

Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Industry, Innovation and Science Portfolio
2016 - 2017 Additional Estimates
2 March 2017

DEPARTMENT: DEPARTMENT OF INDUSTRY, INNOVATION AND SCIENCE

TOPIC: Access to data

REFERENCE: Question on Notice (Hansard, 2 March 2017, page 118)

QUESTION No.: AI-47

Senator XENOPHON: It is just the sheer exhaustion from the exhilaration of estimates. The concern is that there may actually be impediments to having the most robust level of contestability in access to data. If you are trying to get access to data, and that oil company that has been exploring has got all of this material, then you are not going to be able to make an informed bid. Also, can you take on notice, Minister and NOPTA: are there other regimes elsewhere in the world where there is a greater level of contestability than what we have in Australia? In other words, is there a use-it-or-lose-it approach that is more immediate in other countries?

Again, I have absolutely no criticism of NOPTA. You are clearly working diligently through the existing framework but I am just wondering whether other parts of the world have a more contestable arrangement?

Senator Canavan: I am happy to do that, Senator Xenophon. I would note—I think it was at the last estimates—question SI-42, where we did provide some information in that regard on situations in other countries. Obviously that is there for you to review. There are often, what seems to be generically called, 'holding' titles in other parts of the world in the OECD. We have a renewal licence system and we can provide some further details.

ANSWER

1) Contested approach in other countries

The Department, including the National Offshore Petroleum Titles Administrator (NOPTA), is not aware of any arrangements in other offshore jurisdictions that provide for direct contestability of a title once it has been awarded.

The Department is aware of “holding title” arrangements in other offshore jurisdictions similar to those provided by Retention Leases (as referenced in Question on Notice SI-42 and below).

2) Retention leases in other OECD countries

A retention lease could be described as a form of ‘holding’ title for petroleum discoveries which are currently non-commercial but likely to become so in the future. Australia is not the only OECD country that has a form of ‘holding’ title for petroleum discoveries.

For instance, Canadian petroleum legislation has a holding title called a ‘significant discovery licence’ which operates in a similar way to Australia’s retention lease system. The Canada-Nova Scotia Offshore Petroleum Board is the independent joint agency of the Governments of Canada and Nova Scotia responsible for the regulation of petroleum activities in the Canada-Nova Scotia Offshore Area. The Board may issue a significant discovery licence, which like a retention lease, sits between the exploration and production titles. The Board describes a significant discovery licence as: *‘The document of "title" by which an interest owner can continue to hold rights to a discovery area while the extent of that discovery is determined and,*

if it has potential to be brought into commercial production in the future, until commercial development becomes viable..... the term of a significant discovery licence is indefinite and was designed to maintain an explorer's rights during the period between first discovery and eventual production'.¹

Ireland also has a specific legislative mechanism for petroleum discoveries that are not yet considered commercially viable for development called a 'lease undertaking'. Ireland's Department of Communications, Climate Action & Environment describes a lease undertaking as follows: *'When a discovery is made in a licensed area and the licensee is not in a position to declare the discovery commercial during the period of the licence, but expects to be able to do so in the foreseeable future, the licensee may apply for a Lease Undertaking. This is an undertaking by the Minister, subject to certain conditions, to grant a Petroleum Lease at a stated future date. The holder of a Lease Undertaking is required to hold a Petroleum Prospecting Licence which will govern activities under the Lease Undertaking'.²*

In both cases, these 'holding titles' are subject to work programs and compliance and regulatory mechanisms aimed at removing impediments to resource commercialisation to ensure timely development. This is not inconsistent with the mechanisms underpinning Australia's offshore petroleum retention leases.

A number of other OECD countries, while not having specific 'holding titles', allow for extended timeframes under exploration and production titles in recognition of the time required to bring some resources to commercialisation.

For example, the UK's Oil and Gas Authority (OGA) in its latest 'Offshore Licensing Round' launched in July this year introduced the 'Innovate Licence' concept.³ The OGA describes this licence as a 'flexible and pragmatic approach to licensing which allows licensees to work with OGA to design an optimal work programme, ensure more appropriate phasing of activity, rental fees and competency tests and implements a stage-gate process for better monitoring of progress'. This licensing acknowledges the inherent difficulties and long lead times associated with frontier exploration and development activities. It factors in the availability of extended licence terms for further appraisal work in the transition towards production.

Also, in New Zealand petroleum exploration permits are issued for up to 15 years, depending on the permit location. Following this, it is possible to obtain up to two extension of up to four years each time for appraisal purposes in the transition towards commercialisation.⁴

It is important to note that the various petroleum licensing systems are typically designed in recognition of country-specific conditions including resource characteristics and economics, market factors, and industry maturity and structure. Retention leases were introduced in recognition of the conditions specific to Australia's offshore petroleum sector where there can be significant challenges to early commercialisation of resources due to the relative lack of infrastructure and other factors. They remain a fundamental component of our offshore petroleum regime.

¹ Refer to <http://www.cnlopb.ca/exploration/issuanceprocess.php> and <http://www.cnsopb.ns.ca/lands-management/licensing>

² Refer to <http://www.dccae.gov.ie/natural-resources/en-ie/Oil-Gas-Exploration-Production/Pages/Types-of-Authorisations.aspx>

³ Refer <https://www.ogauthority.co.uk/news-publications/announcements/2016/oga-launches-29th-offshore-licensing-round/> and <https://www.ogauthority.co.uk/licensing-consents/offshore-licences/>

⁴ Refer to <http://www.nzpam.govt.nz/cms/permits/petroleum/types>