

## **Senate Economics Legislation Committee Inquiry into Offshore Petroleum and Greenhouse Gas Storage Amendment (Benefit to Australia) Bill 2020**

**Submission by Associate Professor David Lee, UNSW Canberra**

Senate Economics References Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

16 February 2021

Dear Secretary,

Thank you for inviting me to make a submission to the Committee. I support the intent of the legislation to broaden the objects clause of the Offshore Petroleum and Greenhouse Gas Storage Act of 2006.

In her second reading speech Senator Hanson referred to the situation wherein the federal government (on behalf of the Australian people) is not collecting an adequate share of the revenue from the production of oil and gas, which are publicly owned Australian resources.

### **Australian Equity in Resource Projects during the Post-War Minerals Boom**

In 1960, after the Commonwealth government relaxed the embargo on the sale of iron ore abroad, Australia experienced a resource boom as large deposits of iron ore, coal, bauxite, uranium, petroleum and natural gas were discovered and developed. The States rather than the Commonwealth generally determined the conditions under which mining proceeded and the States typically were not overly concerned about promoting Australian equity in resource projects.<sup>1</sup> The Menzies government, however, insisted on a significant degree of Australian equity in the mining of bauxite resources of the Northern Territory and the petroleum and gas resources in Bass Strait were developed in the late 1960s by a consortium consisting of the multinational company, ESSO, and the Australian company, the Broken Hill Proprietary (BHP) Company.<sup>2</sup> When the Whitlam government came to power in 1972 it instituted policies such as export controls for mineral resources, policies about Australian equity in resource projects and a regulatory framework for foreign investment.<sup>3</sup> One of its main proposals was to establish a Petroleum and Minerals Authority, which would be empowered to

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<sup>1</sup> See David Lee, *The Second Rush: Mining and the Transformation of Australia*, Connor Court, Redland Bay, 2016.

<sup>2</sup> David Lee, 'The Development of Bauxite at Gove, 1955-1975', *Journal of Australasian Mining History*, Vol. 12, October 201, pp. 131-47.

<sup>3</sup> <https://firb.gov.au/>

explore for petroleum and petroliferous minerals and to 'co-operate with authorities, organizations and other persons in formulating proposals to ensure that the recovery of petroleum and minerals is carried on in the best interests of the Australian people having regard to the long term needs of the Australian people'.<sup>4</sup>

### **The Whitlam Government's Proposed Petroleum and Minerals Authority (PMA) as a Template for an Australian Owned Resources Company**

During its first term in office, the Whitlam government had a majority in the House of Representatives but not in the Senate, which twice rejected ten government bills. One of those bills was the Petroleum and Minerals Authority Bill, which acted as one of the legislative triggers for the double dissolution election in May 1974. The Whitlam government won the 1974 election and subsequently the Petroleum and Minerals Authority Bill was enacted after a joint sitting of both houses of parliament. Subsequently, the State of Victoria challenged the legislation and the High Court decided by majority that the act was not valid because not enough time had elapsed between the Senate's first rejection of the law and it being passed a second time by the House of Representatives.<sup>5</sup> The Petroleum and Minerals Authority therefore ceased to operate. The 1973 legislation does, however, provide a template for a possible Australian owned resources company that could help to maintain a higher degree of Australian ownership of resource projects and potentially generate revenue for a Sovereign Wealth Fund.

### **A Comparison of Norway and Australia**

The Whitlam government originally had the intention that the Pipeline Authority, established by federal legislation in 1973, should take all of the hydrocarbon reserves in the North West Shelf, Western Australia, and that these should be mined under the auspices of its proposed Petroleum and Minerals Authority.<sup>6</sup> The defeat of the Whitlam government in 1975 and the High Court's 1975 decision that the Petroleum and Minerals Authority Act was invalid saw the resources of the North West Shelf being developed by a consortium of Australian and foreign owned companies.<sup>7</sup> With investments amounting to \$34 billion since the early 1980s, it is the largest resource development in Australian history.<sup>8</sup> The first liquid natural gas (LNG) shipments went to Japan in 1989. Successive Western Australian governments have legislated to make gas equivalent to 15% of exports available to Western Australian consumers.<sup>9</sup>

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<sup>4</sup> Petroleum and Minerals Authority Act 1973  
<https://www.legislation.gov.au/Details/C2004A00102>

<sup>5</sup> Colin Howard, *Australian Federal Constitutional Law*, Third Edition, The Australian Law Book Company Ltd, Sydney, 1985, pp. 101-3.

<sup>6</sup> 'Mr Connor's statement', *Canberra Times*, 4 October 1973.

<sup>7</sup> 'Petroleum Authority Act Invalid', 25 June 1975, *Canberra Times*, 25 June 1975.

<sup>8</sup> Woodside Energy Ltd, Submission to PRRT Review, 8 February 2017.

<sup>9</sup> <https://www.wa.gov.au/government/publications/wa-domestic-gas-policy>

The Australian companies in the consortium included the Broken Hill Proprietary Company (BHP) and Woodside Petroleum, but the Australian equity in the project was progressively attenuated.<sup>10</sup> Woodside Petroleum is today 57 per cent owned by US-based investors and only 21 per cent owned by Australian-based investors.<sup>11</sup> BHP is 70 per cent US-based and 11 per cent Australian-based.<sup>12</sup> This means that a large proportion of the profits from the enterprise are repatriated to foreign owners of the project. Even if the Petroleum and Minerals Authority had not been able to achieve 100% Australian ownership of the North West Shelf project, it could have provided a mechanism for keeping up Australian equity in it.

In contrast to the Australian example, the Norwegian government in 1972 set up a state-owned company, the Norwegian State Oil Company (Statoil now Equinor), to build up Norwegian competency within the petroleum industry in order to establish the foundations of a domestic petroleum industry. In 1990 the Norwegian government set up the Government Pension Fund Global to invest the proceeds from the sale of Norwegian oil. The Norwegian people owns the fund and the Norwegian Ministry of Finance determines its investment strategy. The fund is today worth more than £923 billion (approximately 1.7 trillion Australian dollars).<sup>13</sup>

The Australian government introduced a resource rent tax on offshore oil and gas deposits in 1987 (Petroleum Resource Rent Tax Assessment Act 1987), which was applied to onshore petroleum projects and the North West Shelf project in 2012.<sup>14</sup> Since its first extraction of gas in 1984, the participants in the Woodside-operated North West Shelf project have paid approximately \$25 billion.<sup>15</sup>

## Recommendations

1. The Australian Government and Parliament should have persisted with seeking to establish a Petroleum and Minerals Authority (Whitlam's act was invalidated on a technicality; its substance was never tested in the High Court).
2. The Petroleum and Minerals Authority could have been an effective vehicle for seeking to retain a minimum level of government and/or Australian ownership of key Australian mineral resources such as those in the North West Shelf.

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<sup>10</sup> 'Battle on the Shelf', *Canberra Times*, 12 August 1976

<sup>11</sup> Company ownership data provided by the Bloomberg Professional Terminal, 15 February 2021.

<sup>12</sup> Company ownership data provided by the Bloomberg Professional Terminal, 15 February 2021.

<sup>13</sup> "Sovereign Wealth Fund Gains More than £90 billion during 2020", *The Guardian*, 28 January 2021.

<sup>14</sup> <https://www.legislation.gov.au/Details/C2019C00138>

<sup>15</sup> Woodside Energy Ltd, Submission to PRRT Review, 8 February 2017.

3. The Government and the Parliament should consider establishing a Sovereign Wealth Fund along the lines of Norway's Government Pension Fund Global to invest for the benefit of the Australian people proceeds from the sale of non-renewable natural resources owned by the Crown (effectively the Australian people).

Yours sincerely

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