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John Hawkins
Committee Secretary
Senate Economics Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Mr Hawkins

Department of Resources Energy and Tourism submission to Senate Economics Legislation Committee inquiry into the Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Bill 2010

Thank you for the opportunity to provide further explanatory information in support of the *Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Bill 2010* (the Bill).

The Department of Resources Energy and Tourism (the Department) considers the Bill contributes to the maintenance and continual improvement of a strong, effective framework for the regulation of offshore petroleum and greenhouse gas activities.

The Bill makes a number of minor policy and technical amendments to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the Act). These various measures are explained comprehensively in the accompanying explanatory memorandum of the Bill, and therefore I would in the first instance refer the Committee to this document rather than duplicating its contents within this submission.

The Department understands the Committee is focussed on the fact that the Bill introduces a measure whereby the Commonwealth will retain the industry fees raised under the Act in order to use the revenue raised for the establishment of a National Offshore Petroleum Regulator. Currently, the registration fees are remitted to the States and the Northern Territory. The Government intends to establish the National Offshore Petroleum Regulator on 1 January 2012. To this end, the Department attaches a submission that is focussed upon providing further information relating to this measure (in Part 1 of the submission).

The submission also details (in Part 2 of the submission) the State and Northern Territory government and industry consultation that was carried out by the Department in relation to various policy measures contained in the Bill.

The Department has already agreed to make officials available to attend a public hearing should that be required. In the alternative, in response to specific questions, further information can be provided by written correspondence. To fulfil either of these needs please contact Peter Livingston (ph 02 6213 7974, peter.livingston@ret.gov.au) or Jessica Brown (ph 02 6213 7974, jessica.brown@ret.gov.au).

Yours sincerely

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Submission to the Senate Standing Committee on Economics, Economic Legislation Committee Inquiry on the Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Bill 2010

1. Registration Fees

Introduction

This submission by the Department of Resources, Energy and Tourism provides the rationale for proposed amendments to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGSA) particularly in relation to the amendments under Schedule 1, Part 1 – Registration Fees.

Schedule 1, Part 1 – Registration Fees

The amendments in Part 1 progress the Government's intention to establish a National Offshore Petroleum Regulator commencing from 1 January 2012. The Productivity Commission's *Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector* identified significant unnecessary costs from delays and uncertainties in obtaining approvals; duplication of compliance requirements; and inconsistent administration of regulatory processes. The Commission found that these burdens could be reduced through a change in institutional arrangements – principally the establishment of a national regulator for offshore petroleum – as well as the implementation of best practice regulatory principles in all jurisdictions.

Part 1 of the Schedule introduces a measure to recover from the industry the establishment costs of a National Offshore Petroleum Regulator (NOPR). The legislation establishing NOPR will also establish transparent and accountable, full cost recovery arrangements for the new regulator, as recommended by the Productivity Commission. The present measure is not part of those on-going cost-recovery arrangements.

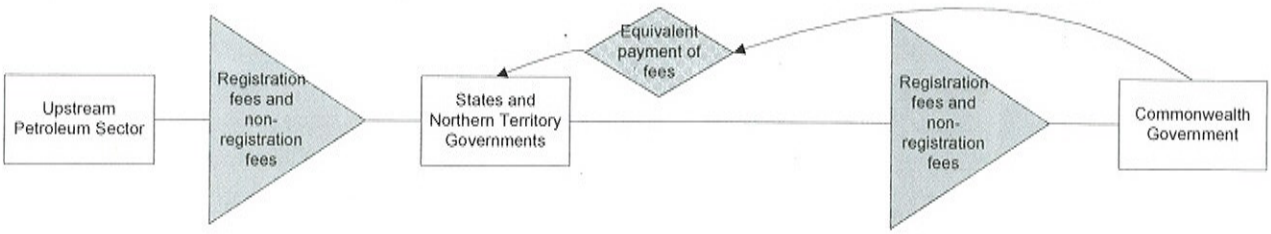
The Bill introduces a measure by which the Commonwealth Government will retain the industry fees raised under the *Offshore Petroleum and Greenhouse Gas Storage (Registration Fees) Act 2006* (the Registration Fees Act). The registration fees are a 1.5 percent ad valorem tax on transfers and dealings in petroleum titles. The Productivity Commission recommended that the ad valorem fees be abolished and replaced by a fee that reflects the actual costs of registering transfers and dealings. The Commonwealth proposes to act on that recommendation. However, in order to recover the establishment costs of a NOPR, the Commonwealth proposes to retain these revenues for about 18 months rather than moving immediately to abolish this tax on industry. It is therefore the industry, and not the States and the Northern Territory, that will bear the establishment cost of a NOPR. Subsequent amendments to replace the ad valorem tax with a cost recovery fee are proposed as part of a package of amendments to establish NOPR to be introduced into the Parliament in 2011.

Currently the States and the Northern Territory receive payments on behalf of the Commonwealth from the petroleum industry for offshore petroleum fees under the:

- *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act);
- *Offshore Petroleum and Greenhouse Gas Storage (Annual Fees) Act 2006* (the Annual Fees Act); and
- the Registration Fees Act.

Each month the States and the Northern Territory transfer these payments to the Commonwealth and they are paid into Consolidated Revenue. In accordance with section 76 of the OPGGS Act, before the end of the following month, the Commonwealth must pay an amount to the State or Northern Territory that is equal to the amount received from that State or the Northern Territory in the preceding month. This payment is made to the States and the Northern Territory to compensate them for administering petroleum activities in the Commonwealth offshore areas. The flow of monies is outlined in Diagram 1.1 below.

Diagram 1.1: Current arrangements for collection and distribution of petroleum fees



The Commonwealth is proposing to remove the revenues received under the Registration Fees Act from the amount that it will pay each month to the States and the Northern Territory. The States and the Northern Territory will continue to receive an amount from the Commonwealth equal to the amounts raised under the OPGGS Act and the Annual Fees Act. The Minister for Resources and Energy has undertaken to review the fees raised under the OPGGS Act and the Annual Fees Act to ensure that the States and the Northern Territory continue to receive from the Commonwealth their full costs of administering petroleum activities in Commonwealth offshore areas pending the establishment of the new regulator.

If necessary, the Minister for Resources and Energy has undertaken to amend the level of non-registration fees by regulation to ensure the States and the Northern Territory are compensated in full for their administration costs.

Offshore Petroleum Fee Revenues

Table 1.1 below shows total revenues from offshore petroleum fees for the past five financial years from and paid to each State and the Northern Territory.

Table 1.1 – Revenue from offshore petroleum fees 2004-05 to 2008-09

REVENUE ($)	2004-05	2005-06	2006-07	2007-08	2008-09
NSW	8,444	8,444	10,874	6,450	6,450
QLD	0	0	9,000	18,000	0
SA	122,918	85,721	19,866	44,350	12,850
TAS	297,691	342,683	320,380	877,314	163,396
VIC	2,035,921	2,120,023	1,879,487	7,299,053	1,514,534
WA	14,130,883	17,133,981	12,712,765	17,718,863	3,784,307
NT	342,119	349,577	228,202	3,966,186	308,644
ASHMORE	2,190,800	2,245,167	1,533,509	11,392,279	1,884,371
TOTAL	19,128,776	22,285,596	16,714,083	41,322,495	7,674,552

- Note: Ashmore Cartier revenue is paid to the Northern Territory by the Commonwealth for acting as the delegate of the Designated Authority for this territory.

The table illustrates the volatility in fee revenues due to the unpredictable nature of the registration fee revenues which can be significantly impacted by individual transactions. The States and the Northern Territory do not provide the Commonwealth with a break-down of petroleum fee revenues by fee type. However, the Department has created a model that can estimate non-registration fee revenues from existing title information and allows registration fee revenues to be determined from total fee revenues as shown in Table 1.2 on the following page. The registration fee has raised an average of $15.3 million over the past five financial years.

Table 1.2. Estimated revenue from offshore petroleum fees 2004-05 to 2008-09, by registration fee and non-registration fee

REVENUE ($)	2004-05	2005-06	2006-07	2007-08	2008-09
Registration fees	12,778,776	15,935,596	10,364,083	34,972,495	1,774,552
Non-registration fees	6,350,000	6,350,000	6,350,000	6,350,000	5,900,000
Total	19,128,776	22,285,596	16,714,083	41,322,495	7,674,552

Administration Costs of States and the Northern Territory

Table 1.3 provides estimated costs for administering the petroleum activities in Commonwealth offshore areas in 2010-11 as provided by State and Northern Territory Mines Departments.

Table 1.3 – Estimated cost of states/NT administering OPGGSA in 2010-11

Jurisdiction	Estimated Annual Cost
Western Australia	$6,046,000.00
Northern Territory (including Ashmore/Cartier titles)	$1,144,956.00
Victoria	$934,000.00
South Australia	$379,000.00
Tasmania	$155,000.00
TOTAL	**$8,658,956.00**

Note: Queensland and New South Wales did not provide cost data, but given they only administer one offshore petroleum title each, their administrative costs would be negligible.

By comparing the information in tables 1.1, 1.2 and 1.3 it can be seen that the States and the Northern Territory have, on average, received payments from the Commonwealth well in excess of the costs they incur in administering petroleum activities in Commonwealth offshore areas. Most of this excess revenue is accounted for by registration fee revenues. While there is no consistent use of these revenues across the jurisdictions, it is clear that there is a very significant leakage of offshore petroleum fee revenues into State/Northern Territory budgets. For example, over the past five financial years the Commonwealth has paid Western Australia an average of $13.1 million per year whilst the current cost of administering petroleum activities Commonwealth waters offshore of Western Australia is about $6.0 million per year

It is appropriate for the Commonwealth to ensure that revenues raised from industry by Commonwealth imposed fees and charges are used for a purpose intended by the Commonwealth.

The Commonwealth first sought to abolish the ad valorem registration fees in 2002 in line with the policy of the Government-of-the-day to remove charges in the nature of stamp duties following the introduction of the goods and services tax. However, the ad valorem registration fees were not abolished at that time due to opposition from Western Australia.

Western Australia continues to oppose the removal of the ad valorem registration fee. On 13 October 2009 the Western Australian Treasurer, in a letter to the Commonwealth Treasurer, proposed that the ad valorem registration fee be increased from 1.5 per cent to 5.15 per cent to bring it in line with other stamp duties in Western Australia. The Commonwealth understands that Western Australia is no longer pursing an increase in the rate of the fee but continues to oppose the removal of the ad valorem fee.

Removing Unnecessary Costs of Regulation on Industry – Independent Review by the Productivity Commission

On 30 April 2009, the Productivity Commission (the Commission) released the *Review of Regulatory Burden on the Upstream Petroleum (Oil & Gas) Sector*. The Commission found that, in an international context, Australia's regulatory regime for oil and gas projects is generally regarded as good. However, the Commission identified significant unnecessary costs from delays and uncertainties in obtaining approvals, duplication of compliance requirements, and inconsistent administration of regulatory processes. The Commission found that these burdens could be reduced through a change in institutional arrangements –

principally the establishment of a national regulator for offshore petroleum – as well as the implementation of best practice regulatory principles in all jurisdictions.

The Commission also found that the ad valorem registration fee for transfers and dealings has the potential to slow the desirable transfer of a title to a discovery from one party unwilling to commercialise it to another party that is. Not only is the fee an inhibitor but the time taken to agree valuations and make transfers is a regulatory burden in its own right. Accordingly, the Commission recommended that Australian governments should abolish the ad valorem registration fee and replace it with a cost-recovery fee.

Consultation on Regulatory Reform and Fees

The Commission's review process involved extensive consultation: 24 submissions were received; 37 site visits were conducted; five round-table meetings were held and a draft report was issued for public comment.

Consultation on responding to the Commission recommendations has also been extensive. A working group of officials under the Ministerial Council on Minerals and Petroleum Resources (MCMPR) was formed on 9 August 2009 to develop draft responses for the MCMPR. The working group, involving representation from all jurisdictions, was advised of the Commonwealth's proposal to retain the registration fee revenues to recover the establishment costs of NOPR in September 2009. The only opposition to this proposal is from Western Australia.

The working group of officials has also consulted with industry on three occasions regarding the proposed responses to the Productivity Commission. While industry does not support full cost recovery for the new regulator, it welcomes the proposed removal of the ad valorem registration fee.

A Cost Recovery Impact Statement (CRIS) in accordance with the Australian Government Cost Recovery Guidelines is being prepared to cover the proposed recovery of NOPR establishment costs and adjustment to non-registration fees to ensure States and the Northern Territory recover their costs of administering the Commonwealth offshore areas pending the establishment of NOPR. It is intended that this CRIS will be posted on the Departmental website in advance of the new arrangements taking effect. This will introduce for the first time proper transparency and accountability in the cost recovery arrangements applying to the regulation of Commonwealth offshore areas.

A further CRIS will be developed in 2011 to justify the new cost recovery arrangements for NOPR operations from its establishment on 1 January 2012. All fees and charges for recovery of NOPR operating costs will be subject to a three yearly review.

Summary

The proposed amendments are a temporary measure to fund the cost of the Commonwealth establishing a transparent, accountable, full-cost recovered national offshore petroleum regulation as recommended by the Productivity Commission. A national regulator will remove existing unnecessary regulatory duplication; address shortages of technical expertise, provide consistency across offshore areas; and reduce approval timelines. The phase-out of the ad valorem registration fee, together with the establishment of the new regulator, will provide significant cost savings to industry.

2. Consultation

An appropriate level of consultation was carried out by the Department with the State and Northern Territory governments and industry as detailed below.

Part 1 – Registration Fees

As explained above.

Part 2 – Functions of the Safety Authority

This policy issue was raised and discussed in the Integrity Working Group which was comprised representatives of State and Northern Territory Mines Departments, industry and RET. The working group met during the period March 2006 to mid 2007. The working group released a report in September 2007 which was then provided to the Upstream Petroleum and Geothermal Subcommittee (UPGS), a government subcommittee of the Ministerial Council on Minerals Petroleum and Resources, which supported its recommendations.

At this point some State and Northern Territory Mines Departments changed their position on the recommendations relating to wells. There was never any disagreement that the National Offshore Petroleum Safety Authority (NOPSA) was responsible for safety. However State and Northern Territory Mines Departments were concerned about the perceived or possible diminution of their responsibility for resource management. WA and Victoria saw well operations as chiefly being about management of the resource. Through further discussion UPGS came to a landing to commit to further exploring where the split between State and Northern Territory Mines Departments and NOPSA responsibility for wells might be best placed.

Discussion and determination of NOPSA's precise role in the regulation of wells and structural integrity is continuing and further discussion will take place with stakeholders on what will constitute the exact amendments to safety and well regulations as part of consolidating the resource management and administration regulations under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006.*

The Review of NOPSA operational activities in February - March 2008 also considered this matter. The independent review team noted (at pages 5-6 of the Review) "stakeholders including industry, NOPSA and State regulators supported the view that the legislated coverage of NOPSA should be extended to include the integrity of pipelines, subsea equipment and wells".

During the consultation on the draft amendment bill, the peak offshore resources industry body, the Australian Petroleum Production and Exploration Association (APPEA), gave its express and full support for the amendment bill, including specifically supporting the clarification of NOPSA's role in seamlessly regulating structural integrity and wells. APPEA recognised that there would inevitably be a degree of overlap however stated that this is not a concern as long as there is clarity and no conflict.

Part 3 – Multiple titleholders

These changes are intended to set in legislation the practice already commonly adopted by industry in making applications and providing other notices to regulators. That is in the case of joint venture partners, one partner is nominated by the other joint venturers to make the

applications/notices etc. on behalf of the other partners. Further, the amendments make clear that while multiple titleholders are individually responsible under the Act any one of them can acquit the obligation. These amendments amount to achieving regulatory efficiencies and streamlining, and a clarification of legal obligation – they do not alter or reduce property rights.

These amendments were discussed and overall supported in the UPGS meetings of May and October 2009.

Part 4 – Strict liability offences

These amendments conform to Commonwealth policy on offence provisions. The Attorney-General's Department was consulted, and approval granted. There are no new offences being added so consultation draft was considered sufficient. There was no objection from the peak industry body APPEA concerning these amendments.

Part 5 – Functions and powers of the Joint Authority and Designated Authority

These are technical amendments to make sure the Joint Authority (JA) and Designated Authority (DA) can carry out functions and powers already set out in the Act. There was some legal doubt that State and Northern Territory Acts correctly conferred powers for DAs and JAs under regulations. This is a clarification, and there are no new powers being added so consultation draft of legislation is considered sufficient.

Part 6 – Duties of titleholders in relation to wells

These amendments stem in part from discussions with industry at the end of 2007 in relation to the move towards consolidated regulations. The matter was initially raised in this context by the International Association of Drilling Contractors - who also raised this matter again as part of the Review of NOPSA operational activities in February-March 2008. That review (at page 5 of the Review) gave the impetus for this matter to be included in the 2009 amendment bill. These amendments carry out the original policy intention of making titleholders responsible for the safety of wells.

APPEA was consulted and indicated that they agreed to the changes on the basis they captured the titleholder's responsibility for wells but did not make titleholders responsible for safety of facilities generally.

Part 7 – Technical correction

This fixes an error made in the 2005 amendment bill and fixes references to another provision of the Act. As such the consultation draft provided sufficient consultation.

Part 8 – Listed OHS laws

This is a minor technical amendment caused by renaming of regulations. Wider consultation was therefore not required.