

Analysis of the Bills

Background

- 1.1 On 25 May 2011 the Selection Committee referred the following bills to the Committee for inquiry and report:
- Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011
 - Offshore Petroleum and Greenhouse Gas Storage (Registration Fees) Amendment Bill 2011
 - Offshore Petroleum (Royalty) Amendment Bill 2011
 - Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies Legislation Amendment (2011 Measures No. 2) Bill 2011
 - Offshore Resources Legislation Amendment (Personal Property Securities) Bill 2011

Purpose and overview of the bills

- 1.2 In its submission, RET noted that the main purpose of the Bills is to amend the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* and associated Acts to implement reforms associated with the establishment of a national offshore regulator in Commonwealth waters. The Bills address the

regulatory framework for petroleum and greenhouse gas storage activities and do not impinge on the activities themselves.¹

1.3 The four main objectives of the reforms in the Bills are:

- to provide an integrated approach to the regulation of safety, structural integrity and environmental management;
- ensure that this regulation is independent and appropriately skilled and resourced;
- separate the resource development function from regulation and retain resource development within government; and
- reduce the regulatory inconsistency and duplication that is inherent in the existing regulatory regime.²

1.4 The Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011 ('National Regulator Bill') will amend the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*. It will establish two new regulatory bodies to administer and regulate petroleum and greenhouse gas storage operations in Commonwealth waters in the Australian offshore area. The new bodies will replace the Designated Authorities—State and Northern Territories Ministers who, through their departments, have performed functions and exercised powers conferred directly on them by the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* and its predecessor Act the *Petroleum (Submerged Lands) Act 1967*.³

1.5 The purpose of the Offshore Petroleum and Greenhouse Gas Storage (Registration Fees) Amendment Bill 2011 is to amend the *Offshore Petroleum and Greenhouse Gas Storage (Registration Fees) Act 2006* to reference the new National Offshore Petroleum Titles Administrator (NOPTA), which will be established through the *Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Act 2011*.⁴

1.6 The purpose of the Offshore Petroleum (Royalty) Amendment Bill 2011 is to amend the *Offshore Petroleum (Royalty) Act 2006* to reference NOPTA.⁵

1 RET, Submission no. 1, p. 1.

2 Mr Peter Livingston, Manager, Offshore Petroleum Regulatory Reform, Resources Division, RET, *Proof Committee Hansard*, 17 June 2011, p. 1.

3 The Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011, Explanatory Memorandum, p. 2.

4 Offshore Petroleum and Greenhouse Gas Storage (Registration Fees) Amendment Bill 2011, Explanatory Memorandum, p. 1.

5 Offshore Petroleum (Royalty) Amendment Bill 2011, Explanatory Memorandum, p. 1.

- 1.7 The purpose of the Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies Legislation Amendment (2011 Measures No.2) Bill 2011 is to amend the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* to impose new cost-recovery levies on holders of offshore petroleum and greenhouse gas storage titles. The levies will recover the costs of NOPTA in undertaking its regulatory functions in relation to titles administration and the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) in undertaking its regulatory functions in relation to environmental management.⁶
- 1.8 The purpose of the Offshore Resources Legislation Amendment (Personal Property Securities) Bill 2011 is to amend the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* and the *Offshore Minerals Act 1994* to exclude application of the *Personal Property Securities Act 2009*.⁷

Policy history

- 1.9 In April 2007, the Australian Petroleum Production and Exploration Association's (APPEA) Strategic Leaders' Report, '*Platform for Prosperity*' identified more efficient national petroleum regulation as a policy priority. APPEA called for the Productivity Commission to carry out a review of the onshore and offshore regulatory framework in order to assist implementation of a more efficient and nationally consistent petroleum regulatory regime.⁸
- 1.10 In 2008 the Council of Australian Governments (COAG) identified the upstream petroleum sector as one area where overlapping and inconsistent regulation threatens to impede economic activity and agreed that the Productivity Commission should undertake a review. The Productivity Commission review process involved extensive consultation including informal discussions with stakeholders, an issues paper, 20 submissions, four roundtable meetings, a draft report and a final report in April 2009.
- 1.11 The Productivity Commission delivered its *Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector* in April 2009 and identified

6 Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies Legislation Amendment (2011 Measures No.2) Bill 2011, Explanatory Memorandum, p. 1.

7 Offshore Resources Legislation Amendment (Personal Property Securities) Bill 2011, Explanatory Memorandum, p. 1.

8 APPEA, *Platform for Prosperity: Australian Upstream Oil and Gas Industry Strategy*, April 2007, p. 63.

significant unnecessary regulatory burdens on the sector. Its principal recommendation to reduce those burdens was the establishment of a national offshore regulator.⁹ The Productivity Commission also identified significant potential national income gains, in the order of billions of dollars each year, from the implementation of its recommended reforms.¹⁰

- 1.12 The Commonwealth Government sought to develop an all-of-governments' response to the Productivity Commission report through the Ministerial Council on Mineral and Petroleum Resources (MCMPR). In August 2009, the MCMPR established a Working Group of officials involving all jurisdictions to develop the responses. By the end of 2009, MCMPR had agreed 25 responses to the Productivity Commission recommendations, but deferred its consideration of the recommendations for a national offshore regulator pending the outcomes of the Montara Commission of Inquiry.
- 1.13 The Montara incident in 2009 highlighted problems arising from regulatory gaps between regulation of safety separate from regulation of integrity, environment and day-to-day operations. The Montara Commission of Inquiry reported to the Commonwealth Minister for Resources and Energy in June 2010 and the Minister publicly released the report together with the Commonwealth's draft response on 24 November 2010. The Commonwealth's draft response included the reform model that is now in the current amendment Bills. Stakeholders were provided three months to comment on the draft response.¹¹
- 1.14 On 18 February 2011, the MCMPR met to consider the Commonwealth's proposed establishment of a national offshore regulator. In its submission, RET notes that:

While a consensus could not be reached, the Commonwealth Minister advised the Council that, in light of the PC Review and the Montara Report, continuation of the status quo was not a credible option. Accordingly he advised the Council that the Commonwealth would move to implement its proposed reforms in Commonwealth waters. MCMPR agreed to establish a Working Group of officials from all jurisdictions to guide the transition to the new regulatory arrangements.¹²

9 Productivity Commission, *Review of the Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector, Research Report*, Melbourne, 2009, pp. 292-3.

10 Productivity Commission, *Review of the Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector, Research Report*, Melbourne, 2009, p. 197.

11 RET, Submission no. 1, Attachment A.

12 RET, Submission no. 1, Attachment A.

1.15 On 25 May 2011, the Commonwealth Government released its final response to the Montara Report and its response to the Productivity Commission report. Both responses incorporate the reform model in the current Bills.¹³

1.16 The importance of the Montara incident to the evolution of policy was highlighted in the evidence of both RET and APPEA. In evidence before the Committee Mr Peter Livingston, Manager, Offshore Petroleum Regulatory Reform, Resources Division, RET, explained:

There have been changes to the proposed model for reform as these reviews have developed. If you go back and look at the original proposed government response to the Productivity Commission review, that was looking at maintaining the National Offshore Petroleum Safety Authority unchanged and creating a separate national offshore petroleum regulator to look after the other regulatory functions. In light of the Montara response and also the comments that we received during consultation with stakeholders, we amended that model fairly significantly so that the national regulator that is now proposed is an expansion of the National Offshore Petroleum Safety Authority so that it can now have an integrated approach to the regulation of environmental management and structural integrity at the same time. That was a significant change. The original model did not propose to retain the joint authority. However, industry and jurisdictions wanted to maintain that strong state involvement in the process, so we have amended it there. It has been an evolutionary process.¹⁴

1.17 In its evidence, the peak industry organisation also recognised the significance of Montara. Mr Mark McCallum, Deputy Chief Executive, Policy and External Relations for APPEA, told the Committee:

The Montara Commission of Inquiry was important in that it identified and reinforced the need for substantial improvements to the regulatory regime. In our mind, the commissioner raised real and serious concerns in relation to the regulatory disconnects, particularly around the matters of safety, environment and integrity of facilities, and made a very compelling case for the establishment of a single national regulator.¹⁵

13 RET, Submission no. 1, Attachment A.

14 Mr Peter Livingston, Manager, Offshore Petroleum Regulatory Reform, Resources Division, RET, *Proof Committee Hansard*, 17 June 2011, p. 5.

15 Mr Mark McCallum, Deputy Chief Executive, Policy and External Relations, APPEA, *Proof Committee Hansard*, 17 June 2011, p. 9.

Discussion of the Bills

- 1.18 The evidence presented to the Committee has identified three principal issues in relation to the Bills, which otherwise are a series of machinery amendment to provide for these three central outcomes. These principal issues are:
- The creation of a national regulator for Commonwealth offshore waters for the petroleum and gas industry;
 - The introduction of a new system of fees for industry based on the principle of full cost recovery; and
 - Amending the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* to exclude application of the *Personal Property Securities Act 2009*.
- 1.19 The Committee notes that the first two have been the subject of considerable controversy between the Commonwealth and Western Australian Governments.

National Regulator

- 1.20 The Bills propose to create a national regulator through the creation of two regulatory bodies, the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) and the National Offshore Petroleum Titles Administrator (NOPTA).
- 1.21 NOPTA will replace the current system of Designated Authorities (essentially the State and Northern Territory Ministers and their respective departments) with a single national titles administrator. NOPTA will be part of the Department of Resources, Energy and Tourism. Its principal functions will be to provide information, assessments, data, analysis, reports, advice and recommendations to members of the Joint Authorities and the Responsible Commonwealth Minister in relation to the performance of those Ministers' functions and the exercise of their powers, the collection, management and release of data, titles administration, approval and registration of transfers and dealings, and the keeping of the registers of petroleum and greenhouse gas titles.¹⁶
- 1.22 The Bills retain the Joint Authority as decision maker on key petroleum and mining title decisions to maintain a state role in these decisions. The Joint Authority for each State and the Northern Territory comprises the

16 RET, Submission no. 1, Attachment A; The Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011, Explanatory Memorandum, pp. 2-3.

responsible Commonwealth Minister (currently the Minister for Resources and Energy) and the relevant State or Northern Territory Minister. The Joint Authorities make the major decisions under the Act concerning the granting of petroleum titles, the imposition of title conditions and the cancelling of titles, as well as core decisions about resource management and resource security. The responsible Commonwealth Minister's view prevails in the event of a disagreement. Statutory timeframes for key title decisions are to be introduced. The Commonwealth Minister will remain decision maker for greenhouse gas storage titles.¹⁷

1.23 NOPTA will make recommendations to the Joint Authority on titles as well as administer titles and collect data relating to petroleum, mining and greenhouse gas storage activities in Commonwealth waters. States will have an option to confer their administrative powers on NOPTA.¹⁸

1.24 In evidence before the Committee, Ms Fiona Brotherton, a lawyer with the Australian Government Solicitor outposted to RET, explained the advantages of NOPTA over current arrangements:

The titles administrator will be able to source that advice from wherever they wish to, and obviously all relevant and available sources of advice will be used, including any information and advice that can be provided by the state department. But the advice will go to the joint authority as a single set of advice from the titles administrator. That will increase efficiency over the current situation, where it tends to be the case that the state minister gets his technical advice from his department and the Commonwealth minister gets his technical advice from Geoscience Australia, and sometimes there is toing and froing between the two departments about the quality of each other's advice and that kind of thing. That will all now be dealt with in an efficient manner by the titles administrator and there will be one set of technical advice that goes up.¹⁹

1.25 NOPSEMA will be created by expanding the functions and title of the National Offshore Petroleum Safety Authority (NOPSA). NOPSA, which is a body corporate, will continue under the new name and with an extended range of functions in relation to petroleum and greenhouse gas operations. Its principal functions will be: occupational health and safety;

17 RET, Submission no. 1, Attachment A; The Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011, Explanatory Memorandum, pp. 2-3.

18 RET, Submission no. 1, Attachment A; The Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011, Explanatory Memorandum, pp. 2-3.

19 Ms Fiona Brotherton, AGS, attached to RET, *Proof Committee Hansard*, 17 June 2011, p. 5.

structural integrity of facilities, wells and well-related equipment; environmental management; and regulation of day-to-day petroleum operations. NOPSEMA will appoint and deploy OHS inspectors and petroleum (and greenhouse gas) project inspectors. NOPSEMA, like NOPSA, will be fully funded by cost-recovery levies and fees, managed by means of a Special Account under the *Financial Management and Accountability Act 1997*.²⁰

- 1.26 The advantages of the integrated safety, structural integrity and environmental management functions were highlighted in evidence by RET:

NOPSEMA will have responsibility for occupational health and safety, structural integrity of facilities, wells and well operations, and also environmental management. Those are three separate subject areas, but there is a substantial degree of overlap between them and therefore overlap in the skills required of the regulator. The structural integrity of facilities, including pipelines, and structural integrity of wells and well operations is at the core of what NOPSEMA will be doing. It is a very important element of occupational health and safety. It is also an extremely important element of environmental management because if there are people on board a facility, structural integrity is crucial to their safety. The integrity of the well means, essentially, its ability to contain pressure within the well and prevent the release of fluids. Those fluids can be petroleum, oil or gas, but they can also be drilling mud or whatever comes out of the well while it is being drilled – whatever is down there. So the containment of fluids within the well is crucial to the protection of the environment. If you have a well blowout you have a potential environmental disaster as well as a potential safety catastrophe, as there will be people on board the vessel or structure that the drilling is taking place on.²¹

- 1.27 NOPSEMA will operate in offshore Commonwealth waters. However, in addition, the States and the Northern Territory will have the option to confer their equivalent regulatory powers and functions on NOPSEMA in State and Northern Territory waters. NOPSEMA will be solely a regulator of offshore petroleum activities. Where States or the NT confer functions and powers under their coastal waters legislation, the activities of NOPSEMA as regulator of safety, structural integrity and environmental

20 RET, Submission no. 1, Attachment A; The Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011, Explanatory Memorandum, pp. 2-3.

21 Ms Fiona Brotherton, AGS, attached to RET, *Proof Committee Hansard*, 17 June 2011, p. 7.

management will be concerned only with the offshore operations of titleholders. The conferral will have no bearing whatever on the State or Territory's right to grant petroleum rights over its three nautical mile seabed. The same will be true if Western Australia confers functions and powers on NOPSEMA in the 'eligible coastal waters'. The amendments will enable NOPSEMA to provide assistance on a cost recovery basis to State, NT and international governments and regulators, provided the assistance is within the scope of its functions.²²

1.28 Jurisdictional areas in which NOPSEMA and NOPTA will or may operate are:

(a) *Commonwealth waters* – these are the waters covered by the *Commonwealth Offshore Petroleum and Greenhouse Gas Storage Act 2006*, i.e. waters of the territorial sea between 3 and 12 nautical miles as well as the continental shelf, and the offshore areas of external Territories (such as Ashmore and Cartier Islands). NOPSEMA and the Titles Administrator will function in all Commonwealth waters.

(b) *Designated coastal waters* of each State and the Northern Territory – these are the waters covered by the State and Northern Territory Petroleum (Submerged Lands) Acts, i.e. the first 3 nautical miles of the territorial sea adjacent to each State and the Northern Territory, plus (in the case of Western Australia) some historic petroleum title areas landward of the (3-mile) territorial sea baseline but external to the State. In designated coastal waters, functions and powers may be conferred on NOPSEMA by the relevant State's or the Northern Territory's Petroleum (Submerged Lands) Act and regulations. Functions and powers may also be conferred on the Titles Administrator.

(c) *Eligible coastal waters (WA only)* – these are waters landward of the (3-mile) territorial sea baseline that are external to the State. Only Western Australia has any offshore resources activity in waters in this category. WA is able to confer functions and powers on NOPSEMA on the same basis as in designated coastal waters.

(d) *Any State/NT waters or onshore* – A State or the Northern Territory may contract with NOPSEMA for the provision of

22 RET, Submission no. 1, Attachment A; The Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011, Explanatory Memorandum, pp. 2-3.

regulatory services. In relation to the provision of services onshore, constitutional restrictions apply.²³

- 1.29 In its submission, RET notes that the 'Bill thus provides the potential to avoid any offshore boundary between regulatory regimes' and that:

NOPSEMA and NOPTA will provide significant regulatory reform by replacing seven DAs and their Departments and will deliver significant efficiency gains and reduction in regulatory burden. NOPSEMA and NOPTA together provide the integrated approach to regulation and separate titles administration recommended by the Montara Commission of Inquiry.²⁴

- 1.30 Further, there is an explicit function that NOPTA and NOPSEMA will 'each have an express function of cooperating with the other in matters relating to the administration and enforcement of the Act and regulations':

While it is an important aspect of the new regime that the two bodies will act entirely independently of each other in their decision-making and regulatory practices, a level of administrative coordination between the agencies will assist in minimising any potential impact on the industry of having offshore operations regulated by two different entities.²⁵

- 1.31 In evidence before the Committee, RET highlighted the key feature of the new regulatory regime – the separation of the resource management and regulatory functions and the integration of safety, structural integrity and environmental management:

The Montara inquiry and the Macondo disaster in the Gulf of Mexico have highlighted the importance of having a regulator of petroleum operations that is independent of government resources departments. This package of bills separates the resources development functions of the joint authorities and their departments from the regulation of human health and safety, the structural integrity of facilities, wells and well operations, and environmental management and gives the regulator the necessary independence.²⁶

23 The Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011, Explanatory Memorandum, pp. 4–5.

24 RET, Submission no.1, Attachment A.

25 The Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011, Explanatory Memorandum, pp. 2–3.

26 Mr Peter Livingston, Manager, Offshore Petroleum Regulatory Reform, Resources Division, RET, *Proof Committee Hansard*, 17 June 2011, p. 2.

- 1.32 In its submission and evidence before the Committee, APPEA highlighted the need for a further degree of integration, the accreditation of NOPSEMA under the *Environment Protection and Biodiversity Conservation Act*:

Montara in particular showed regulatory disconnect. You cannot just regulate for environment. You are regulating for the environment; you are regulating to make sure that hydrocarbons do not escape, basically – which is what safety regulators do as well and which is what integrity regulators do as well. Just regulating for the environment under the EPBC Act, prudently, the environment minister should have access to people who are experts in corrosion, well design, well construction, concreting, welding – a whole suite of things that relate to the integrity of facilities, and they do not. They do not have access to that expertise. So, if you are going to regulate for the environment, you need to make sure that you cover off each and every one of those skill sets, because you are regulating, really, for the integrity of facilities.

The establishment of NOPSEMA will have that exact skills set, will have experts in every one of those fields and will be looking at the integrity of facilities. For us it makes sense – good sense – for the environment minister to consider on drawing on that expertise, drawing on that skill base to make sure that, diligently, he has access to the right sets of expertise. That being said, I am not questioning the environmental credentials of those working under the EPBC Act. I am merely suggesting that, to regulate for the environment, you also need to regulate for the integrity of facilities. To do so, you need that broader skills set.²⁷

- 1.33 In evidence before the Committee, RET indicated that accreditation of NOPSEMA to carry out functions under the *Environment Protection and Biodiversity Conservation Act* would represent a further efficiency and was a possible outcome.²⁸

27 Mr Mark McCallum, Deputy Chief Executive, Policy and External Relations, APPEA, *Proof Committee Hansard*, 17 June 2011, p. 12.

28 Mr Peter Livingston, Manager, Offshore Petroleum Regulatory Reform, Resources Division, RET, *Proof Committee Hansard*, 17 June 2011, p. 8; Ms Fiona Brotherton, AGS, attached to RET, *Proof Committee Hansard*, 17 June 2011, p. 22.

The Western Australian Position

- 1.34 The Western Australian Government is opposed to the creation of a national regulator.²⁹ In evidence before the Committee, Mr Bill Tinapple, Director, Petroleum Division, Western Australian Departments of Mines and Petroleum stated:

We still think that the old joint authority and designated authority system was not broken, so we do not see a need to throw out the baby with the bathwater. There were improvements being made almost daily, and we think it could be improved to the extent that it would offer a better system than what is proposed in these amendments.³⁰

- 1.35 Western Australia believe that the Bills will actually complicate the regulatory system by creating two regulators where there is now only one, replacing the single Designated Authority with a national regulator in Commonwealth waters and a state regulator in coastal waters.³¹

- 1.36 The Western Australian Government seeks three changes to the Bills, reflecting its concerns about royalties, the role of the joint authority and consultation through NOPSEMA: Mr Tinapple explained:

Western Australia is the only state that has royalties from the offshore area and we believe that we should be able to maintain the administration of those areas for royalties. We have been doing it for 25 years and doing it, we believe, reasonably efficiently ... As far as the joint authority is concerned, we believe that although the joint authority that has worked well for 40 years or so has been preserved, it is a single almost Superman kind of joint authority from the states' viewpoint. Western Australia and the other states will have an input, but there is no support staff and no recognition of consultation with other state agencies, so we would like to see something reflected in the amendments for that. Finally, NOPSEMA, as a statutory authority, is really an authoritative

29 DMP, WA, Submission no. 4, p. 2.

30 Mr Bill Tinapple, Executive Director, Petroleum Division, Western Australian Departments of Mines and Petroleum, *Proof Committee Hansard*, 17 June 2011, p. 17.

31 Mr Bill Tinapple, Executive Director, Petroleum Division, Western Australian Departments of Mines and Petroleum, *Proof Committee Hansard*, 17 June 2011, pp. 16, 19; Mr Simon Skevington, Project Manager, Safety Reform, Safety Reform Division, Western Australian Departments of Mines and Petroleum, *Proof Committee Hansard*, 17 June 2011, p. 19.

agency unto itself. There is no requirement for consultation or notice to be given to the state for NOPSEMA.³²

1.37 The Western Australian Government is concerned at the loss of control over the setting of royalties, a significant source of State revenue (over \$800 million per annum and rising³³). In its submission, the Department of Mines and Petroleum noted that though the changes would have no impact on State revenue, the following responsibilities will move from the Department of Mines and Petroleum (DMP) to NOPTA:

- Involvement in setting the royalty rates.
- Negotiation of wellhead royalty schedules (agreements) with holders of licences.
- Determination of the wellhead point and the value of petroleum at the wellhead.
- Assessment/determination of the quantity of petroleum recovered.
- Assessment and audit of monthly royalties payable.
- Exemption from royalties.
- Forecasting of Northwest Shelf royalties.

1.38 The submission argues that this is a 'significant departure from the practical and cooperative approach to administration of the offshore areas that was put in place under the 1979 Offshore Constitutional Settlement', and that:

WA does not support the amendments to the *Offshore Petroleum Royalty Act 2006* in the absence of a Service Level Agreement (SLA) with WA to continue this function. The amendments remove the State's involvement in the administration of royalty arrangements for the North West Shelf (NWS) Project (WA-1-P and WA-28-P). WA is the only jurisdiction that receives any royalties under this legislation.³⁴

1.39 The submissions recommends 'that all references to the "Designated Authority" in the current legislation are replaced with "the Western

32 Mr Bill Tinapple, Executive Director, Petroleum Division, Western Australian Departments of Mines and Petroleum, *Proof Committee Hansard*, 17 June 2011, p. 14.

33 Mr David Norris, Royalties Division, Western Australian Departments of Mines and Petroleum, *Proof Committee Hansard*, 17 June 2011, p. 15.

34 DMP, WA, Submission no. 4, p. 4. Currently, although royalties are negotiated and assessed by DMP, the actual payment of royalty is made by the licence holders to RET, which then pays Western Australia its share as a Commonwealth grant.

Australian Member of the Joint Authority''' rather than NOPTA, 'or a clear Policy Statement is made that WA will continue this function under a SLA' (Service Level Agreement).³⁵

- 1.40 In evidence before the Committee, Mr David Norris, of the Royalties Division of DMP, emphasised the complexity of the royalties regime and the necessary expertise that had developed within DMP to deal with it:

From our perspective we have said that this particular act, which is one of the acts being amended, is an act that only relates to Western Australia. It only relates to the North West Shelf Project, which has been paying royalties since it started up with the first royalty payments coming through around 1984. The arrangement that we have in place is relatively complex – it is based on sales values with deductions of capital and operating costs. It is called a wellhead royalty system, and the objective is to try to calculate the value of the petroleum at the wellhead and then apply the royalty rate to it. It is a complex arrangement that involves operating and capital costs, LNG shipping deductions and, in addition to that, interest and boring costs. It is a very specialised role that is required. It is not a general accounting-type qualification that would enable a person to do it but it is a very specialised role that the state has been successfully doing for 25 years now in terms of looking after the North West Shelf Project.³⁶

- 1.41 The Western Australian Government has also questioned the effectiveness of arrangements for the Joint Authority under the Bills. In its submission, DMP argues that 'the creation of the national regulator in the main amendment Bill does not contain any provisions to safeguard the State's interests. The State member of the Joint Authority has no formal access to advice other than that received from NOPTA':³⁷

The reality is that for the Joint Authority to be effective, DMP will have to continue to provide advice to the WA member of the Joint Authority, This capability is currently funded through the financial returns that WA receives from administration of these projects, which will be removed with the establishment of NOPTA.

35 DMP, WA, Submission no. 4, p. 5.

36 Mr David Norris, Royalties Division, Western Australian Department of Mines and Petroleum, *Proof Committee Hansard*, 17 June 2011, p. 14.

37 DMP, WA, Submission no. 4, p. 6.

Activities taking place in Commonwealth waters offshore WA can come under significant public and media scrutiny due to their proximity to sensitive environments, including Margaret River, Rottnest Island, the Abrolhos Islands and Ningaloo Reef. It is therefore critical that WA maintains the capability to assess these activities and ensure that appropriate safeguards are in place.

1.42 DMP is also concerned that there is no provision for any linkage to the Western Australian member of the Joint Authority 'which could act to safeguard the State's interests in the areas that are NOPSEMA's responsibility'.

1.43 In view of this, in its submission, DMP has recommended that:

amendments are incorporated into the *Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011* to provide recognition that State/NT members of the Joint Authorities will incorporate advice from State/NT agencies in making decisions and that this function may require some limited staffing resources which should be cost recovered or funded through another appropriate mechanism.

1.44 And that:

further amendments are incorporated into the *Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011* to provide a consultation mechanism between NOPSEMA and the State/NT members of the Joint Authorities, which would include notice of approvals.³⁸

Response to Western Australian Position

1.45 In evidence before the Committee, RET addressed the concerns put forward by the Western Australian Government. Mr Graeme Waters, General Manager, Offshore Petroleum Regulatory Reform, Resources Division, RET, highlighted the work undertaken to develop a Memorandum of Understanding between the Commonwealth and Western Australian Governments. He stated:

The alternative that was put forward by the Department of Mines and Petroleum in Western Australia, Minister Moore's alternative, was talking about cooperative working arrangements and collocation, and everything that sat underneath that, which Mr Tinapple now refers to as the 'big shed'. We saw a lot of positives

38 DMP, WA, Submission no. 4, p. 6.

in that approach. So we progressed that, which then led to a meeting between Minister Moore and Minister Ferguson, where an in-principle agreement was reached between the two to further flesh out this notion of cooperative working arrangements. To that end, we developed a memorandum of understanding, which addressed all of those issues and it exists between the CEO of NOPSA, the Secretary of the Department of Resources, Energy and Tourism and the Director General from DMP. We reached agreement on those things, Minister Ferguson signed the MOU and it was sent to DMP in late May. That is where we have got to, and all of those issues relating to consultation – working together, the notion of the executive liaison committee and how these three co-located organisations would operate – is explained in the MOU.³⁹

- 1.46 The importance of the Memorandum of Understanding, and Commonwealth–Western Australian co-operation generally, to industry was emphasised by APPEA in its evidence before the Committee. Mr McCallum told the Committee:

We view the arrangements between the Commonwealth and the states as critically important and we have been encouraged by the recent efforts of cooperation, particularly between Western Australia Minister for Resources Norman Moore and Commonwealth minister for resources Martin Ferguson. For us, that cooperation should see an agreement to co-locate the offshore and onshore regulatory agencies with interests in WA. That is important because it should result, we would hope, in greater efficiencies, greater streamlining and in sharing the rare expertise that is required to undertake the regulatory oversight of this very complex and dynamic industry. So we look forward to the outcomes of those negotiations between the respective ministers.⁴⁰

- 1.47 The first amendment proposed by Western Australia, covering royalties, has been one of close discussion between the Commonwealth and Western Australia, and one where the Commonwealth has indicated it is prepared to give further consideration to Western Australia's position.⁴¹

39 Mr Graeme Waters, General Manager, Offshore Petroleum Regulatory Reform, Resources Division, RET, p. *Proof Committee Hansard*, 17 June 2011, p. 22.

40 Mr Mark McCallum, Deputy Chief Executive, Policy and External Relations, APPEA, *Proof Committee Hansard*, 17 June 2011, p. 9.

41 Mr Graeme Waters, General Manager, Offshore Petroleum Regulatory Reform, Resources Division, RET, p. *Proof Committee Hansard*, 17 June 2011, p. 22.

- 1.48 The issue of advice to the State member of a Joint Authority is regarded by RET as a matter for the States themselves – one of the members of the Joint Authority is always a State Minister, who, by definition, has access to advice from their department. Recognising and financially supporting State input into the Joint Authority could undermine the role of sole technical advisor to the Joint Authority.⁴²
- 1.49 The third issue raised by Western Australia, the proposed amendment requiring formal consultation between NOPSEMA and the Western Australian Government, was rejected on the grounds that it would impinge upon the independence of the regulator and confuse operational and safety/integrity/environmental decision making:

A right to be consulted makes WA DMP part of the legal process of NOPSEMA making the regulatory decision and, as we have said previously, it is the major object of these reforms to separate regulation from resource development. A right to be consulted may sound quite innocuous and in most cases indeed it is. It can however be used tactically to great effect to achieve outcomes that you want that are not necessarily related to the process that the consultation is about. A right to be consulted is, in the right hands, an ability to delay the decision-making process. The ability to delay is a very powerful tool. If you consider that the company that is applying for the regulatory approval or consent – this may relate to the drilling of a well – may have had a drilling rig booked for the last six months. It might be due to arrive in three days time. The time when a drilling rig is sitting idle will cost the company maybe \$500,000 a day, possibly a million dollars a day for sitting there doing nothing. That is an enormous cost to the company

...apart from that sort of tactical use of that power, there is also the fact that if WA DMP has a right to be consulted in the making of NOPSEMA's regulatory decisions, that makes WA DMP's interests relevant to the making of NOPSEMA's decisions. You do not put in a right to be consulted unless that person's interests or position is going to be relevant to the making of the decision and our position is that resource development issues are not relevant to the making of decisions about safety, integrity or environment.⁴³

42 Ms Fiona Brotherton, AGS, attached to RET, *Proof Committee Hansard*, 17 June 2011, pp. 5, 22.

43 Ms Fiona Brotherton, AGS, attached to RET, *Proof Committee Hansard*, 17 June 2011, p. 22.

Cost recovery

- 1.50 In its submission to the inquiry, RET notes that the Australian Government 'has decided that the costs of regulating petroleum and greenhouse gas storage activities in Commonwealth waters should be recovered from those industries which gain the benefits from those activities. This will ensure that the costs of regulation do not fall upon the wider community.'⁴⁴
- 1.51 The cost recovery process will fall into two stages. First, the costs of establishing NOPTA and NOPSEMA will be recovered from industry by the Commonwealth retaining registration fee revenues for a minimum of 24 months subject to the lesser of \$30.6 million or the actual establishment costs being recovered. Second, from 1 January 2012, NOPTA and NOPSEMA's fees and levies will be re-set to ensure they operate on a full cost recovery basis. On-going fees and charges will be subject to three yearly reviews.
- 1.52 One key aspect of the change is greater transparency in cost recovery. The RET submission notes that:
- As the petroleum and greenhouse gas storage industries will pay the costs of their regulation, it is appropriate that they are provided full transparency in the raising of revenue from fees and levies and its expense on the regulation and administration of petroleum and greenhouse gas storage activities. Under the current arrangements there is no transparency in the Designated Authority's costs and the revenues from offshore petroleum fees frequently significantly exceed the DAs' costs of administering petroleum titles.⁴⁵
- 1.53 RET estimates that the reforms will result in an on-going cost reduction for industry in the order of \$5 million per year after the establishment costs of NOPSEMA and NOPTA are recovered. While the establishment costs are being recovered, industry will incur a cost increase in the order of \$10 million per year for about two years. The submission further notes that:
- It is expected that the annual net cost reduction for industry is likely to be less than the average annual cost of the registration fees because NOPSEMA will adopt a more robust approach to the regulation and compliance monitoring of the structural integrity of

44 RET, Submission no. 1, Attachment A.

45 RET, Submission no. 1, Attachment A.

wells and environmental management than has previously occurred.⁴⁶

Table 1 Estimated Cost Impacts on Industry

	Existing Regime Full year costs \$ Million	Establishment Phase (a) Full year costs \$ Million	Final Regime (b) Full year costs \$ Million
Registration Fees	15	15	-
Non-registration fees	7	-	-
NOPSA	15	-	-
NOPSEMA	-	23	23
NOPTA	-	8	8
Total	37	46	31

(a) Establishment Phase refers to the period after the Commencement of NOPSEMA and NOPTA during which the Commonwealth retains registration fee revenues to recover the establishment costs of NOPSEMA and NOPTA.

(b) Final Regime refers to the period following the abolition of registration fees.

Source *RET, Submission no. 1, Attachment A*

1.54 RET will prepare full Cost Recovery Impact Statements prior to determining new fees and levies for NOPSEMA and NOPTA's ongoing costs. These processes will provide more accurate indications of the cost impacts on industry.⁴⁷

1.55 The RET submission emphasises that one of the key objectives of the reforms in the amendment Bills is to reduce unnecessary delays in approvals times. The benefits of reducing approvals times for industry will far outweigh any short term cost to industry while the establishment costs of NOPSEMA and NOPTA are recovered.⁴⁸

Criticism of new cost recovery model

1.56 In its submission and in evidence before the Committee, APPEA highlighted its opposition to fees collected on a full cost recovery basis, arguing that there is a strong case for recognition of public good outcomes in the cost of industry regulation. APPEA's submission states:

APPEA and its members are strongly opposed to full cost recovery being applied to the regulatory functions associated with the

46 *RET, Submission no. 1, Attachment A.*

47 *RET, Submission no. 1, Attachment A.*

48 *RET, Submission no. 1, Attachment A.*

control, administration and technical oversight of the industry's operations. While there is a benefit to the industry from regulatory third party oversight of the industry's operations, the industry remains of the view that there are substantial public benefits associated with the regulation and oversight of the industry.

The industry strongly believes that the significant public benefits derived from the effective and efficient oversight of the industry represents a public good that should be recognised through at least some publicly funded contribution.⁴⁹

1.57 APPEA is also concerned that there may be some discrepancy between the establishment costs of NOPTA and NOPSEMA and the fee revenue collected to cover that cost.⁵⁰

1.58 The Western Australian Government opposes the new fee structure because of the loss of revenue from registration fees. In its submission, DMP states:

The State will also suffer a funding gap due to the loss of registration fee revenue at the same time that WA will need to cover start-up costs for the co-location of the State and Commonwealth petroleum regulators. The Commonwealth amendments make no mention of the co-location exercise that is the subject of the recently finalised MOU. This is indicative of the need to ensure cooperation in the regulation of the petroleum industry especially as WA is in effect funding the establishment of the NOPTA and NOPSEMA.⁵¹

1.59 In evidence before the Committee, Mr Tinapple noted that the costs savings identified by RET under the new fee structure did not take account of the need for States to raise revenue to cover their own costs following the loss of fee revenue. He stated:

I believe that DRET had put in their table about the financial forecast for the cost of the national regulator showing basically that, once it is established, the cost would go from \$37 million to \$31 million. Whilst that is true for the best estimate for the Commonwealth area, something that is not included in that... is that the states – not just Western Australia, but Western Australia has much larger activity happening in state waters than onshore – will want to, will have to, cost recover their regulatory services.

49 APPEA, Submission no. 3, p. 5.

50 APPEA, Submission no. 3, pp. 6–7.

51 DMP, WA, Submission no. 4, p. 5.

Having the two agencies there, we will be adding to that \$31 million and it will be a less efficient way than having a single DA based agency. We will have our own system, our own state agency, and that will add to the cost of the industry.⁵²

- 1.60 The overall loss of revenue to Western Australia from the abolition of fees is expected to be in the order of \$14 million per annum.⁵³

Response to criticism of new cost recovery model

- 1.61 In its response to criticism of full cost recovery, RET has highlighted the findings of the Productivity Commission in favour of full cost recovery in the regulation of the petroleum sector.⁵⁴ In its report, the Productivity Commission recommended that:

The current full cost recovery model used for the National Offshore Petroleum Safety Authority should be used to fund any new regulatory agency. As with the National Offshore Petroleum Safety Authority, the cost recovery model adopted for a new regulatory agency should be subject to regular review and appropriate governance arrangements. Only appropriately defined costs associated with regulating the upstream petroleum sector should be recovered by the new national offshore petroleum regulator. Implementation of this recommendation should be associated with the removal of the registration fee for transfers and dealings.⁵⁵

- 1.62 In evidence before the Committee, RET stated that the NOPSA model 'is consistent with the Australia government's cost recovery guidelines', and that that 'is the model that the government has chosen to implement.'⁵⁶
- 1.63 RET's position on the recovery of cost by Western Australia was that it was Western Australia's 'right and their responsibility' to levee charges in State waters, but that they have no ability to recover costs in

52 Mr Bill Tinapple, Executive Director, Petroleum Division, Western Australian Departments of Mines and Petroleum, *Proof Committee Hansard*, 17 June 2011, p. 22.

53 Mr Bill Tinapple, Executive Director, Petroleum Division, Western Australian Departments of Mines and Petroleum, *Proof Committee Hansard*, 17 June 2011, pp. 18-19; DMP, WA, Submission no. 4, p. 5.

54 Productivity Commission, *Review of the Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector, Research Report*, Melbourne, 2009, pp. 266-7.

55 Productivity Commission, *Review of the Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector, Research Report*, Melbourne, 2009, p. 295.

56 Mr Peter Livingston, Manager, Offshore Petroleum Regulatory Reform, Resources Division, RET, *Proof Committee Hansard*, 17 June 2011, p. 4.

Commonwealth waters. Western Australia also has the option of reducing its own regulatory burden by conferring powers over coastal waters on NOPSEMA.⁵⁷

Personal Property Securities

1.64 The Offshore Resources Legislation Amendment (Personal Property Securities) Bill 2011 is a stand-alone measure, amending the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* and the *Offshore Minerals Act 1994* to exclude application of the *Personal Property Securities Act 2009* to the registration and approval of offshore petroleum, greenhouse gas and minerals titles and dealings in relation to those titles.

1.65 In its submission, RET notes that the Bill:

... will ensure that necessary safeguards remain in place to enable the regulator to ensure the suitability of entities that potentially are able to exercise control over Australia's offshore petroleum and greenhouse gas storage resources, while maintaining the legal certainty of treatment of those interests, and also will achieve consistency with State/Territory onshore mining legislation. This ensures that Australian Government objectives are met, while the regulatory burden on industry is not increased.⁵⁸

1.66 The submission further notes that if no amendments are made to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* and the *Offshore Minerals Act 1994*, offshore petroleum, greenhouse gas and minerals titles will be 'personal property' for the purposes of the *Personal Properties Securities Act 2009*, and that the registration and other provisions of the Personal Properties Securities Act will apply to these titles, in addition to the requirements of the Offshore Petroleum and Minerals Acts:

This Bill implements the policy decision to expressly exclude application of the PPS Act for the purposes of dealings relating to titles under the OPGGS Act and the OMA. As a result of the proposed amendments, all types of rights and interests acquired in relation to those titles and licences, are not personal property for the purposes of the PPS Act.⁵⁹

1.67 Excluding application of the Personal Properties Securities Act to the Offshore Petroleum and Minerals Acts is designed to ensure consistency

57 Ms Fiona Brotherton, AGS, attached to RET, *Proof Committee Hansard*, 17 June 2011, pp. 21-2.

58 RET, Submission no. 2, p. 1.

59 RET, Submission no. 2, p. 2.

between the onshore and offshore mining regimes, and minimise a potential regulatory burden and cost to industry with the potential to skew investment between onshore and offshore.⁶⁰ It will also prevent a situation whereby a dealing refused under the Offshore Petroleum Act could be registered on the Personal Properties Securities Register, leading to legal confusion over the standing of the security interest.

1.68 RET considers that 'the amendments are necessary to meet the Australian Government's ongoing commitment and objective to ensure regulatory certainty while keeping the regulatory burden on industry to a minimum'.⁶¹

1.69 Speaking to the Bill before the Committee, Ms Jessica Brown, Legislation Review and Timor Sea, Offshore Resources Branch, Resources Division, RET, stated:

There are a number of interests that are contained in both the Petroleum Act and the Offshore Minerals Act that would be captured by the personal property securities regime that is being established by the Personal Property Securities Act, so there would be a couple of implications from that. It would create duplication in that there would be a registration scheme under our regime as well as the national register being established by the PPS Act. Minister Ferguson has agreed with the Attorney-General that there is a necessity to keep the registration scheme under the offshore petroleum and offshore minerals regimes because there is an approvals mechanism contained there in terms of ensuring the suitability of people who have interests in these significant resources. So we need to retain that approvals mechanism. That would be duplication in itself, and a situation could possibly arise where there could be an interest that was rejected under our regime but was registered on the PPS register; because there is no approvals mechanism involved. They simply register and it comes into being on that register. So that could create some legal uncertainty in terms of the status of that interest.

The last thing I would point out is that we have consulted with our state and territory counterparts for onshore mining and state and territory governments have to actively opt out of this regime because Commonwealth legislation overrides state and territory legislation. So, in terms of maintaining the consistency in the

60 RET, Submission no. 2, p. 2.

61 RET, Submission no. 2, p. 3.

industry both onshore and offshore, we think it is important that we also opt out.⁶²

Committee conclusions

- 1.70 The Committee believes there is a global trend towards one regulator dealing with safety, structural integrity and environmental issues, and the evidence that we have been given as a Committee is that the expertise these days needs to incorporate all those skill sets. There seems to be a trend in the world, especially post the disasters in the Gulf of Mexico, to make sure that we have regimes for safety, structural integrity and environmental regulation separate from the areas of managing production, royalties and collecting of income. There are people with those skill sets that work in the world, and probably one difficulty will be ensuring that we have people with those skills within our regulator. That is the rationale behind these Bills and the issues we are dealing with as a parliament at the moment.
- 1.71 The starting point for these Bills is the essential reforms identified by the Productivity Commission report and the report of the Montara Commission of Inquiry. The Committee agrees with the Government that failing to address the findings of these reports is not an option. The Committee also believes that these Bills do fulfil the objectives laid down by those reports. The Bills are actually reforming regulatory processes, tidying up the present arrangement between regulatory bodies for the new era we are in now in for the regulation of offshore petroleum. The Bills are making the regulatory environment more efficient and effective and are moving towards world's best practice.
- 1.72 An essential part of this is cooperation between the Commonwealth and the States and Northern Territory in the transition to the national regulator. The Committee is heartened by the evidence of cooperation between Western Australia and the Commonwealth in the formulation of a Memorandum of Understanding to guide government and industry along the new regulatory path. The success of that process is essential to the future of the industry. Both Governments have a responsibility to make it work.

62 Ms Jessica Brown, Legislation Review and Timor Sea, Offshore Resources Branch, Resources Division, RET, *Proof Committee Hansard*, 17 June 2011, p. 8.

- 1.73 In terms of the detail of the Bills, the Committee endorses the formation of NOPTA and NOPSEMA to replace the current regulatory regime. We endorse the retention of the Joint Authorities, but with NOPTA as the principle source of technical advice. We fully endorse the independence of NOPSEMA and do not believe that its activities should be compromised by mandatory consultation with outside bodies. The independence of the regulator of safety, structural integrity and environmental management should be ensured. The Committee therefore rejects two of the three recommendations made by the Western Australian Government.
- 1.74 On the other hand, the Committee recognises the importance of the royalties to the Western Australian Government, and the expertise that the Department of Mines and Petroleum has developed over many years in negotiating and setting royalties. Leaving this matter in the hands of the Western Australian Government will not affect the integrity of the reforms and will allow access to the existing expertise of the Department of Mines and Petroleum in administering royalties.

Recommendation 1

- 1.75 **The Committee recommends that the Designated Authority role in the *Offshore Petroleum (Royalty) Act 2006* be conferred upon the State member of the relevant Joint Authority under the *Offshore Petroleum (Royalty) Amendment Bill 2011*.**
- 1.76 The Committee also recognises the national and global trend around the world to go to full cost recovery for operational regulation, and endorses the cost recovery mechanisms created by these bills. Industry must expect to face closer scrutiny on safety and environmental matters as part of its social licence to operate. Public confidence in industry and its effective regulation is an important consideration for industry as well as government.
- 1.77 The Committee endorses the amending Bill dealing with personal property securities. This is important for regulatory consistency and to prevent confusion.
- 1.78 The Committee believe that with the new responsibility for environmental oversight, the NOPSEMA Advisory Board should include members with environmental expertise. This will be especially important if and when

NOPSEMA receives accreditation under the *Environment Protection Biodiversity Conservation Act*.

Recommendation 2

- 1.79 **The Committee recommends that given NOPSEMA's environmental management function, the membership of the NOPSEMA Advisory Board include members with relevant environmental expertise.**
- 1.80 The Committee notes that the Senate Economics Legislation Committee has reported on these Bills and recommended their passage, with a dissent calling for further negotiations with Western Australia before the Bills were passed.
- 1.81 The Committee endorses the Bills.

Recommendation 3

- 1.82 **The Committee recommends that the House of Representatives pass the Bills.**

Hon Dick Adams MP

Committee Chair

24 June 2011