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ECONOMICS LEGISLATION COMMITTEE

Reference: Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Bill 2010

WEDNESDAY, 31 MARCH 2010

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SENATE ECONOMICS

LEGISLATION COMMITTEE

Wednesday, 31 March 2010

Members: Senator Hurley (*Chair*), Senator Eggleston (*Deputy Chair*) and Senators Bushby, Cameron, Pratt, and Xenophon

Participating members: Senators Abetz, Adams, Back, Barnett, Bernardi, Bilyk, Birmingham, Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cash, Colbeck, Collins, Coonan, Cormann, Crossin, Farrell, Feeney, Ferguson, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Furner, Hanson-Young, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Ludlam, Lundy, Ian Macdonald, Marshall, Mason, McEwen, McGauran, McLucas, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Ronaldson, Ryan, Scullion, Siewert, Sterle, Troeth, Trood, Williams and Wortley

Senators in attendance: Senators Back, Eggleston and Pratt

Terms of reference for the inquiry:

To inquire into and report on:

Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Bill 2010

WITNESSES

BROWN, Ms Jessica Kate, Manager, Legislation Review and Timor Sea, Offshore Resources Branch, Department of Resources, Energy and Tourism..... 10

HARVEY, Mr Colin, Principal Legislation and Policy Officer, Petroleum Division, Department of Mines and Petroleum, Western Australia..... 2

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SELLERS, Mr Richard, Director General, Department of Mines and Petroleum, Western Australia..... 2

TINAPPLE, Mr William, Executive Director, Petroleum Division, Department of Mines and Petroleum, Western Australia..... 2

Committee met at 9.16 am

ACTING CHAIRMAN (Senator Eggleston)—I declare open this hearing in the inquiry of the Senate Standing Committee on Economics into the Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Bill 2010. On 24 February 2010 the Senate referred the bill for inquiry and report by 23 April. The bill introduces a measure whereby the Commonwealth will retain the industry fees raised under the act to use in the establishment of a national offshore petroleum regulator. Currently the registration fees have been distributed to the states and the Northern Territory.

These are public hearings, although the committee may agree to a request to hear evidence in camera or may determine that certain evidence should be heard in camera. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. If a witness objects to answering a question the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer a witness may request that the answer be given in camera. Such a request may also be made at any other time.

I remind members of the committee that the Senate has resolved that departmental officers shall not be asked to give opinions on matters of policy and should also be given reasonable opportunity to refer questions to superior officers or to a minister. This resolution prohibits only asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted.

[9.19 am]

HARVEY, Mr Colin, Principal Legislation and Policy Officer, Petroleum Division, Department of Mines and Petroleum, Western Australia

SELLERS, Mr Richard, Director General, Department of Mines and Petroleum, Western Australia

TINAPPLE, Mr William, Executive Director, Petroleum Division, Department of Mines and Petroleum, Western Australia

ACTING CHAIR—I would like to welcome witnesses from the Western Australia Department of Mines and Petroleum. I invite you to make an opening statement if you would care to do so.

Mr Sellers—We do have a short opening statement. We are really pleased to have the opportunity to speak to the committee on the subject of the Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Bill 2010. Our submission focused on three main parts of the bill: the retention of the registration fees, the functions of the safety authority and multiple titleholders.

Firstly, on the retention of registration fees, the purpose of these amendments is to retain registration fees to provide the establishment funding for the proposed National Offshore Petroleum Regulator, NOPR. Whilst it is understood that the Commonwealth's preferred position as announced on 5 August 2009 is to establish a national offshore petroleum regulator, the form and function of a national regulator with regard to its operation in the Western Australian offshore area is currently the subject of ongoing negotiations between the Commonwealth and the states. The NOPR proposal was in fact the subject of an all-day workshop just two days ago involving us, the Commonwealth Department of Resources, Energy and Tourism, the Australian Pipeline Industry Association and other industry stakeholders; therefore, we consider it inappropriate to continue with the amendments for the Commonwealth to retain the registration fees before an agreement is reached on an acceptable regulatory model.

Secondly, on the functions of the safety authority, Western Australia has for some time recommended the inclusion of non-occupational safety and health structural integrity facilities and pipelines as part of the National Offshore Petroleum Safety Authority's responsibilities. However, WA does not totally support this amendment, as well integrity and well approvals involve resource or reservoir management issues which are not considered to be part of NOPSA's responsibility.

Thirdly, regarding the multiple titleholders, Western Australia does not believe that a consensus was reached at the meetings discussing this and does not agree with the multiple titleholder amendments as proposed in the bill. We have consistently stressed to the Commonwealth that while the proposed amendments would make title administration easier we are concerned that this could be viewed as taking away some of the property rights of an individual member of a joint venture.

We thank you for considering our submissions and we await your questions.

ACTING CHAIR—Thank you very much. I will ask you a few questions and then go to my colleagues. First of all, is it true that 85 per cent of the oil and gas deposits in Australia are off the Western Australian coast?

Mr Sellers—I am not 100 per cent on the 85 per cent figure, but certainly the majority of oil and gas expenditure and activity is off the north-west coast of Western Australia.

ACTING CHAIR—When you say 'the majority', what are you talking about?

Mr Sellers—Certainly that is above 70 to 75 per cent. I am not 100 per cent sure on the 85 per cent figure.

ACTING CHAIR—That is the expenditure rather than the deposits?

Mr Sellers—Yes, that is right.

ACTING CHAIR—Have these developments occurred under the Western Australian government's jurisdiction?

Mr Sellers—Certainly the joint authority model that exists has allowed the focused development of the resources on the North West Shelf and further fields up the Western Australian coast.

ACTING CHAIR—You refer to a joint authority, which is the Commonwealth and the state, authorising offshore petroleum and gas developments. That is what you are talking about, isn't it?

Mr Sellers—That is right. Since the Offshore Constitutional Settlement there has been a working arrangement for the administration of the approvals and other processes to deal with the oil and gas operations off our coasts, and that has certainly been a very workable structure. While with any administrative process there is always room for some improvement, we think it has been a very successful structure.

ACTING CHAIR—Can you describe in simple terms for the record what the Offshore Constitutional Settlement was?

Mr Sellers—The Offshore Constitutional Settlement was an agreement between the Commonwealth and state and territory jurisdictions that set the ownership of the oil and gas to the Commonwealth in Commonwealth waters—that is, outside the Western Australia state territorial three-mile boundary. As part of that settlement there was an agreement for a joint authority mechanism between the relevant federal minister and the minister of the day in each jurisdiction and a process agreed between the jurisdictions and the Commonwealth department of the day around how the negotiations would take place with companies that were working through approvals, working through the day-to-day management of their resources and the overactivities that are required for the operation of those facilities.

ACTING CHAIR—Thank you very much.

Mr Sellers—Mr Bill Tinapple will add a little bit more to that.

Mr Tinapple—I just wanted to add that it is important to realise that it was not only a joint authority; it was a joint authority and designated authority structure that was set up by that offshore constitutional settlement. The designated authority is actually the Western Australia department and the minister. The designated authority carries out all the day-to-day approvals in the Commonwealth offshore area. The joint authority carries out high-level decisions such as the award of titles and so on, but the bulk of the approvals, the day-to-day administration—for example, drilling approvals—is carried out under the designated authority function.

CHAIR—I am glad you pointed that out to us. Since the changes being proposed, in what respects has this arrangement been unsatisfactory?

Mr Sellers—The public record of the process came in in terms of the Productivity Commission report around the upstream petroleum industry. In that report there was some discussion around some specific cases. Because approvals go through Commonwealth and state jurisdictions, there are multiple approvals. The suggestion was made that there is certainly scope to reduce the actual number of approvals that might be required to progress the administration of some of these production facilities when they go through the process. We are clearly in support of that as a recommendation. The Productivity Commission also commented that there was probably an opportunity to form NOPR, but only if all jurisdictions were willing to roll in their state and territorial waters as well so that there was a consistent approach on it. Western Australia has been very supportive of the majority of the Productivity Commission reports—in fact, all but five. It is the five that relate to NOPR and the formation of NOPR as a resolution to what we see as a finetuning issue around the joint authority that has caused the ongoing discussions that we are continuing to have with the Commonwealth.

CHAIR—I have got a copy of the Productivity Commission report here. I do not see that you cannot achieve the efficiencies that you would like to within the present structure. You could have the joint structure and still have those efficiencies, could you not?

Mr Sellers—Certainly that is our position as well.

CHAIR—In other words, you can achieve the goal of a more simple and efficient operation but still have the joint authority.

Mr Sellers—That is certainly our belief.

Mr Tinapple—I just wanted to point out that Western Australia, in its broader approvals systems, has been carrying out a significant investigation and review of and improvement to our approvals system. We have implemented a lot of initiatives to improve the current system. For example, online tracking of approvals has been well received by the industry. We are also implementing a lead agency approach. We have been applying that for projects that cross jurisdictional boundaries. We allow one agency to take the lead so that there will not be multiple agencies involved and we have been applying that or doing other approvals improvements. If I could put a view, I believe that the current system can well be improved to cover the issues that were raised in the Productivity Commission report.

CHAIR—But within the existing structure?

Mr Tinapple—Yes.

CHAIR—We come back to where I began, really—that is, most of the oil and gas offshore developments are in Western Australia, so this is almost exclusively a Western Australian matter, with Victoria to some degree and perhaps Queensland to a smaller degree, and the Northern Territory.

Mr Sellers—Thank you, Senator. We certainly have some numbers that Mr Tinapple will talk to in a moment. That is a good assumption and one we agree with as well. The Northern Territory and Western Australia clearly have the great percentage of offshore potential and, on current figures, Western Australia and Northern Territory are the majority. I will ask Mr Tinapple to give us that actual figures around that.

Mr Tinapple—I believe that the Department of Resources, Energy and Tourism may comment on this later in the day, but 55 per cent of the titles actually exist off the Western Australia coast. The nearest equivalent to that, if we look around Australia, is something on the order of nine per cent. To come back to your reserves statement, for offshore resources we are fortunate to have the Queensland CSM gas resources coming up, but for offshore resources Western Australia actually has about 90 per cent of the gas resources off its coast. We produce about 70 to 75 per cent of gas and oil in the offshore areas. I am just reinforcing what you said, Senator Eggleston, that the majority of oil and gas activity certainly is off the Western Australia coast.

Senator PRATT—In state waters?

Mr Tinapple—No, it is in the Commonwealth waters. We do have a unique situation in Western Australia in that we do have significant state waters and we do have some oil and gas production that comes from those areas, both offshore and on the islands.

ACTING CHAIR—Such as Barrow Island?

Mr Tinapple—That is right, but also some offshore facilities such as the Harriet facility, which is fairly large, and a number of smaller facilities that feed into the production facilities at Varanus Island. There are other island—

ACTING CHAIR—On the North West Shelf?

Mr Tinapple—Yes.

ACTING CHAIR—Essentially, what we are talking about is that this is almost exclusively a Western Australian matter with a few other jurisdictions coming in. What I have taken from what you have said is that the joint authority works well and that the streamlining of the processes, which seem to be agreed to be a good thing, could be conducted without changing the structure of the authority. Is that a fair summary?

Mr Sellers—That is an excellent summary. We have clearly put the position that we consider that fine tuning is part of the business of what we are doing now and we are happy to work with industry and the Commonwealth to continue to do that. We do not see merit in shifting the system that we already have as a very blunt instrument to try to fine tune what is an already workable system.

ACTING CHAIR—This is my last question before I hand over to Senator Pratt. What rationale is there for the Commonwealth seeking to take over this role when in fact, as we have agreed, it could be simplified within the existing structure?

Mr Sellers—I do not want to speak on behalf of my Commonwealth colleagues, but the position that has been put to us is that the minister of the day would like to make sure that the information they get is through a direct mechanism. I might put forward to the committee that, while Mr Tinapple heads a delegated authority on the higher order issues, the material is discussed in cooperation with our Commonwealth colleagues, whether that be Browse or Gorgon or any other project. So, while the discussions that we are having with a company might be led by Mr Tinapple and his crew, the counterparts in RET and the federal minister of the day are well informed of each and every discussion that we have. I see fine tuning of that process as a positive, but I certainly do not see a need to remove in any way, shape or form the ability of Western Australia to have those discussions, especially when you consider that although the majority of these projects might start as a platform in Commonwealth waters the production facilities that they lead to are clearly on state islands or on land in Western Australia. I think The Western Australian public would have a hard time understanding how the separation of discussions on those issues with the Commonwealth would be a reasonable shift from what we have now, which is the joint ability for Western Australia and the Commonwealth to discuss the licensing, the impact and the regional benefits for those particular facilities.

ACTING CHAIR—That is quite interesting because what you are really saying is that you cannot escape the domestic Western Australian aspects of these offshore developments in the sense that the facilities for

LNG, for example, are often onshore—the housing, the airports and so on all involve the state. So in many ways this joint facility is perhaps an ideal management structure for such a complex arrangement.

Mr Sellers—I think the authors at the Productivity Commission recognise that in their statements. They said that if NOPR was to be formed it would need the state and territorial waters to be rolled in to that administrative structure because, if you look at the Gorgon process that we have just gone through, over 60 per cent of the approvals and licensing actually took place within the state territorial waters for pipelines, facilities and other mechanisms. Clearly there is that overlap. Whatever the solutions of the Productivity Commission for these issues turn out to be, they need to recognise that. Our position is strongly that Western Australians would like the opportunity to be involved in those discussions at a high level and upfront.

ACTING CHAIR—And that there is no real reason to change the existing structure, I would conclude from that.

Mr Sellers—The existing structure can be fine tuned to pick up the issues that were raised by the Productivity Commission. That is our position.

ACTING CHAIR—Thank you. I will now hand over to my colleague, Senator Pratt.

Senator PRATT—I have some concerns about the duplication between state and federal responsibilities and, in some instances, not duplication but a lack transparency in relation to who ultimately is responsible. I am going to turn to the Varanus Island incident, which we are clearly all very familiar with, and ask you about the findings of the 2009 report, which said that NOPSA should be given more resources, powers and responsibilities. Can I ask for your comment in relation to that?

Mr Sellers—I will start and then pass to Mr Tinapple. There is a prosecution pending for Varanus Island so we are restricted in terms of what we can and cannot talk about in reports that might prejudice that prosecution. In terms of policy, clear guidelines and processes for business so that they understand who is the regulator, who is responsible and who are the people they talk to is best practice and something that we would aspire to as well.

Mr Tinapple—I will give some background and context, if I could. Varanus Island is state land. It is in state waters. It is fed by facilities that come both from state waters and from Commonwealth waters. When NOPSA was formed in 2005, part of the decision of the Ministerial Council on Mineral and Petroleum Resources was that the states would have an option to roll in their state waters and islands and that the states would have an option to do that either legislatively or through service level agreements. It takes time to put through the legislation to make that happen, so in Western Australia we started out with a service level agreement between our department and NOPSA to provide regulatory services.

In the overwhelming majority of the activities that come under our Petroleum (Submerged Lands) Act 1982, we then went on to provide to give NOPSA legislative power under that area. We still had in place a service level agreement with NPOSA. So NPOSA was providing advice on Varanus Island when the incident occurred. The incident occurred in June and in early February 2009 NOPSA withdrew from that contract. So we did have a contract. It was determined that, under the Commonwealth legislation that created NOPSA, they did not have the power to continue that contract.

In my opinion as a regulator there is some benefit in having contiguous regulation over facilities. However that has to be shown to work. Under the circumstances that we found, it has not worked. We have gone back to where our resources safety division of our department is providing those OH&S regulatory services for Varanus Island. NOPSA is providing the offshore portion of those pipelines for regulatory services.

Senator PRATT—When it comes to OH&S concerns, I understand there are other examples of buck-passing as to who is ultimately responsible. It can happen when you have workers on a boat that moves and docks, and a change of jurisdiction is involved. There are arguments going around at the moment about who is ultimately responsible. You talk about contiguous arrangements over facilities having advantages but that it needs to be seen to work. Clearly these reforms are being pursued because there is a perception that there are some problems with the duplication that exists. The Productivity Commission has identified this and that is why these kinds of reforms are before us. Why are we falling over in our capacity to cooperate and move on and get something done here?

Mr Sellers—Are we talking about NOPSA?

Senator PRATT—Both NOPSA and NOPR. The issues are connected.

Mr Sellers—I will restrict myself NOPR in the first instance.

Senator PRATT—Thank you.

Mr Sellers—In answering Senator Eggleston's questions, I was trying to explain that we are very committed to achieving a combined solution to work on areas that need refinement and clarity. We just did not see NOPR as a blunt instrument as the best way of fixing the administrative and approval process that, in essence, probably is best described as some finetuning—some collapsing of multiple approval processes and providing some clarity around guidelines. We did not see the requirement for a new separate authority that would take away the ability of the current Western Australia government to interact in that process. That was the intent of that discussion.

Certainly on the issues you raised around safety and clarity—and I am paraphrasing here—when, say, a rig tender comes back into a port and ties up against the port, about who controls the safety around the port, there is no argument that there needs to be clarity around that. Unfortunately, the issues that we are talking about there are outside our control, given that that would be a WorkSafe site and that NOPSA clearly operates in offshore waters. So there is a sequence there. I can understand the question but, unfortunately—

Senator PRATT—It is outside the scope.

Mr Sellers—Yes, it is outside our scope.

Senator PRATT—But I suppose it does point to the multiple levels of complexity when you look at the different jurisdictions and different departments that have responsibility for regulation in the sector.

Mr Sellers—That is right.

Mr Tinapple—Senator, what you say is true, that there is a complex set of arrangements, but unless we had one regulator covering everything in Australia it is going to be difficult to not have that. For example, as Richard said, when a supply vessel is tied up in Dampier it is regulated under the port authority; as soon as it leaves the harbour area then it is regulated by AMSA; when it ties up to an offshore drilling rig or platform then it would be regulated by NOPSA.

Senator PRATT—I am glad you are clear about who is regulating it, because it seems that some regulators are reluctant to step in and say, 'Yes, that is our responsibility.' But you seem pretty clear about it, Mr Tinapple, so I am pleased about that.

Mr Tinapple—I think the regulators tend to be, just as you would be when you get your car and drive somewhere. You would know that when you are in a parking lot you have certain legal coverage, when you drive down the road it is a different legal responsibility and when you pull in to a university or hospital that is a different set of authority again. We live with that. It is the same thing with helicopters that fly offshore—they are covered by the CAA for part of the time and when they are on the platform they are covered the NOPSA arrangements. We do have a whole matrix of regulatory authorities.

Senator PRATT—I would like to turn to a different topic: the problems you outlined for joint venture partners, which you have reflected on a little bit this morning and also talked about on page 3 of your submission. I want to ask you what kinds of solutions you see to those concerns and what you see as the specific problems for multiple titleholders in relation to property rights.

Mr Sellers—It is a question with a couple of parts and I will go through them. Our initial concern and our initial submission was that we thought there had not been enough consultation to tease out some of the issues you have raised around multiple titleholders having collapsed down to one only that we dealt with and then the joint venture partners getting an appropriate say at the table. When that round of consultation occurred, we thought that that was a bit rushed and that there needed to be wider and more fulsome discussions so that the issues we could see in it around us as regulators dealing with one partner and perhaps not taking into account some of the other partners' views might be dealt with.

Senator PRATT—Please keep commenting along your current train of thought, but I want to intersect there to ask: other than property rights, that would also pertain to questions of liability et cetera under the regulatory arrangements so that, if you are just working with one partner, there is a liability that extends to the entity that holds the title, surely?

Mr Sellers—There certainly is. If we were to get into a prosecution situation then the fact that it is a joint venture would be an issue. In terms of getting the actual elements of the prosecution to go forward, one of those would be ownership. Clearly in our current processes, if there are multiple titleholders or multiple operators, then they would all be jointly involved in that action, so there may be some concerns around that. I have not actually put my mind to that side of it. Our issue is more around the fact that we are involved in

higher level discussions on very large, very valuable operations that have multiple partners, and occasionally after the event you might have one of the smaller joint venture partners commenting that perhaps their views were not taken up. So our issue was fundamentally making sure that was canvassed properly before this legislation was taken forward.

After the first round of consultation there was some amendment that allowed one of the other joint venture partners to come in and, in essence, register an interest as an operator. I am not trying to use the terminology of the legislation there. Given that that is a process that might take some time, it could easily, in our view, be well past the point where a decision is made and we have reached an endpoint on a discussion that we were having with the original nominated operator.

Senator PRATT—You have reflected on the fact that there have been some changes made to address those kinds of concerns, but you do not believe they go far enough?

Mr Sellers—We are not uncomfortable with the changes. It would like a further round of consultation with the industry to see whether they are meeting their goals or not. So our first issue was that we thought there was not enough consultation. The amendment seems to be a step in the right direction. We are suggesting that perhaps there needs to be a follow-up round of consultation, just to confirm that that meets the requirements.

Senator PRATT—I suppose we could put that question to industry ourselves.

Senator BACK—Gentlemen, can I ask you: is the thrust of this move by the Commonwealth more directed at those states and territories that are minor participants rather than Western Australia, or is that the genesis of it? I ask the question because one of the points in the summaries given is that it will address a shortage of technical expertise and remove unnecessary regulatory duplication. Is there a shortage of technical expertise in your department?

Mr Sellers—There is. In the recent boom time that we experienced in both metals and offshore petroleum and gas, there was a general skills shortage across industry, and that is liable to come again with the ramp-up of some of the projects that are in train at the moment. As we speak, I am very confident that we have the skills within our department to deal with issues that we need to deal with. Is it likely that in the future, if you are sitting in one of the smaller jurisdictions, you will have some of your skills poached? I think that is probably a fair commentary.

Senator BACK—This seems to be one of the catalysts for this particular move. Time is against us, but can I ask you to comment on this. In terms of the administration costs of states and particularly the Northern Territory, it will be put to us that states and the 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. Western Australia is given as an example: $13 million per year goes back from the Commonwealth to the state, where the Western Australian costs have been $6 million. So the difference is $7 million a year, the suggestion being that in essence the Commonwealth is basically giving $7 million a year back to Western Australia for no service offered. Could you comment on that?

Mr Sellers—Certainly. I will ask Mr Harvey to give us some background detail around it in a moment, but the high-level commentary is that a large component of the genesis of the fee that they are commenting on is that it came in in lieu of some stamp duty. It goes straight to the Treasury as part of the general revenue of the state. The administrative fee is a cost recovered component that comes back to each jurisdiction to run the administrative process. In the main, in my experience both in the territory and here, it is either line ball or a bit below what it actually costs us to do the business.

Mr Harvey—I think the main issue here is that, even though we are not talking about extremely large amounts of money, the amounts of money we are talking about are in lieu of stamp duty. They go back to 1967, when the original settlement was undertaken to administer the offshore area by agreement between the Commonwealth and the states. So the registration fees we are talking about here are in lieu of stamp duty. At the time it was uncertain that the states' power to levy duties could extend to the offshore area. That arrangement continued through the 1979 offshore constitutional settlement, which continued to reinforce the cooperative federalism model which we operate under, such that the states would receive back the amounts of the fees that were collected—all of them. In WA's case, the amounts of fees that we have received back over and above the general administration fees have in no way recompensed us as a state for the expenditure that we have had to undertake for the construction of very expensive infrastructure. By that I mean roads, railways and ports, without which all of these offshore developments would not be viable, because, even though they are offshore, they have to be brought onshore in order to be developed. The state has long argued that it needs

to be recompensed and that these large amounts have to be spent onshore to develop these offshore projects. Retaining the registration fee component, which was in lieu of stamp duty, in some small measure helped to recompense the state for its expenditure in that area.

Senator BACK—Can you tell me then, in the proposal that has been put before everybody, what does the Commonwealth propose to do to replace that very meagre sum of money, which, as you say, goes only a small way to compensating the stamp duty loss?

Mr Sellers—In terms of back to Western Australia?

Senator BACK—Yes.

Mr Sellers—Nothing.

Senator BACK—Okay. Thank you. I have obviously been speaking to industry groups. What they want, of course, is the greatest degree of efficiency and effectiveness as it affects them. For Australian companies and multinationals, how can the current arrangements be improved without moving towards this Commonwealth takeover?

Mr Sellers—The Productivity Commission raised a number of matters which are causing blockages in the approval process. Two of the main ones, environmental issues and heritage related issues, were suggested to be addressed by some discussions and changes to Commonwealth activity. Underneath that was the administrative process of doing the approvals for pipelines, facilities and things. My experience as a regulator is that even though there might have been 11 when I did the Blacktip process up in the Territory, that component was done, as Mr Tinapple described, with the Northern Territory being the lead agency, dealing with industry in a seamless way on an agreed timetable, and it went very smoothly. For those sorts of processes that we are involved in, we suggest working with the Commonwealth and others to collapse the total number of licences, which would drive some efficiency savings for both us and industry. That would probably be the major gain in the administrative process that we have in front of us at the moment. Beyond that, there is not a great scope for savings within the NOPR model that we can see. We see the issues of environmental approval and heritage as still being very large and looming, and we cannot see how just the NOPR model is going to help resolve those. We think that there are other activities that need to take place, such as discussion on streamlining the EPBC legislation and other components of it, which will greatly assist industry and us to get these through in a more timely manner.

Senator BACK—As Mr Tinapple kindly explained to us, the joint and designated authorities—and so Western Australia—have designated to them responsibility on behalf of the Commonwealth for those waters that the Commonwealth controls. Given the fact that the waters and islands under Western Australia's control would not be willingly moved under this NOPR, is there not a case for those jurisdictions for whom this is a minor activity—the other states and, to a lesser extent, the territory, who do not have the capacity—to designate to the Western Australian department the responsibilities that they actually have under law? You mentioned Blacktip in the territory. That was in territorian waters, as I recall.

Mr Sellers—It started in the Commonwealth and went through to Western Australia. It actually went through three jurisdictional changes.

Senator BACK—It did. That is correct.

Mr Sellers—In the workshop that was held only two days ago, there were a couple of models that were talked through with industry. One of them was much along the lines of what you are suggesting, which is a model that we have been working on in Western Australia as an alternative to the NOPR model. There was also a refined NOPR model presented by Canberra which moved a bit towards some of the issues that we think are important. Unfortunately, the outcome of that workshop was that more discussions are needed. So there is not a simple or sensible answer to your question yet.

Senator BACK—But what of the department's capacity to be actually able to expand to provide that designated role? Should it be a favoured option?

Mr Sellers—If that were a favoured option there would be scope for us to grow in the work that we need to do, yes.

Senator BACK—There seems to be a level of common sense to that. Acting Chairman, time is against us although I do have other questions.

ACTING CHAIR—If you wish, you can have a short extension.

Senator BACK—No, that is fine.

Senator PRATT—I have one last question, thank you, Acting Chair. I neglected to ask this before. We have had a long conversation about funding. I suppose I would like to ask how such a body should be funded in your view.

Mr Sellers—Current policy is that the licence fees are set up in a way so that by default they are covering the costs of doing that administration. For us to enter into another funding model, we would be hoping to have discussions with the industry on what that should be. Clearly across government there are broader discussions about the possibility of cost recovery in appropriate areas. Within the petroleum industry there is already a recognition from the NOPSA model that for all the complex sites and safety case that they put up there is a fee charged depending on the complexity of the petroleum facility that they are addressing. So in a sense if we were talking about another industry you might say that discussion around various models for costing is not well advanced. In the petroleum sector it is reasonably well advanced. The industry have been clearly telling me over the last short period that they are very concerned about the continued push for cost recovery. We would take that into account in anything that we would be working on. Currently with the model that exists, on the safety side the companies pay a fee for safety cases that are related around the total cost of NOPSA. For us and our administrative process, the fees are generally seen to be covering the activities that we do.

ACTING CHAIR—As there are no other questions, we thank witnesses for appearing this morning and for their evidence, which has been very useful.

[10.07 am]

BROWN, Ms Jessica Kate, Manager, Legislation Review and Timor Sea, Offshore Resources Branch, Department of Resources, Energy and Tourism

LIVINGSTON, Mr Peter, Acting General Manager, Petroleum Regulatory Reform, Department of Resources, Energy and Tourism

Evidence from Ms Brown was taken via teleconference—

ACTING CHAIR—I welcome the department to this hearing. I invite you to make an opening statement if you so desire.

Mr Livingston—The Department of Resources, Energy and Tourism considers that the bill under consideration contributes to the maintenance and continual improvement of a strong, effective framework for the regulation of offshore petroleum greenhouse gas activities. The bill makes a number of minor policy and technical amendments to the Offshore Petroleum and Greenhouse Gas Storage Act. These various measures are explained comprehensively in the accompanying explanatory memorandum to the bill. I would in the first instance refer the committee to this document, as we have tried to avoid duplicating its contents within our submission to the committee.

The department understands that the committee is focused on the fact that the bill introduces a measure whereby the Commonwealth will retain the industry fees raised under the registration fees 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 by 1 January 2012. To this end, the department attaches a submission that is focused upon providing further information relating to this measure, and I will do my best to answer questions in relation to that matter. Part 2 of the submission also details 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, and I will ask my colleagues in Canberra to respond to your questions on those aspects of the bill. Thank you.

ACTING CHAIR—Thank you very much, Mr Livingston. I will open the questions. The evidence given so far certainly demonstrates that this matter very largely relates to Western Australia because most of the offshore oil and gas production in this country is off the coast of Western Australia and, to some degree, the Northern Territory. Reference has been made to the Productivity Commission's recommendations for improvement in the administration of this regulation, but we have also heard evidence from the WA department that these improvements could be put in place without changing the joint regulatory authority structure. What then is to be gained by introducing this proposed sole Commonwealth regulation rather than retaining the joint structure? If you would be kind enough to answer that, I would be grateful.

Mr Livingston—I think that some of the best responses to that are to be found in the Productivity Commission review. The commission found that, whilst the Australian regulatory arrangements are generally seen to be relatively good compared to those around the world, there was considerable scope to reduce the regulatory burden, to remove unnecessary duplication and to provide greater consistency in the regulation across Australia. They recommended that the principal way to address those unnecessary burdens was through the establishment of a National Offshore Petroleum Regulator.

I think one thing that needs to be borne in mind with the current joint designated authority arrangements is that, while they have been successful in enabling a very large industry to get underway in Australia, there are aspects of those arrangements that are inherently duplicative. If you consider the joint authority arrangements, they involve two lots of ministers jointly making decisions on all the key title decisions. If they are looking at a Western Australian decision, the Western Australian minister draws upon advice from his department, from Bill Tinapple's area, and the Commonwealth minister draws upon advice from our department, the Department of Resources, Energy and Tourism, and we also draw upon technical advice from Geoscience Australia. So what tends to happen is that you get a fair amount of duplication in that process. We have a very good relationship with the regulators all around Australia, but it is just natural that on complex issues you will get different views. Quite often, we spend a fair amount of time trying to resolve these sorts of technical issues. I would have to say that the current arrangements are inherently duplicative, and that is one of the aspects that we are trying to address by going to a single regulator that would be the sole source of technical advice to the decision maker.

ACTING CHAIR—You refer to 'across Australia' when in fact this is a Western Australian issue. Eighty-five per cent of these projects are off the coast of Western Australia, so it is a little bit gratuitous for you to talk about Australia and 'across Australia' when in fact we are referring to Western Australia. My understanding is that these decisions are very largely made in Western Australia and the Commonwealth simply goes along with them and that the working of this authority is very much like the working of the environment and biodiversity act, under which, when environmental assessments are made, they are made by the state authority first and the Commonwealth only intervenes if it feels there is a need for further assessment or a different decision.

I disagree with you that there is anything to be gained from the evidence that has been given today by having a single authority. The evidence we have had is that the joint authority structure works extremely harmoniously. The other point that has been made is that in any of these developments there is a land component, a state component, in terms of the provision of infrastructure—ports, railways, towns, airports and accommodation—so there is inherently a need for the state to be involved, and I find it very hard to accept your argument.

Mr Livingston—It is true that the bulk of Australia's resources of petroleum are found in the Commonwealth offshore area adjacent to Western Australia. I think that, generally, over 75 per cent of the petroleum resources are in those areas. But it is an important issue for other jurisdictions and the Commonwealth as well. Currently, of the titles under the Commonwealth's legislation, 55 per cent are held in the Commonwealth offshore area adjacent to Western Australia and 45 per cent are held offshore in other Commonwealth offshore areas. There is a significant amount—over 20 per cent, I think—in offshore Victoria and about nine per cent in the NT. I cannot remember the figures precisely but there is another large amount in the area offshore of the external territory of the Ashmore and Cartier islands. So this is an issue which is broader than just Western Australia. But I do acknowledge that you have made a very good point about the need for the states to be involved in the decisions about these major projects. This has been one of the issues that the Commonwealth has been trying to resolve with the states to ensure that they can continue to have full access to all the information about these projects and an opportunity to contribute to the decision making.

My colleagues from Western Australia referred to the workshop that we had with industry earlier this week. At that workshop we investigated a proposal that the Commonwealth has put forward, which would retain the joint authority arrangements so that Western Australian and other state ministers would remain decision makers in the legislation on the key decisions. That would also provide a guarantee that their departments would have full access to all the relevant information on these projects. We have put that proposal to Western Australia, and I understand that they have that under consideration. On the other part of that proposal, whilst we are proposing to maintain the joint authority arrangements, we are proposing that a new national regulator be established to take over the current designated authority's day-to-day regulatory arrangements so that, instead of having seven different regulators around the Commonwealth offshore area, you would end up with a single national offshore regulator which would be the sole source of technical advice to the decision makers.

ACTING CHAIR—That is all very well except for the reality that the oil and gas is very largely off the West Australian coast. I have not heard about anybody proposing a project like Gorgon, off Ballina in New South Wales, for example, or anywhere else around this country. So, while in theory it sounds fine, it defies reality because the reality is that oil and gas is found particularly off the north-west coast of Western Australia, and it seems there are also very large deposits off the south-west coast. I still do not really accept your arguments. One of the other positions that were put to us was that the ad valorem registration fee could not be introduced without abolishing the joint authority. What do you say to that? Why couldn't the existing joint authority change to an ad valorem registration fee? I do not follow that argument.

Mr Livingston—Is that argument in our submission?

ACTING CHAIR—I think that is in your submission. The summary on page 57 of our document, which is not quite the same as yours—it is on page 7 of yours—states:

A national regulator will remove existing unnecessary regulatory duplication; address shortages of technical expertise—

which perhaps is a matter we can return to—

provide consistency across offshore areas—

which we have just addressed—

and reduce approval time lines—

which again is questionable. It continues:

The phase-out of the ad valorem registration fee, together with the establishment of the new regulator, will provide significant cost savings to industry.

I think earlier it refers to the fact that the new body would introduce an ad valorem registration fee. The second paragraph at the top of page 7 states:

… the Commission recommended that the Australian government should abolish the ad valorum registration fee and replace it with a cost-recovery fee.

Why can't that be done in any case where there is joint authority?

Mr Livingston—That could be done.

ACTING CHAIR—Yes, I am sorry; I have got it around the wrong way.

Mr Livingston—The commission had focused on that ad valorum registration fee being an unnecessary burden on industry and recommended that that ad valorum fee be abolished. The Commonwealth would like to act on that recommendation, but we have proposed that, as a temporary measure, we retain that ad valorum registration fee for a period of about 18 months to raise the revenues that would be sufficient to recover the establishment cost of the new regulator. It is the Commonwealth's intention to abolish that ad valorem fee, which is seen as being an unnecessary burden.

ACTING CHAIR—Again I come back to the fact that, if that is seen to be a burden and overly costly and difficult, surely the joint authority could abolish it.

Mr Livingston—It could be abolished under the current arrangements if the Commonwealth parliament passed legislative amendments to that effect. I take your point that you could abolish it under the current arrangements and you would get the same savings for industry. That is a correct statement.

ACTING CHAIR—You also refer to shortages of technical expertise to provide consistency. Surely you are not implying there is a shortage of technical expertise in Western Australia. I would have thought Western Australian technical expertise in offshore petroleum and gas developments would far exceed that of the Commonwealth.

Mr Livingston—Would you like me to elaborate on that?

ACTING CHAIR—If you would like to.

Mr Livingston—The first point I would make there is that the national regulator would remove existing unnecessary regulatory duplication. That gets back to the point I was making earlier on that the joint authority arrangement, because it requires both the state minister to receive advice from his advisers and the Commonwealth minister to seek advice from his advisers, is inherently duplicative. We have also set it up so that each state minister can obtain advice from one of the seven departments around Australia. The Commonwealth minister gets his advice through our department and through Geoscience Australia. We would like to move away from having seven state and NT agencies and the Commonwealth and bring it all to a single adviser. That is removing the duplication.

In relation to addressing shortages of technical expertise, this is not a criticism of Western Australia. We have been very impressed by the efforts that that state has been making to improve its approvals processes. We want to do likewise all around Australia in the Commonwealth offshore areas. As I think you were focusing on in the earlier discussion with the Western Australian officials, this is probably more of an issue around other jurisdictions in Australia.

ACTING CHAIR—It is, I agree, but the reality is that this oil and gas industry is very largely a Western Australian industry. It seems to me that you are seeking to provide, if you like, regulatory security as a sort of theoretical proposition if and when other states have oil and gas industries when in fact they do not and you are seeking to abolish this joint authority, which works well in Western Australia, simply against the theoretical possibility that New South Wales or Tasmania will have an oil and gas industry one day and you will be able to regulate it from Canberra. That seems to me to be an unnecessary thing for you to do when in fact this joint regulatory authority has been working effectively.

I come back to your point about two lots of advisers. I return to the environment and biodiversity act whereby the Commonwealth only intervenes if and when there is doubt about an environmental assessment done by the state authorities, which is a very efficient way to operate. I actually do not see why that argument does not apply in this situation.

Mr Livingston—If I could make a few responses. Other jurisdictions do have significant petroleum industries. Victoria has a very significant petroleum industry and has had for over 30 years in Bass Strait.

There are a number of gas fields on the western side of Victoria as well. The Northern Territory has one LNG project at present and there are prospects for further LNG projects offshore the NT. Whilst there have not been the discoveries of petroleum offshore other jurisdictions, we are still very hopeful that underexplored areas offshore other states, particularly South Australia, will in the future provide the sorts of wonderful opportunities that we currently have off Western Australia.

I do not dismiss the fact that there are probably opportunities to also improve the current regulatory arrangements that we have separate to the move to a national offshore petroleum regulator. I remind the committee that the Productivity Commission actually made 30 recommendations in its review and 25 of those recommendations have already been approved by the Ministerial Council on Mineral and Petroleum Resources. Some of those deal with matters such as the EPBC Act and other land access matters. The proposed responses have now been referred to the Council of Australian Governments and, hopefully, we will have those responses and implementation plans announced publicly later this year. We are at the moment focusing on the recommendations to do with the establishment of a national regulator.

Senator PRATT—You talked about the need to move towards a single adviser because of the duplication that exists in the regulation of this area of our economy. It was quite apparent to me, based on the evidence given by the Western Australian authorities here, that they are not really of the same view. I would like your comment on that.

Mr Livingston—That is true. We have been discussing these recommendations with jurisdictions since about August of last year. Currently all of the other jurisdictions either support or accept the proposal to move to a national offshore petroleum regulator. Western Australia's position though I think, as quite clearly put by the WA officials, is that they do not support a national regulator. They have raised with us a number of their concerns and we have been doing our best to address those concerns and see if we can arrive at an acceptable arrangement for all jurisdictions.

Senator PRATT—How would you characterise the economic impact of the kind of duplication that currently exists and the burden on companies that are trying to meet obligations in both jurisdictions?

Mr Livingston—That is a very difficult thing to do. The actual immediate impact, say, on the cost of that regulation is probably not all that great. We have estimated that the costs incurred by the regulators are in the order of around $16 million a year. We feel that, if you move to a national regulator for the resource management and environment functions, that cost would be in the order of about $12 million a year. So the actual reduction in the cost of the regulation is not that great. The real benefits for industry are in the shortening of approvals time. It is very difficult to estimate how much of a reduction in the approvals time will result following the move to a national regulator. The Productivity Commission had a bit of an attempt at that exercise. It had 30 recommendations. It did not say how much each recommendation would reduce approvals time. It said that all of its recommendations—all 30 of them—taken together could reasonably be expected to lead to a 50 per cent reduction in approvals time. Then it made an estimate: what is the potential benefit of such a 50 per cent reduction in approval times? It estimated it could be in the order of billions of dollars per year. So there are significant benefits to be achieved.

Senator PRATT—With respect to fees currently paid, this bill means that the Commonwealth will retain the industry fees raised under the act. How is it that the states should be compensated for the work that they inevitably do have to do when these developments happen?

Mr Livingston—The states do incur significant costs in the administration of Commonwealth offshore areas. We have recently sought advice from the states about the magnitude of the costs that they have incurred. I think they have advised us that it is in the order of $8.7 million per year. The Commonwealth's proposal is to retain only the registration fees. There are other fee revenues that are derived from annual fees and also from application fees for titles. Those current fees raise in the order of a bit over $7 million, so there would be a slight shortfall if the Commonwealth did not do something to adjust those fees to ensure that the states are fully compensated for the costs that they incur. That is something that the Minister for Resources and Energy has undertaken to review. So if this measure for the Commonwealth to retain the registration fees goes through it is proposed that the Commonwealth minister would adjust the annual fees and the application fees to ensure that the states recover all of their costs for administration.

Senator PRATT—I am not sure whether this is something you can comment on, but the politics of this are clearly connected to a much wider debate about the extent to which the states are supported and compensated from what are the Commonwealth's royalty revenues from projects that come from Commonwealth orders to a range of costs, impacts and infrastructure developments that happen and also the burdens on the state when

such projects get off the ground. It is hard sometimes to draw the line on those buckets of money and where they are going, isn't it?

Mr Livingston—Yes, it is. It is rather difficult to make any comment on that. I might ask whether one of my colleagues in Canberra may be able to. But I understand the Commonwealth has given some undertaking to share future petroleum resource rent royalty revenues from the Gorgon project with Western Australia to assist in the provision of infrastructure. I am not sure whether Martin Squire could comment on that.

Mr Squire—Those matters you have raised about costs more generally are really beyond the area of expertise of the people whom we have available.

Senator PRATT—That is fine. As I asked the question, I expected that that might be the case. I am quite supportive of the principle of a notion of a single adviser and a single regulator. I can really see the duplication that exists. Nevertheless, even if you pursue that path, there will always be fringes of the regulatory burden that are going to fall on the states. It is actually impossible to create a system where the Commonwealth would be wholly responsible for such regulation, surely. How does the Commonwealth see that boundary being drawn in the future?

Mr Livingston—The Productivity Commission, in their original recommendation, actually saw it as a bit of a transition process. They said that in the first instance the Commonwealth should establish a national regulator in the Commonwealth offshore areas and then provide the option for the states and the NT to confer their powers for coastal waters, internal waters and islands onto the Commonwealth. They did examine the possibility of whether you could move to a single petroleum regulator onshore as well, but they probably saw that as a step too far. I guess I would see it as fairly ambitious. The commission said that even if reform only went as far as the Commonwealth setting up this NOPRA in its Commonwealth offshore areas, there would still be significant benefits from doing that and it should be proceeded with. That was their finding.

Senator PRATT—As far as future progress goes, that is clearly something that would take place over time, and it may or may not happen, depending on the kinds of negotiations that take place between the Commonwealth and states like Western Australia.

Mr Livingston—It is quite clear that you maximise the benefits the more powers the states and the NT confer on the single regulator. Other than WA, the states have said that they support the recommendation for them to have that option. But it is an objective, definitely of the Commonwealth, to try to come to an arrangement with the Western Australian government whereby they could confer their powers on a new regulator, because it is under that sort of arrangement that you will get the maximum reform benefits and the maximum benefits for industry.

Senator PRATT—Thank you.

Senator BACK—Mr Livingston, Ms Brown and Mr Squire, I asked the previous witnesses a question with regard to the recovery of administrative costs to the states The example you have given in your submission, Mr Livingston, is that, in the case of Western Australia, the Commonwealth has paid the Western Australian government an average of $13.1 million per annum, whilst the cost of administering is $6 million, leaving a surplus of $7 million, with the obvious suggestion that the $7 million is in some way money for nothing or money for jam. The response that I was given was that, going back to agreements extending back to the 1970s, this differential was in some way to be paid in lieu of stamp duty to be used for infrastructure such as roads, railways and ports. I do not think anybody would think that $7 million per annum was much of a contribution to the cost of that infrastructure. In the proposed legislation, can you tell me, Mr Livingston or Mr Squire or Ms Brown, where the Commonwealth proposes to pick up or indeed even add to that shortfall that the state of Western Australia would incur from the loss of that $7 million in lieu of stamp duty?

Mr Livingston—While the Commonwealth is not proposing this in the legislation, in his second reading speech the minister noted that he would review the other offshore petroleum fees and adjust them if necessary to ensure that the states recover all of the costs of administering the offshore areas.

Senator BACK—That is correct. You answered that a few moments ago. There is a recognition of the $6 million or its equivalent in other states and territories. It does not quite match it. You did make that point, yes?

Mr Livingston—That is right.

Senator BACK—That would presumably come out of some of the $7 million that the Commonwealth is looking to save, I would think.

Mr Livingston—It would be done by increasing the other fees, which would raise another $1.5 million, which would go to the states to meet any shortfall. The Commonwealth would not be compensating the states for the $6 million that they would no longer receive. The proposal is that that fee is an unnecessary burden on industry and it should be removed. In a perfect world, we would remove it now.

Senator BACK—Who would then meet the cost of the infrastructure? Presumably, industry would accept the need for the ports, roads, railways et cetera.

Mr Livingston—We have done a review of the arrangements that were in place back in 1967 and the offshore constitutional settlement in the late 1970s. We can find no record to say that the remittance of the offshore petroleum fees was for the purpose of supporting the provision of infrastructure by the states.

Senator BACK—Do your records confirm that it was in lieu of stamp duty that the state would otherwise have enjoyed? What the state does with its stamp duties is—

Mr Livingston—I do not recall that it was that specific, but I acknowledge that the nature of the fee is clearly that of a stamp duty. I accept what the Western Australian officials were saying, which was that this was a fee similar to stamp duty that applied offshore around Australia at the time. But the thing to be noted is that this is, if you like, a stamp duty on transactions that occur in Commonwealth jurisdiction. Really, it is a Commonwealth stamp duty.

Senator BACK—And other circumstances it might in today's world, since the GST did not exist in that time, be picked up in a GST payment. Not wishing to take us to an area that is unrelated, but when you are getting 68 cents in the dollar back Western Australians do not think much of the distribution of GST. But there is no other accommodation encompassed in this legislation to pick up that shortfall?

Mr Livingston—No.

Senator BACK—I understand from submissions made that the move going forward relies on the states and territories rolling the areas for which they have responsibilities—the waters inside three nautical miles and the islands—into the agreement. What happens if states and territories do not? Is it correct that Western Australia and the Northern Territory are the two who have not accepted that notion at the moment? Are there other states also?

Mr Livingston—A would like to make a couple of points. The Commonwealth could create a national offshore petroleum regulator within its own jurisdiction. The Productivity Commission recommended that even if reform went only went that far it should do so. But there is no doubt that the maximum benefits from reform occur if the states and the NT roll in their powers as well. It is not a matter of if the states do not do it it cannot go ahead. Rather, if the states do not do it, you will not get the maximum benefits. The discussions with the jurisdictions to date indicate that it is only Western Australia that opposes the national regulator and that has said that it will not confer its powers. The other states have all said that they support being provided the option to confer their powers. A number of those states have said that, because in their coastal waters and internal waters there is either no petroleum activity or no prospective activity, there would not be the legislative priority to provide the amendments. So I think that you will see Tasmania, New South Wales and Queensland not conferring their powers—not because they disagree about doing so, but because they cannot provide the legislative priority to do so.

Senator BACK—Yes, I understand the difference. I did ask this question earlier, but perhaps you would be kind enough to comment also. Given that at the moment there is a joint and designated authority—the Commonwealth in fact designates to Western Australia its authority in the waters under its control—would it not be an effective way of achieving the same result to invite the other states and territories or for the Commonwealth to act as a catalyst to that process and for the Western Australian department to actually undertake this administration if indeed 85 per cent of the activity is in this jurisdiction now?

Mr Livingston—Effectively then the Western Australian department would become the National Offshore Petroleum Regulator. I think to do that you would need the agreement of all of the other jurisdictions and the Commonwealth to such an arrangement. As I said, we have been looking at options with all of the jurisdictions to see how we can come to an acceptable outcome. I am not sure that that one is strictly being put forth within that basis, but we can consider that.

Senator BACK—You mentioned earlier that one of the validations for undertaking this activity was that with there currently being joint or overlapping responsibility, Commonwealth and states, there is a different set of views. Can you give us an example or examples of where there are currently different views coming out

from, for example, any one state and the Commonwealth, or is that something that the Productivity Commission regarded as being a possibility?

Mr Squire—I might take that question. To give you an example, when we are currently looking at field development plans, which are essentially the plans for how a titleholder might develop an offshore oil or gas reservoir, essentially the titleholder provides the Western Australian Department of Mines and Petroleum with a plan for how they might develop that resource. Obviously the company has a view about the size and structure of that resource and what sort of development it would support. The state department have their technical people review that plan. Their own technical experts may agree or they may not agree with the size of that particular reservoir and then, in our administration of the act in providing support to the minister in his capacity as the member of the joint authority, we also have Geoscience Australia provide us a technical assessment. In some cases those three views align, but it is certainly not correct to say that that is always the case. Essentially what can occur is a disagreement between the various technical experts about the size and scope of a particular reservoir. It is while those issues are being resolved that delays in decision making that Mr Livingston referred to in his earlier evidence are generated.

Senator BACK—So what would be the basis then in your analogy, Mr Squire, if the state was not a party to that process? Does that not actually remove one possible control? Which is the more likely: that the state would approve and the Commonwealth would not, then subsequently would, approve that well design, for example? Is that the more likely scenario? What I am coming towards is the question asked by our chair earlier about the overarching role of the Commonwealth in other legislation. Are you not effectively giving effect to the argument the chair used in an earlier question?

Mr Squire—I would not characterise it that the state would necessarily simply agree with the titleholder and that the Commonwealth's general position was to disagree with the technical assessment of the state. It is more a case that different technical experts reviewing the same information can often come up with variations on the conclusions that they draw. On the other issue that Senator Eggleston raised before, these resources are in Commonwealth waters. The Australian government raises substantial petroleum resource rent tax from these resources and I would think that the Commonwealth has a legitimate role in assessing how those resources are developed.

Senator BACK—The questions of multiple titleholders and of sole risk provisions in a joint venture agreement have come up and it has been put to us that, under the proposed amendments, it is not clear how a joint venture partner who is not the nominated operator can make an application to drill a well except through the nominated operator, who in fact may have no interest in it. It has been put to us that this may not be a feasible approach and it has been suggested that there needs to be more consultation with the industry before we move to formally consider these amendments. Would you care to comment on that or perhaps give us an assurance or provide the clarity that does not seem to be present amongst some of the players?

Ms Brown—To start with your last point, which was APPEA, the consultation with industry, which is the peak industry association in this industry, supports the multiple titleholder amendments in this bill. To go to the particular situation that you raised as an example, the sole risk situation: I would say this is more of a perception than a legal issue. The arrangements that we are proposing to put in place with the nomination of one titleholder out of a whole group does not preclude these sole risk arrangements going ahead. The sole risk arrangements would actually be a matter for the joint venture arrangements. It is part of their commercial arrangements and, referring to the WA submission, they are talking about them already being in place. So they are already dealt with under joint venture agreements and that is not a matter for the regulatory regime. The nomination for applications and notifications on behalf of multiple titleholders does not preclude those arrangements going ahead.

Senator BACK—We have been told as recently as Monday this week that there still are ongoing negotiations between the parties. Is there anything to be gained in actually pushing ahead with these proposed amendments before those negotiations are completed? Would it not be perhaps more beneficial to the whole process to have those negotiations completed and perhaps have moved closer towards an agreed position before these amendments are put up?

Mr Livingston—The Minister for Resources and Energy noted in the debate on these bills in the House of Representatives that:

> … the government will not press for the Senate to give consideration to this legislation until after the Ministerial Council on Mineral and Petroleum Resources has had the opportunity to further consider the Montara commission report at a meeting scheduled for the end of May.

The minister wants the jurisdictions to consider the outcomes of the Montara Commission of Inquiry before coming to a decision on these institutional reform matters. So I think he is basically agreeing with your proposal.

Senator BACK—The consultation I have had with industry is not to come down in favour of one solution or another but more to push for there to be concurrence and unanimity. That was the basis of my question—if it is possible to achieve that rather than push ahead then perhaps everybody's interests might best be served.

ACTING CHAIR—Thank you, Mr Livingston, Mr Squire and Ms Brown in Canberra, for appearing today. We do appreciate you giving the evidence that you have because it helps us understand the implications of this legislation.

Committee adjourned at 10.55 am