

SUBMISSION No. 4
Inquiry into Bills referred 25 May 2011



Government of **Western Australia**
Department of **Mines and Petroleum**

Our ref: A 118/201101

Enquiries: Bill Tinapple

Email:

The Hon Dick Adams MP
Committee Chair
Standing Committee on Agriculture, Resources, Fisheries and Forestry
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Committee Chair

STANDING COMMITTEE ON AGRICULTURE, RESOURCES, FISHERIES AND FORESTRY INQUIRY INTO THE OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE AMENDMENT (NATIONAL REGULATOR) BILL 2011 AND ASSOCIATED AMENDMENT BILLS

I refer to your emailed letter of 30 May 2011 inviting the Department of Mines and Petroleum (DMP) to make a submission to the Committee's inquiry into the *Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011*.

Please find attached a submission from DMP which represents the interests of Western Australia for the Committee's consideration.

I advise that DMP is not supportive of the amendments in their current form for reasons explained in the attachment.

The department would appreciate the opportunity to discuss this submission with the Committee directly. If this is possible, please advise Bill Tinapple, Executive Director, Petroleum Division on ph: 9222 3291 or by email, bill.tinapple@dmp.wa.gov.au of the proposed date and location of a suitable hearing at your earliest convenience.

Yours sincerely

Richard Sellers
DIRECTOR GENERAL

10 June 2011

DEPARTMENT OF MINES AND PETROLEUM'S SUBMISSION:

OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE AMENDMENT (NATIONAL REGULATOR) BILL 2011 AND ASSOCIATED AMENDMENT BILLS

On May 25 2011, the Minister for Resources and Energy, Martin Ferguson introduced a package of amendment Bills into the House of Representatives that will give effect to the establishment of national regulators through expansion of the current safety National Offshore Petroleum Safety Authority (NOPSA) to the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) and creation of the National Offshore Petroleum Titles Administrator (NOPTA).

Western Australia (WA) is not supportive of the legislative amendments in their current form as they do not reflect the progress made on co-location and WA's understanding of the continuing role of the Joint Authority.

Australia is in the midst of a boom in LNG developments involving multi-billions of dollars in investment and multi-billions in export earnings with significant impacts on our national and state/NT economies. Within WA, *the most active petroleum jurisdiction in Australia*, five LNG developments with onshore LNG processing plants are at various stages of development, from engineering to construction. These projects will have a large impact on the State's economy and span across Commonwealth and State jurisdictions.

WA has already stated that it does not support such important regulatory functions within State waters, islands and onshore to be incorporated into both NOPTA and NOPSEMA. Already, several regulators are involved in approvals for aspects of these projects. It should be noted that under the amendments, a form of the Joint Authority (Commonwealth and State participation in decision making) is preserved, thus giving the State some information from NOPTA regulation. However, there is no provision for consultation or notice provided in the amendments for giving the State information from NOPSEMA regulation.

Under these amendments, different regulators will have responsibilities in Commonwealth and State jurisdictions. The Productivity Commission in its 2009 report, 'Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector', indicated the full effectiveness and efficiency of a national offshore petroleum regulator depends on "*the States and Territories agreeing to give it (and the Commonwealth Minister) the responsibility for petroleum regulation in State and Territory waters...including islands*".

The establishment of NOPTA and NOPSEMA does not, in itself, improve the areas of the regulatory system which really need reform – environment and native title. There has been a suggestion that NOPSEMA may be able to become accredited under the *Environment Protection and Biodiversity Conservation Act 1999* and that this may provide for consistent strategic assessment. It should be noted that NOPSEMA will not have responsibilities for WA waters, island and onshore where these developments have facilities. Strategic assessment in State areas would continue to be made by the Commonwealth Department of Sustainability, Environment, Water, Population and Communities (SEWPAC) and the Western Australian Environmental Protection Authority which may be done under a Bilateral Agreement.

Despite WA's position regarding the creation of NOPTA and NOPSEMA, the State has been negotiating with the Commonwealth for more than a year to provide a workable arrangement. Recently, agreement in principle has been reached with the Federal Government for State and Commonwealth petroleum regulators to be co-located to facilitate the transfer of responsibilities and ensure more efficient use of regulatory staff for approvals in State and Commonwealth waters.

Unfortunately, WA was not provided with the amendment bills until after they were introduced into Federal Parliament on 25 May 2011. Given the work on the co-location proposal and the development of a Memorandum of Understanding (MOU), this development is not an encouraging signal for the cooperation and goodwill required to establish NOPTA and NOPSEMA.

WA is also disappointed that the Federal Government has progressed legislation to introduce a single national offshore regulator without consultation or advice prior to the completion of negotiations with the State Government.

Given that a MOU for this co-location which WA has been negotiating for is almost finalised, it may have been better if the Federal Government had delayed its legislation until negotiations were completed and perhaps reflected in relevant parts of the legislation.

National Regulator Commencement Implications

The commencement time table for the national regulator also presents problems for WA. In that it is expected to continue to administer the WA State offshore area up until such time as the Commonwealth national regulator is ready to commence operations. For this administration the State will continue to receive the administration fees it currently receives under the *Offshore Petroleum Greenhouse Gas Storage Act 2006*.

On the commencement day of the NOPTA legislation, (which may be anything up to 12 months from Royal Assent) the State's current role will cease, the revenue stream will end and the staff currently retained to maintain this coverage on the Commonwealth's behalf will have to be redeployed. However, the transition issues will require WA to continue to provide input. This approach is reliant on the goodwill of the State to continue its role in the Commonwealth area up to the time that the Commonwealth considers it is ready to take over in its own right.

Royalty Act Amendments

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.

Although no revenue impact to the State is expected, the amendments remove the Designated Authority and replace it with the Commonwealth's proposed Titles Administrator. This means that 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.

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. No notice was given by the Commonwealth that this would change until the release of the amendment Bill.

Currently, although royalties are negotiated and assessed by DMP, the actual payment of royalty is made by the licence holders to the Department of Resources Energy and Tourism (DRET). DRET then pays the State its share as a Commonwealth Grant. The State's share of the royalties paid by the North West Shelf Project is substantial and forms a key component of the State's budget. The following amounts have been included in the 2011 State Budget papers. This represents the State's share of the royalty payments from the North West Shelf Project.

	2010/11 Estimate	2011/12	2012/13	2013/14
North West Shelf Grants	\$898M	\$1028M	\$1099M	\$1193M

If these provisions are implemented, the State may not have any estimates of royalty revenues until payments are actually received from the Commonwealth.

Given that WA is the only jurisdiction affected by the amendments to the *Offshore Petroleum Royalty Act 2006* and WA has successfully administered the wellhead royalty arrangements for over 25 years, **WA recommends** that all references to the 'Designated Authority' in the current legislation are replaced with 'the Western Australian Member of the Joint Authority' rather than the proposed 'Titles Administrator', or a clear Policy Statement is made that WA will continue this function under a SLA.

Registration Fees Amendments

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.

In addition, the loss of registration fee revenue for the State will come at a time when the State will be required to commit funding to infrastructure development for Gorgon and other major projects and it has been suggested that advance royalty payments be sought from the Commonwealth to ease WA's financial burden for these developments. The registration fee revenue that is the subject of these amendments has averaged \$10.3 million per annum over the last five years. Western Australia's Department of Treasury and Finance (DTF) has been informed of the proposal. DTF has claimed that the transfer fees affected by this amendment are stamp duties on the transfer of titles and it is not appropriate to remove these fees while stamp duties apply to other similar transactions.

Further, as WA is the only jurisdiction with the staff expertise to complete these complex assessments, there is the expectation that the State will still be required to undertake the registration fee assessments and compliance checks without receiving any benefit. It should also be noted that this is not purely a financial issue as the assessment of registration fees also considers whether dealings and transfer proposals are in the national interest and the new company has the technical and financial capacity to be a titleholder.

State advice to Joint Authority

Although there is an expectation that the new national regulator will be based in Perth, WA, the location does not ensure that the State's interests will be taken into account. 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. The Commonwealth have shared some legal advice with WA that shows the Joint Authority will continue in its functions.

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.

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. This involvement was emphasised by the US *National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling*, which recommended the need to strengthen State and local involvement in oil spill contingency planning and training and create a mechanism for local involvement in spill planning and response similar to the Regional Citizens' Advisory Councils mandated by the Oil Pollution Act of 1990.

In view of this, **WA recommends** that further 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.

NOPSEMA advice to Western Australia

The Commonwealth note that it is an important aspect of the new regime in that there will be a level of administrative co-operation between NOPSEMA and NOPTA. However, there is no such provision for any linkage to the WA member of the Joint Authority which could act to safeguard the State's interests in the areas that are NOPSEMA's responsibility. **WA recommends** 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.