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Philip Weickhardt
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Productivity Commission
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Dear Commissioner

**PRODUCTIVITY COMMISSION REVIEW OF REGULATORY BURDEN ON
THE UPSTREAM PETROLEUM (OIL AND GAS) SECTOR - ISSUES PAPER**

Please find attached the Department of Industry and Resources' comments on the issues paper at Attachment 1.

Western Australia is currently the nation's major petroleum producer, accounting for 67 per cent of national crude oil and condensate production and 69 per cent of national natural gas production. The strategic importance of this sector in the State and national economies is demonstrated by current levels of output - in 2007-08 total petroleum output contributed \$19 billion to the State's entire gross state product of around \$141 billion.

There is potential for ongoing exploration success in Western Australia with many under-explored but highly prospective areas existing both onshore and offshore. While discoveries have occurred both onshore and offshore, offshore areas of the State remain the focus of most petroleum exploration, investment and development.

The cornerstones of growth in the petroleum industry are exploration and investment, and the past year has seen a record number of new companies apply for petroleum exploration acreage in Western Australia and new higher levels of work commitments and take-up of acreage. This new exploration and potential investment reflects the growing interest in the State as a destination for capital expenditure from both interstate and overseas investors.

While encouraging development of the petroleum industry, the State Government is committed to ensuring that sufficient supplies of competitively priced gas are available to underpin Western Australia's long-term energy security and economic development, emphasising the importance of this Department's initiatives to encourage petroleum developers to continue searching for gas onshore, close to the domestic market.

The Western Australian Government welcomes the Productivity Commission's review and looks forward to participating further in the examination of opportunities for streamlining regulatory approvals.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Stedman Ellis', with a long horizontal flourish extending to the right.

Stedman Ellis
Deputy Director General
RESOURCES GROUP

6 November 2008

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PRODUCTIVITY COMMISSION REVIEW OF THE REGULATORY BURDEN ON THE UPSTREAM (OIL AND GAS) SECTOR ISSUES PAPER – COMMENTS FROM THE WESTERN AUSTRALIAN DEPARTMENT OF INDUSTRY AND RESOURCES

Overview

- The Western Australian Government supports the aims of the review in seeking to improve the transparency, certainty and timeliness of regulatory approvals, and removing duplications between jurisdictions.
- The current program of consolidation and streamlining of eleven sets of petroleum regulations into three – Environment, Safety and Resource Management – should remain a priority in the reform agenda.
- There remains significant duplication in referrals required under Commonwealth environmental legislation which could be addressed by recognition processes between respective agencies or authorities.
- Increased resourcing of native title parties is required to maintain recent successes in the elimination of the native title backlog for petroleum operations in Western Australia.
- Securing commitments to domestic gas from major LNG projects should be a national, as well as a Western Australian Government, priority.
- The efficiency and effectiveness of national regulatory models, such as the National Offshore Petroleum Safety Authority, need further evaluation prior to further consideration of this option.

General Petroleum Legislation

Western Australia's petroleum regulatory regime covers three distinct areas:

1. All onshore areas of Western Australia including its lands and, in certain circumstances, areas of submerged lands internal to the State are covered by the *Petroleum and Geothermal Energy Resources Act 1967*, excluding 'subsisting' permit areas which are under the *Petroleum (Submerged Lands) Act 1982*.
2. Coastal and internal waters to the three nautical mile limit including the territorial sea around State islands are subject to *Petroleum (Submerged Lands) Act 1982*.
3. Offshore areas, i.e. the submerged lands of the continental shelf beyond the three nautical mile limit which are designated as being adjacent to Western Australia, are covered by the *Offshore Petroleum Act 2006 (Cwlth)*.

The Petroleum (Submerged Lands) Act is administered solely by Western Australia while the Offshore Petroleum Act, in respect to the area adjacent to Western Australia, is administered by a Joint Authority comprising the Commonwealth and State ministers responsible for petroleum administration.

There has been a significant effort in recent years to improve the Commonwealth petroleum legislation, including:

- the introduction of the Offshore Petroleum Act this year, designed to replace the Commonwealth *Petroleum and Submerged Lands Act 1967* while reducing compliance and administrative costs and improve user-friendliness; and
- the consolidation exercise by the Commonwealth Department of Resources, Energy and Tourism to consolidate and streamline the current eleven sets of petroleum regulations to only three - Environment, Safety and Resource Management. The consolidated regulations are expected to come into effect by the end of 2008-09.

Western Australia has been a strong advocate of this legislative reform and recommends that the Commonwealth's consolidation program be finalised and the new regulations implemented. A review of the impact of this reform on the regulatory regime should then be completed before other reforms are carried out.

This is complemented by Western Australia having a policy of mirroring Commonwealth legislation in its own acts in order to ensure consistency of requirements in Commonwealth and State waters. Western Australia also has a petroleum mining code common to onshore and coastal areas.

Comments regarding specific areas of legislation:

Resource Management

In 1999, a joint working group from the Commonwealth, States and the Northern Territory was established to prepare regulations for petroleum industry resource management. The regulations and associated guidelines are designed to apply a lifecycle approach to petroleum resource developments and to bring all related regulatory requirements for resource management under one umbrella. The working group, headed by Western Australia, finalised the draft of the regulations and submitted it to the Commonwealth Department of Resources, Energy and Tourism in June 2007. As yet, the regulations have not been put into effect.

The current regulatory system for resource management is inconsistent and relies on some discrete clauses in the Offshore Petroleum Act, a few remaining clauses of the Schedule of Specific Requirements and non-mandatory guidelines. This approach is disjointed and confusing.

It is the Department of Industry and Resource's view that the regulation of resource management practices would be improved if the Resource Management Regulations were implemented.

Environmental Protection

Environmental assessment and approvals for offshore petroleum operations is generally more straightforward than for onshore operations. Nevertheless, a significant area of duplication between the petroleum environmental legislation

and the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999* provides an opportunity to improve processes for offshore operations.

The *Petroleum Submerged Lands (Management of Environment) Regulations 1999* require operators to submit Environment Plans for their activities. This usually requires:

- a Development Drilling Environment Plan,
- a Construction/Installation Environment Plan,
- an Operations Environment Plan,
- an Oil Spill Contingency Plan, and
- sometimes, a Decommissioning Plan.

There are a number of petroleum projects under which the requirements of the petroleum environment regulations have been directly duplicated by the Environmental Protection and Biodiversity Conservation Act approval conditions.

The issue of duplication arises through referral, under the Environmental Protection and Biodiversity Conservation Act, of projects that could have an impact on matters of national environmental significance to the Department of the Environment, Water, Heritage and the Arts (DEWHA). Once a proposal is referred, DEWHA, as part of its assessment, sets conditions which require the operator to submit detailed Environment Plans for ministerial approval prior to construction and operations. The conditions also require an Oil Spill Contingency Plan to be approved by the Commonwealth minister. These conditions (referred to in the issues paper as 'quasi-regulation') are a direct duplication of the requirements under the petroleum environment regulations.

Examples of recent projects for which DEWHA has set conditions that duplicate requirements of the petroleum regulations include:

- Apache Energy – Van Gogh Development (August 2008),
- ENI – Blacktip Development (November 2005),
- Woodside Energy – Vincent Development (June 2006),
- Woodside Energy – Angel Development (June 2005),
- BHP Billiton Petroleum – Stybarrow Development (June 2005),
- BHP Billiton Petroleum – Pyrenees Development (April 2006),
- Exxon Mobil – Jansz-Lo Development (March 2006), and
- Chevron – Gorgon Development (October 2007).

Copies of the conditions, set through the Environmental Protection and Biodiversity Conservation Act approvals, for these projects can be viewed at: http://www.environment.gov.au/cgi-bin/epbc/epbc_ap.pl.

The Department of Industry and Resources' preferred approach would be for DEWHA to set conditions which relate specifically to matters of national

environmental significance, and only if those aspects to which the conditions relate are not already addressed through other processes. Conditions requiring plans which duplicate the requirements under the petroleum environment regulations should be avoided.

This situation could be addressed through a bilateral agreement between DEWHA and the individual designated authorities around Australia.

Native Title

For petroleum operations, there are three levels of native title requirements under the Commonwealth Native Title Act depending on the location of the development:

- onshore areas are subject to the full “right to negotiate” process,
- coastal waters, including islands, require native title parties to be notified and consulted, and
- Commonwealth waters simply require that native title parties are notified.

The Department of Industry and Resources, in its role as facilitator of agreements between proponents and native title parties, currently exercises every opportunity to dual process pre-grant and operational approvals processes for petroleum exploration and development. A determined effort in recent years has resulted in the elimination of the native title backlog for petroleum operations in Western Australia. The average time for native title agreements or determinations to be finalised is currently between twelve and eighteen months.

In a post-determination environment, the development of Indigenous Land Use Agreements for upstream petroleum and strategic industrial planning activities can be helpful. The success of these agreements, however, is contingent on timing, both in terms of the native title determination and the capacity of all parties to proactively negotiate enduring land and water access arrangements. Increased resourcing of native title parties is seen as an integral to the success of both general native title agreements and Indigenous Land Use Agreements, and the Department of Industry and Resources would support any initiatives for this to occur.

To further improve processes, this Department is currently working with the Office of Native Title and State Solicitors Office to develop Indigenous Land Use Area Agreements with the aim of facilitating low-impact exploration activities such as airborne magnetic surveys.

Recent technical amendments to the Native Title Act, including provisions to ensure that parties negotiate in good faith, are also expected to continue to have a positive impact on the workability of the Act.

Western Australia’s DomGas Policy

In October 2006, the *WA Government Policy on Securing Domestic Gas Supplies* (DomGas Policy) was introduced. The aim of the policy is to ensure Western Australia’s domestic energy security given the State’s heavy dependence on gas for its primary energy needs (almost 50% of primary energy

requirements are currently supplied by gas). The key objective of this policy is to secure domestic gas commitments up to the equivalent of 15% of LNG production from each export gas project.

In the absence of the DomGas Policy, Western Australia could find itself with insufficient gas supplies to meet future demand. A report by McLennan Magasanik Associates to the Ministerial Council on Mineral and Petroleum Resources/Ministerial Council on Energy Joint Working Group on Natural Gas Supply stated that Western Australia is in "urgent need of commitments to new production" to provide additional domestic gas supply.¹ This confirmed modelling undertaken by this Department which showed that Western Australia would face a shortage of domestic gas in the short to medium term. The DomGas policy is therefore essential to ensure the future gas needs of Western Australia.

Western Australia does not impose any price conditions on the sale of gas into the domestic market. The DomGas Policy is designed to ensure gas availability, and places no conditions on price, which is negotiated between producers and consumers on commercial terms.

Western Australia's domestic gas policy places considerably less requirements on the upstream LNG industry than do the policies of many other countries with significant gas resources. In considering Western Australia's domestic gas policy, the Productivity Commission should take into consideration that a large portion of the world's gas resources are located in countries in which there is already strong participation in, and control of, the industry by state-owned agencies.²

The Department of Industry and Resources has been engaging with the Commonwealth Government on its National Energy Security Assessment and domestic gas policy issues more broadly. Specifically, Commonwealth support has been sought, not only in relation to the State's domestic gas policy, but also in relation to the development of a national policy on the provision of domestic gas from major LNG projects. Consideration should be given to securing commitments from major LNG projects as a national, as well as a Western Australian Government, priority.

A National Regulator

A national regulator, using the National Offshore Petroleum Safety Authority as a model, suggests that one or more Commonwealth government agencies would administer titles and operational matters including health and safety, and environmental and resource management for the Australian offshore petroleum industry.

It is recognised that significant benefits can arise through the provision of 'one stop shop' arrangements for approvals processes. While a national regulator, modelled on the National Offshore Petroleum Safety Authority, would provide a

¹ McLennan Magasanik Associates, *Report to the Joint Working Group on Natural Gas Supply*, p. VI.

² N Leonard et al (Area of Research Excellence in Oil and Gas Management, Curtin University), *Domestic Energy Reservations Policies: An International Comparison*, June 2008, p92.

'one stop shop' for developments in Commonwealth waters, issues arise where operations cross into State waters or onshore areas. Resolving these issues often requires substantial consultation with local stakeholders including State agencies which is better handled at a State level.

For this reason, it is recommended that the Productivity Commission consider the costs and benefits of State/Northern Territory based 'one stop shops' incorporating a continuation of current designated authority arrangements. Re-arrangement of government agencies in Western Australia is currently being considered by the State Government in order to establish a single agency responsible for health and safety, resource management, and environmental and title approval processes, for the resources sector.

It is also recommended that the efficiency and effectiveness of national regulatory models, such as the National Offshore Petroleum Safety Authority, need further evaluation prior to further consideration of this option.