.

10 Australian Petroleum Production and Exploration Association, 'Oil and gas industry welcomes Government's responses to Montara, Productivity Commission reports', *Media release*, 25 May 2011; Department of Resources, Energy and Tourism, *Submission 1*, Attachment D.

4.12 For companies that only have activities within a single jurisdiction, however, the WA Department of Mines and Petroleum suggested that the complexity of the regulatory arrangements could be seen to increase. The Department suggested that while they can currently operate as a 'one-stop shop', because Western Australia will retain oversight of its waters and onshore areas the changes would mean that a company dealing with matters within a single state will have to deal with more agencies than previously was the case:

> Western Australia has already indicated that it would not roll in its state waters or onshore areas including islands, and so the companies would have to still relate to two separate regulators—or not 'still'; it is more complex than the one-stop shop that we have with the designated authorities. The industry would have to relate to NOPTA and NOPSEMA and the joint authority on one hand; on the other hand, when the pipelines or facilities such as LNG plants come into the state areas, they would have to relate to another authority.[11]

4.13 If Western Australia is not intending to confer powers over state waters onto the new regulators, and the WA Department indicated this option has already been considered at the 'highest level',[12] this observation highlights the need for co-operation and communication between the organisations involved in the new regulatory arrangements. As noted in Chapter 3, obligations on the Commonwealth regulators to ensure they communicate and coordinate their activities, as well as an obligation to cooperate with the relevant State government departments, are imposed by the bills. Additional arrangements to further promote appropriate levels of coordination between the Commonwealth and State agencies are discussed later in this chapter.

Expertise

4.14 Another way the proposed arrangements would increase efficiency and lead to better outcomes, it was suggested, is by reducing the need for the necessary expertise to be duplicated at both the Commonwealth and State/NT level.

4.15 DRET suggested that it is difficult for some jurisdictions to attract and keep a sufficient level of expertise. To illustrate this, the regulation of the structural integrity of wells was put forward as an example where this difficulty had previously arisen. DRET suggested that there was a shortage of well-integrity engineers with sufficient experience, and that this contributed to the push from the Designated Authorities for the regulation of well-integrity to be given to NOPSA:

> The designated authorities have always struggled to keep a critical mass of well expertise within their departments. It was decided that, by transferring the well integrity function to NOPSA, it would be possible to concentrate

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11 Mr Bill Tinapple, Executive Director, Petroleum, Western Australian Department of Mines and Petroleum, *Proof Committee Hansard*, 7 June 2011, p. 14.

12 Mr Bill Tinapple, Executive Director, Petroleum, Western Australian Department of Mines and Petroleum, *Proof Committee Hansard*, 7 June 2011, p. 17.

> the well expertise that was available in Australia into a single regulator, thereby avoiding a situation where they were spread rather thinly over all of the jurisdictions. In fact, it was a move initiated by the designated authorities, arising from the fact that the designated authorities themselves felt that they did not have the capacity to do that work.[13]

4.16 A national regulator model could address these issues. A single state, particularly the jurisdictions with lower levels of oil and gas extraction activity, may have a relatively infrequent need to utilise staff with certain knowledge and experience. A national regulator which retained these experts would be able to deploy them to these jurisdictions when they were needed, and because of a national workload, would be able to redeploy them to other jurisdictions afterwards. By having this ability, it is likely that a national body would find it easier to maintain a "critical mass" of staff with sufficient knowledge and experience.

4.17 The benefits of such a model may be limited for some states. In Western Australia, because of the higher level of offshore oil and gas extraction activity, it is possible that the WA Department of Mines and Petroleum is able to recruit and retain a "critical mass" of expert staff for its current purposes.

4.18 The WA Department suggested the proposed arrangements could dilute the expertise they currently had, and therefore their ability to perform the functions related to their waters under the new arrangements. For instance, WA gave the example of reservoir engineers, who are 'very highly sought after in the industry':

> With all these projects going on it is difficult to recruit and retain them, and yet as part of the legislation they have resource management functions. We have been able to recruit and retrain and retain two reservoir engineers. So Western Australia has this critical mass. If we divide it in two, we may lose that element of synergy. We may have only one reservoir engineer and one would go into NOPTA, which may not work as well as having the current system.[14]

Effect on Joint Authority arrangements and consideration of local issues

4.19 The Explanatory Memorandum states that 'there will be no change' as a result of the National Regulator Bill to the Joint Authority arrangements, which are the major decisions undertaken by the relevant Commonwealth and State/Territory Minister.[15] States, however, will have the option to confer their administrative powers on the Titles Administrator.

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13 Ms Fiona Brotherton, Australian Government Solicitor; on secondment to the Department of Resources, Energy and Tourism, *Proof Committee Hansard,* 7 June 2011, pp. 9-10.

14 Mr Bill Tinapple, Executive Director, Petroleum, Western Australian Department of Mines and Petroleum, *Proof Committee Hansard*, 7 June 2011, p. 20.

15 Explanatory Memorandum, Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011, p. 1.

4.20 However, the Western Australian Department of Mines and Petroleum considers that while:

> ...a form of the Joint Authority (Commonwealth and State participation in decision making) is preserved, thus giving the State some information from NOPTA [Titles Administrator] regulation...there is no provision for consultation or notice provided in the amendments for giving the State information from NOPSEMA regulation.[16]

4.21 The WA Department expressed concern that local issues, and other issues particularly relevant to the state will not be adequately addressed in advice to the Joint Authority, and that this would limit the decision-making ability of the state member of the Joint Authority. DRET argued that a national titles administrator would be best placed to have the necessary technical expertise to give professional advice to the state member of a Joint Authority. DRET expressed a view that 'we should be able to, in consultation with the WA Department, assure them of the professionalism of the technical adviser'.[17] While the WA Department accepted that 'to a fairly large extent', the Titles Administrator could provide all the technical advice:

> The problem is that they could not provide the local issue input to the JA decisions. If you had to look at the Gorgon project...many aspects had to be negotiated there. We have three other LNG projects onshore, with onshore facilities that require this local knowledge and local input, and that could well have an impact on the offshore facilities. For example, in Gorgon, if the state had not come to the party and allowed the sequestration of CO_2 onto Barrow Island then that whole project would have had a completely different shape. So local knowledge and local input are important, and the JA needs to have that local advice.[18]

4.22 The WA Department also expressed concern about their ability to be involved in matters related to the environment if these responsibilities were shifted to NOPSEMA:

> Just to give you an example: a well could be drilled and regulated by NOPSEMA just outside the three nautical miles, which could be off Rottnest Island or off the Ningaloo reef park, and the state would have no input into that environmental regulation. We would have none whatsoever. But yet we would have significant risks and perhaps local knowledge which should be applied to how that well would be drilled.[19]

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16 WA Department of Mines and Petroleum, *Submission 2*, p. 1.

17 Ms Fiona Brotherton, Australian Government Solicitor; on secondment to the Department of Resources, Energy and Tourism, *Proof Committee Hansard*, 7 June 2011, p. 10.

18 Mr Bill Tinapple, Executive Director, Petroleum, Western Australian Department of Mines and Petroleum, *Proof Committee Hansard*, 7 June 2011, p. 20

19 Mr Bill Tinapple, Executive Director, Petroleum, Western Australian Department of Mines and Petroleum, *Proof Committee Hansard*, 7 June 2011, p. 17.

How the arrangements will operate in practice

4.23 It is important to note that, supplementary to the formal legislative amendments, there are a number of other negotiations and arrangements which should assist in effective operation of the proposed system, and could potentially address many of the practical issues raised by Western Australia.

4.24 DRET noted that a working group has been formed to assist the State and Northern Territory departments in transitional arrangements arising from the move from the current arrangements to the new framework.[20]

4.25 A Memorandum of Understanding (MoU) between the Commonwealth and Western Australia is also in the process of being finalised, with an agreement reached 'in principle'.[21] This MoU would not affect the legislative arrangements, but would seek to address outstanding practical issues.

4.26 The WA Department, however, was critical of the Commonwealth for proceeding with the bills before the MoU was signed; although DRET advised the committee that:

> ...the Commonwealth minister made it clear that it would not delay the legislative amendments. There is nothing in the bills that would preclude the implementation of the cooperative arrangements envisaged in the memorandum.[22]

4.27 The MoU will address arrangements between the Commonwealth and WA regarding the contracting of relevant staff and resources. DRET noted that to ensure the new organisations are able to coordinate and work together effectively, it is proposed that both NOPSEMA and the Titles Administrator will be located in Perth, and in the same building. Also as part of the MoU, negotiations are underway for the organisations to be co-located with 'elements of the Western Australian department', to enable frequent consultation and the sharing of expertise.[23]

Committee view

4.28 The committee considers, in light of the Productivity Commission's report and the recommendations of the Montara Commission of Inquiry, that it is essential for a consistent national regulatory framework and titles administration process to be introduced.

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20 Mr Peter Livingston, Manager, Petroleum Regulatory Reform, Department of Resources, Energy and Tourism, *Proof Committee Hansard*, 7 June 2011, p. 5.

21 WA Department of Mines and Petroleum, *Submission 2*, p. 3.

22 Mr Peter Livingston, Manager, Petroleum Regulatory Reform, Department of Resources, Energy and Tourism, *Proof Committee Hansard*, 7 June 2011, p. 5.

23 Mr Peter Livingston, Manager, Petroleum Regulatory Reform, Department of Resources, Energy and Tourism, *Proof Committee Hansard*, 7 June 2011, p. 10.

4.29 The framework proposed by the National Regulator Bill will ensure that the regulation of important safety, structural integrity and environmental management matters are appropriately resourced at a national level. The arrangements will also deliver significant improvements in efficiency and decrease the burden on industry through the removal of duplication and inconsistencies present throughout the current arrangements.

4.30 The committee notes that the proposals contained in the National Regulator Bill have come about after a number of inquiries and following extensive consultation. The committee also notes that the state governments will still continue to be involved in the major decisions through the Joint Authority arrangements, which are unchanged. The committee considers that any outstanding issues regarding the operation of the new authorities can be addressed through the separate agreements being developed, and should not delay consideration of these bills.