PRODUCTIVITY COMMISSION DRAFT RESEARCH REPORT:
REVIEW OF REGULATORY BURDEN ON THE UPSTREAM PETROLEUM (OIL AND GAS) SECTOR

COMMENTS FROM THE WESTERN AUSTRALIAN DEPARTMENT OF MINES AND PETROLEUM

In commenting on the Productivity Commission's Draft Research Report, it is useful to first provide some background on this agency's regulatory role in the petroleum industry.

The newly formed Western Australian Department of Mines and Petroleum (DMP) has been created from a restructure of the previous Department of Industry and Resources and the Department of Consumer and Employment Protection. DMP began operating on 1 January 2009. The agency now incorporates the regulatory role for mining and petroleum resources safety within the State.

DMP is the lead agency in regulating mining, petroleum, geothermal and carbon capture and storage activities in Western Australia. It also has chief responsibility in public sector investment in pre-competitive geo-science in order to attract private sector investment in exploration and development.

In addition the Department has the duty of managing royalties and ensuring that safety, health and environmental standards are consistent with relevant State and Commonwealth legislation, regulations and policies.

One of the major priorities of DMP in 2009 will be to significantly improve the approvals process for resources projects and the Department is taking the lead in the reform process. The aim is to ensure that elements of the approvals process within DMP's jurisdiction are acted on in a timely and efficient manner, beginning with several short-term measures to improve its performance and reporting against its key title and post-title approvals.

DMP will also be working closely with other Western Australian Government agencies to improve its use of delegations and parallel processing for environmental approvals and to seek opportunities to clarify and stream-line matters related to Aboriginal heritage and Native Title. To assist and provide a focus for this reform, a Ministerial industry advisory group on improving the approvals process was established last year. The group is expected to present a report to the Minister by the end of April 2009.

Comments on the Draft Research Report which follow below are arranged under headings which mirror the Commission's Draft Report. As close as possible, under these chapter headings, DMP's comments are likewise organised in the order the Commission presents the issues.

DMP Comments are provided in reference to the following chapters:

4. *Regulatory overview;*
5. *Resource management and land access;*
6. *Environment and heritage;*
7. *Occupational health and safety;*
8. *What impact are impediments having?;* and
10. *A way forward*.

DMP hopes that the comments that follow with real and current examples of Governments' role in petroleum industry regulation will assist the Commission in drafting the final version of its report.

4 Regulatory overview

Corrigenda:

Table 4.3 shows "Key State and Territory regulatory bodies". DMP would note that in Western Australia, upstream petroleum resource project development, when the report was released, was facilitated by the Department of Industry and Resources, not the Department of Planning and Infrastructure. As of 1 January 2009, it is the newly created Department of State Development that facilitates major projects.

5 Resource management and land access

A key point listed by the Productivity Commission at the commencement of the Resource management and land access chapter is that:

"*Under Australian law, petroleum resources are owned by the Crown on behalf of the community. Governments play a 'stewardship' role in petroleum resource management.*"

DMP supports and reiterates that this is a key reason for Government involvement in resource management, fundamental to the long-term benefit of the community (not just private commercial benefit). These benefits include security of supply, appropriate compensation for the extraction of resources and significantly, efficient and equitable intergenerational benefit from resource extraction. It can therefore be argued that Government involvement in resource management is addressing a market failure where the role for Government is to improve outcomes for the community, environment, businesses and the economy. The externality being addressed in this instance is a rate of resource extraction which left unregulated may potentially be economically inefficient because it does not include full costs relating to intergenerational equity and environmental damage.

However, the message conveyed in the Commission's draft report, particularly in the resource management and land access chapter, is that the Commission questions the rationale and role for Government intervention in resource management.

In the section dealing with "*Approving the method and timing of resource extraction*", the Commission's report suggests that industry has superior technical expertise to that of Government or Geoscience Australia. By default, it is therefore questioned why Government intervenes in resource extraction. DMP reiterates that Government has a mandate to ensure that the return from diminishing natural resources are optimised with a balanced outcome between public interest, to maximise ultimate recovery and industry's interest, to maximise net present value.

The concern should not be whether the Government or Geoscience Australia has superior technical expertise to that of industry. Actually, DMP would argue that major technical issues in the petroleum industry are not complicated to interpret to the extent that a high level of expertise is required. Most non-technical people can understand the issues when they are explained.

The real issue is how industry or government agencies interpret technical issues according to their own economic incentives and policy drivers. This is especially important for the oil and gas industry as there is a fundamental difference between mining and petroleum extraction. Mine tailings are accessible after mining operations have ceased and may be used in the future according to technological and commercial/market developments. However, in petroleum operations, especially offshore, once a field is abandoned the remaining resource is unlikely to be recovered in the future.

Issues demonstrating the need for regulatory intervention in petroleum resource management to address potential market failures include the following:

- Optimisation of long-term petroleum recovery from fields with an ultimate recovery that is sensitive with a clear need to achieve a balance between maximising ultimate recovery versus maximising commercial net present value returns;
- Uncertainty of pre-development resource size;
- Impact of different development options on overall recovery;
- Regional impacts of production on other resources;
- Excessive initial production rates based on the urgent need to raise funds (this can damage a reservoir, reduce ultimate recovery and lead to premature decommissioning);
- Lack of current knowledge or exposure to technology on the part of the operator;
- Implementation of low-cost production methods with the potential to substantially reduce ultimate recovery (particularly where high ultimate cut-off rates are proposed); and
- A short-term commitment to field production (e.g. prior to transfer to another operator).

In addition, DMP offers case studies as presented below in Box 1 which demonstrate the importance of the Government's role in resource management. In particular, the aquifer depletion example demonstrates that while industry may well have superior technical resources, Government agencies are better placed in terms of regional technical knowledge with unlimited access to regional data needed to regulate matters on a wide geographic basis. This enables Government to appropriately manage resources to encapsulate potential public good spillovers or externalities. Such issues are beyond the individual operator's control or interest.

Box 1

Palm Valley

Northern Territory's Palm Valley gas field has been the main gas resource for the Territory since the 1980's. In 1988 P50 gas reserves for this field were reported as 325 billion cubic feet. In 1990 there appeared to be a dramatic revision in the P50 reserves to 680 billion cubic feet. This apparent increase resulted from a 1990 study performed by a world class reservoir engineering consulting firm. This had financial implications for the Northern Territory Government because increased reserves meant the field operator could justify drilling additional wells financed by the Northern Territory Government.

The Northern Territory Government expertise did not accept the results of the study, with its own in-house examination indicating a P50 reserve of 220 billion cubic feet in 1995. In 2008 it was demonstrated that the Palm Valley P50 gas reserves stood at 226 billion cubic feet, which is much closer to the Northern Territory's estimate. The in-house Palm Valley reservoir study had a major impact on the Territory's long-term gas supply policy, alerting them to a future shortfall in gas supply and saved the Government expense of drilling unnecessary wells.

Condensate recovery

Condensate is originally in a gaseous state and liquefies within a reservoir during production. Subsequent pressure depletion during production can cause the condensate to stick to the reservoir rock and be mostly lost without the application of appropriate pressure maintenance gas recycling. A current example of this issue is a potential Western Australian offshore LNG project which, without government intervention to require gas recycling, will lose around 24 million barrels of condensate. Depending on oil prices, this represents a loss of Crown resources valued at between one and two billion dollars.

Aquifer depletion

Aquifer depletion is a widely known global phenomenon occurring in a number of mature oil producing regions including the Dampier and Barrow Sub-Basins in Western Australia and also in the Northern Territory and Victoria. As aquifers are not infinite, their depletion can lead to a drop in pressure in a region with a subsequent loss of oil in yet to be discovered or developed hydrocarbon fields. A regulator therefore needs to deal with the region-wide

impact of a petroleum development to address issues such as aquifer depletion which is beyond an individual operator's control.

DMP has been a pioneer in this issue. The Department has access to all regional data and recognised this phenomenon, initiating and commissioning three studies on the Dampier and Barrow Sub-Basins to quantify the oil loss in Western Australian Basins. The studies have shown that in Western Australia, up to 770 million barrels of oil and around four billion dollars in royalties could be foregone by 2030 if aquifer depletion continues unabated. The issue has also been specifically raised by the Western Australian and Commonwealth governments in relation to the impact that the Pluto development will have on the neighbouring Wheatstone gas field, as both share the same aquifer.

On page 75, in the section dealing with well operations management plans (WOMP), it also needs to be noted that at present the WOMP also regulates the well integrity aspects of a well operation below the blow out preventer (BOP).

On page 81, in the section dealing with 'good oilfield practice', a quote from Woodside Energy's submission is included stating that:

"*Since 'good oilfield practice' is never or consistently defined, and also appears to be evolving over time, there is scope for misunderstandings and differences to arise, especially when the parties have differing drivers. In our view to base a regulation on this idea is therefore potentially hazardous and likely to result in delays to approvals …*"

DMP's position is that 'good oilfield practice' is actually one of the most progressive definitions in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cwlth)* and represents a very good objective based statement. The intent of the regulator in adopting this approach has been to not frustrate innovative industry developments in the future. If 'good oilfield practice' becomes too specifically defined, no matter what the definition is, it becomes a prescriptive statement. On this issue, it is noted that the Commission in its discussion of Objective-based regulation versus prescriptive regulation in section 3.4 of the draft report appears to support the objective based type of regulatory approach.

In this chapter of the Commission's report dealing with resource management and land access, DMP notes that the Commission has commented on pages 88 and 89 on the Western Australian Government's "*domestic gas reservation policy*". DMP would note that this policy is actually the *Western Australian Government Policy on Securing Domestic Gas Supplies* and would stress what the Commission has made passing reference to, namely, that this policy is not regulatory per se.

DMP believes that the Commission, by commenting on the *Western Australian Government Policy on Securing Domestic Gas Supplies*

and presenting a draft finding, has breached the term of reference set down for the Review. The terms of reference set down for the Review of the Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector are very specific, focusing on the petroleum industry's regulatory framework involving more than one jurisdiction. The *Western Australian Government Policy on Securing Domestic Gas Supplies* is a policy aimed at securing sufficient energy sources to projected Western Australian demand. It is a State policy on energy supply and resource extraction, not a regulation.

In the Commission's discussion of native title, page 102 of the draft report states that:

> *"For example, in Western Australia, 25 future act applications for petroleum exploration permits have been determined by the NNTT from the commencement of the NTA until June 2008. Of these 18 took longer than 15 months to approve, with two of these applications taking seven years to approve) (NNTT2008c)."*

These statistics are presented without explanation of at least some of the issues in the Native Title process. The statistics fail to recognise for example, the difference between the arbitral and consent determination processes administered by the National Native Title Tribunal (NNTT) in accordance with the *Native Title Act 1993 (Cwlth) (NTA)*.

Since the commencement of the *NTA* until June 2008, there have been only four arbitral determinations for petroleum exploration permits made by the NNTT in Western Australia.

The remaining 21 applications were dealt with by consent determination, whereby agreement was reached between the parties, but there were logistical problems in finalising the agreement by the execution of a Deed for the Grant of Petroleum Title (State Deed) – which is beyond the control of the regulator (DMP). In these cases, the NNTT was called upon to ratify the agreement, thereby removing the requirement to execute the State Deed. Some examples of delays in native title processes that have resulted in delayed approval timeframes and consequential consent determination referrals include:

- Deceased Applicant, whereby no death certificate is available;
- Mental incapacity of living Applicant, thereby an inability to enter into a legal document;
- Named Applicant's refusal to enter into a State Deed, contrary to the wishes of the broader working group;
- Logistical difficulties in accessing Applicants, because of cultural traditions (e.g. law and sorry business), climatic conditions (e.g. wet season) and custodial confinement; and
- Staffing availability in the Native Title Representative Body that has prevented travel "on country" to obtain signatures on the State Deed.

Likewise, reference to "*…two of these applications taking seven years to approve"* in the above statement is presented without an explanation of at least some of the issues in the native title process that are beyond the regulator's control yet have a direct influence on the time taken to finalise future act negotiations. Examples include:

- The determination of native title and delays in the registration of Native Title Bodies Corporate;
- Inadequate funding for the effective functioning of Registered Native Title Bodies Corporate;
- Commercial dealings of the grantee party (transfer of beneficial interests);
- Referral of the Native Title Claimant Application to the Federal Court when all Applicants are deceased; and
- The grantee party's insistence to pursue conjunctive style negotiations with multiple native title parties.

On the same page (102) the draft research report states that:

"*Under the normal RTN procedure (subdivision P of the NTA) 15 months to approve a future act includes three months for a native title party to register, six months to negotiate in 'good faith' and six months for a determination to be made by the NNTT (box 5.3)".*

This is an inaccurate reporting of the timeframes of the RTN procedure under the *NTA*. The timeframe set under the *NTA* in accordance with section 30(1)(a) is four months. This consists of three months for the claim to be filed in the Federal Court and one month for the NNTT to apply the Registration Test (section 190A of the *NTA*) and the claim to be placed on the Register of Native Title Claim. Only at this point does the claimant group have procedural rights under subdivision P of the *NTA*. Therefore the overall approval timeframe should be set at sixteen months.

Draft Recommendation 5.1
Governments should clearly articulate the objectives of intervention in approving the method and timing of petroleum extraction and periodically assess the benefits and costs to ensure such intervention is justified.

Under Australian legislation, the ownership of petroleum resources has been retained by the Government on behalf of the community when an area has been leased or sold to private individuals or organisations. Government therefore has a responsibility to regulate petroleum related activities to ensure that the community is appropriately compensated for and receives maximum economic benefit from, the extraction of this non-renewable resource.

Maximising community benefit from petroleum resource extraction must include appropriate management of resources to encapsulate potential public good spillovers (or externalities). While an individual business may extract a resource in an optimal profit maximising manner, by definition this may not equal the overall economic or socially optimal rate of maximum benefit to the community.

This has been recognised in the United Kingdom, United States, Canada and Norway where petroleum resources are managed and unregulated resource management has not been accepted. As discussed above in the introduction to the resource management and land access chapter, factors representing chief reasons for regulatory intervention in petroleum extraction include:

- Optimisation of long-term recovery versus maximising private commercial net present value;
- Uncertainty of resource size prior to development;
- Impacts of different development options on overall recovery; and
- Regional impacts (externalities) of production such as aquifer depletion.

Draft Recommendation 5.2
Governments should introduce lighter handed regulation of retention leases by increasing the period of the initial lease from five years to 15 years, with renewals for a period of ten years (to reduce uncertainty and enhance the incentive to invest in exploration).

The inclusion of this recommendation in the Productivity Commission's Draft Report is puzzling. Retention leases represent an explicit policy on managing petroleum acreage, not a regulation in itself. On that basis the recommendation breaches the Review's terms of reference. Significantly, this recommendation and commentary in the Draft Report on the subject, appears to ignore the history, status and policy direction of the retention lease issue in Australia.

Petroleum leases are granted with the express objective of resource development. Naturally, it is not with the aim of immediate resource development. That is why a retention lease enables the holder of an exploration permit to retain rights to a petroleum discovery that it is not commercially viable to develop under a production licence at the time the lease is granted, but which might become viable to develop within 15 years.

Likewise, the intention is certainly not to allow industry to 'real estate' acreage for an indeterminate time to suit its own global priorities (which again represents example of private industry profit maximisation not equating to maximum economic benefit to the community). On this issue, noticeable by its absence, is any reference by the Productivity Commission in its report to the fact that under the current system, more than 85 trillion cubic feet of gas or 57 per cent of Australia's gas resources are held in retention leases. Some

of these resources have remained latent in retention leases for 30 years or more (e.g. Spar-1976, Egret-1972, Scarborough-1979, Torosa-1971 and West Tryal Rocks-1972).

Evidence does not support the current retention lease system as being "heavy handed". The Commission's report admits that in the last 40 years only few retention leases have been rejected. In fact, only now is the economic policy imperative moving towards a tightening in the administration of retention leases and during the last five years this has been reflected in:

- referral of any contentious renewal or grant to the Ministerial level Joint Authority;
- placing of conditions on retention leases for additional work commitments; and
- in some cases calling on a 'mid-term' commerciality review.

The Commonwealth Resources Minister, Martin Ferguson, has stated that under the Rudd Government's new 'use it or lose it' policy for retention leases, that those retention leases currently in the renewal process would come under rigorous scrutiny.

The Designated Authority carries out a detailed examination which includes an economic assessment prior to recommending grant or renewal. The Commonwealth also carries out this process, resulting in a joint Technical Report which includes recommendations. Until recently this has been based on an economic environment which included lower gas prices. However, demand for domestic gas has put a spotlight on retention leases, particularly those covering gas fields close to infrastructure and thought to be currently commercially viable for early development.

Encouraging the development of known undeveloped offshore gas fields close to infrastructure represents an important strategy to pursue potential domestic gas supply alternatives. Some of these fields are in retention leases which could help alleviate potential domestic gas shortages and they are relatively low cost developments. However, because they fall in different title areas which include large scale LNG developers, they are not necessarily viewed by these developers as significant to their corporate (LNG export) aims.

The Ministerial Council on Mineral and Petroleum Resources and Ministerial Council on Energy, are now also acting on recommendations from the Joint Working Group on Natural Gas Supply which stated:

a) there be further review of policy relating to the grant and renewal of retention leases; and

b) existing gas retention leases be re-evaluated.

Draft Recommendation 5.3

State and Territory Governments should mirror amendments resulting from the Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill 2008 in coastal waters, and implement nationally consistent legislation for onshore carbon capture and storage as originally endorsed by the Ministerial Council on Mineral and Petroleum Resources in 2006.

DMP supports this recommendation and intends to mirror the Commonwealth's greenhouse gas storage regime in coastal waters covered by the State's *Petroleum (Submerged Lands) Act 1982*. DMP also intends to develop onshore greenhouse gas legislation as endorsed by the Ministerial Council on Mineral and Petroleum Resources in 2006. It is likely that the onshore greenhouse gas legislation will be developed first before the coastal waters legislation given the location of potential greenhouse gas capture and storage projects.

Draft Recommendation 5.4

Governments should update legislation and its administration to ensure relevant offshore State and Territory legislation effectively 'mirrors' the Commonwealth offshore legislation as intended.

DMP supports this recommendation and has almost completed drafting the *Petroleum and Energy Legislation Amendment Bill*. This Bill will amend all the State's petroleum legislation – the *Petroleum (Submerged Lands) Act 1982, Petroleum and Geothermal Energy Resources Energy Act 1967* and the *Petroleum Pipelines Act 1969.* The main part of the Bill covers the important common petroleum mining code amendments since 1994 to the State's three petroleum Acts up to, but not including, the Commonwealth's plain English rewrite.

Drafting of the *Petroleum and Energy Legislation Amendment Bill* has been underway since 2004. However, changes in the petroleum industry have delayed the drafting process. In 2004-05 this occurred due to the *Petroleum Legislation Amendment and Repeal Act 2005* (the Western Australian NOPSA and onshore petroleum safety amendments act) and in 2007 with the *Petroleum Amendment Act 2007* (the WA geothermal energy legislation).

Draft Recommendation 5.5

There is evidence that in some circumstances Indigenous land use agreements can streamline the native title approval process and reduce the backlog of future act applications. State and Territory Governments should investigate whether such agreements could be used more frequently (including statewide, regional and conjunctive Indigenous land use agreements).

DMP endorses this draft recommendation which is consistent with the current direction of the Western Australian Government to identify opportunities to streamline petroleum approval processes through Indigenous Land Use

Agreements. This occurs during the native title claim mediation process, for implementation once the Federal Court has determined that native title exists over a petroleum prospective area.

Draft Recommendation 5.6

To avoid potentially lengthy delays, State and Territory Governments should, at an early stage, undertake strategic assessment processes in particularly sensitive, resource rich areas to identify suitable land to allow the development of major resource projects.

DMP supports the intent of this recommendation and believes strategic assessments should be conducted at an early stage to ensure major project development is appropriately accommodated. Such developments include access and production activities in Commonwealth offshore jurisdictions and their associated infrastructure in State onshore jurisdictions. There are also potential conflicts in the access to some of these areas, such as greenhouse gas storage sites provided for under the Commonwealth *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, which may require resolution. It is also important that these strategic assessments are done in consultation between the State and Commonwealth governments to ensure progressive actions are undertaken in the strategic assessment process and that the problems of possible duplication are minimised to ensure timely outcomes.

DMP suggests that to ensure the strategic assessment processes are timely, clear and transparent, relevant agencies within the State and Commonwealth governments need to be identified and a process established to assist coordination of these agencies towards meeting the goal of this recommendation. While there is a general spirit of cooperation, agreements between the State and Commonwealth governments and their agencies may be required to enhance certainty in developing strategic assessments. The Western Australian and Commonwealth Agreement on the regional development of the Kimberley region could be a good example of such an intergovernmental agreement.

6 Environment and heritage

Draft Recommendation 6.1

Specific measures to improve the operation of the Environment Protection and Biodiversity Conservation Act 1999 (Cwlth) include:

- ***ensuring the Department of Environment, Water, Heritage and the Arts provides available information (such as information from previous assessments and relevant scientific studies) on significant environmental risks to the Department of Resources, Energy and Tourism to report with new acreage releases and to proponents seeking approval for a new project (such as pipelines)***
- ***developing bilateral assessment and approval agreements between the Department of Environment, Water, Heritage and the Arts and the Designated***

Authorities to avoid the potential for duplication in environmental submissions and to streamline approvals for routine activities where a State or Territory has developed adequate local expertise and knowledge

- ***where strategic assessments are proposed for particular regions, these should be conducted early and according to clear timeframes and should not prevent proponents from pursuing approvals for existing projects.***

DMP supports the intent of the first point of the above recommendation, although the success in its implementation depends on the willingness of industry to release information gained at their expense. As stated in paragraph 1 on page 139 of the Draft Report, information gained by industry is often classified as 'commercial in confidence'. Also, under the EPBC Act Bilateral Agreement between the Western Australian and Commonwealth governments, the Commonwealth Government may have to purchase some information held by the Western Australian Government.

DMP strongly supports the second point of the above recommendation which is consistent with this Department's proposed solution to the duplication issue.

In terms of the third point of the above recommendation, clarification is required as to what constitutes an 'existing project.' The statement's reference to 'pursuing approvals' seems to imply that it relates to new proposals, rather than existing projects already operational. The Productivity Commission should note that although there is an obvious benefit in strategic assessments for particular regions (and should ideally be completed before any new proposals are received), these may not always be completed at the precise time in which a proponent would prefer. For example, new petroleum activities offshore from Western Australia are remote and usually with little or no information on the geology, bathymetry and marine environment. So while it is important that strategic assessments are conducted at an early stage, timelines to create capacity in the assessment process for certainty might be lengthy.

A significant aspect of early strategic assessment is the creation of a foundation of social and environmental data on a region. This can streamline subsequent environmental approval processes for several projects in the same region. Therefore, while the preference is of course not to delay any proposal, if synergies exist in combining certain projects (e.g. through an industrial hub) it is likely to be in the State and Nation's interest to have a minor delay in an individual project for an improved overall outcome.

Draft Recommendation 6.2

The Ministerial Council on Mineral and Petroleum Resources should explore ways of enhancing the effectiveness and transparency of the Environmental Assessors Forum to further improve the consistency of offshore environmental approvals and decision making, particularly in relation to differences in interpretation by individual officials. In addition, the forum should be directed to develop consolidated and consistent environmental guidelines (with flowcharts and

procedural information) for petroleum activities that are cross-jurisdictional, such as offshore pipelines.

DMP supports this recommendation and has developed national guidelines for the preparation and submission of environment plans in consultation with the Environmental Assessors Forum and the State and Territory Designated Authorities. The guidelines clarify the Designated Authorities' expectations regarding the content and submission requirements of an environment plan and are in use by all Designated Authorities to produce a nationally consistent approach to the submission, assessment and ongoing management of environment plans. The guidelines were released in October 2008 at the APPEA National Environment Conference.

In addition, in October 2008, the Environmental Assessors Forum announced the preparation of national guidelines for management of drilling fluids and management of decommissioning. As resources become available it is planned to develop guidelines for other aspects including oil spill contingency plan guidelines.

Draft Recommendation 6.3

The Ministerial Council on Mineral and Petroleum Resources should task the Environmental Assessors Forum to review the range of onshore environmental regulations to identify scope for streamlining onshore approval processes related to petroleum activities.

DMP supports this recommendation. Environment Plan regulations are proposed under the Western Australian *Petroleum and Geothermal Energy Resources Act 1967* in order to apply consistent environmental regulation to all onshore upstream petroleum industry activities in Western Australia. These are expected to be developed in 2009 as part of the *Petroleum and Energy Legislation Amendment Bill* which has recently received Western Australian Ministerial approval for drafting to continue. The environment regulations, when in place, will require an objective-based Environmental Plan similar to the Environment Plan required under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*. Rather than this guideline being solely a Western Australian document, it is agreed that there is opportunity for the Environmental Assessors Forum to seek national consistency.

However the Productivity Commission should note that while legislation differs in each State, the Environmental Assessors Forum may be limited in the level of consistency which can be provided through guidelines.

Draft Recommendation 6.4

Governments should actively manage and release information obtained by proponents as a condition of environmental approvals to enhance the public stock of environmental information and to assist in streamlining future approvals.

- ***For example, by improving the provision of baseline environmental information for new acreage releases or for new applications for project approvals in relevant areas.***

As per draft recommendation 6.1, DMP agrees with the above recommendation, however, implementation would depend on the willingness of industry to release information gained at their expense. As stated in paragraph 1 on page 139 of the draft report, information gained by industry is often classified as 'commercial in confidence'. Also, the management of a national database of all environmental data is a very significant project and substantial resources would be needed to address this recommendation.

The Productivity Commission should note that any proposal which has been formally assessed through the *Environment Protection and Biodiversity Conservation Act 1999 (Cwlth)* assessment process or the Western Australian Environmental Protection Authority assessment process, will require public release of an Impact Assessment document for comment. These documents contain environmental descriptions which consequently are publicly available for reference by other proponents.

Draft Recommendation 6.5

Indigenous heritage Acts in all jurisdictions should require the consideration of previous decisions made in relation to the same heritage site by other jurisdictions. In addition, the Commonwealth Act should be amended to accredit State Indigenous heritage regimes that comply with a national set of minimum standards.

DMP supports this draft recommendation as it would streamline Indigenous heritage approval processes by reducing the duplication of functions between State and Commonwealth legislation regulating for the protection of Aboriginal sites. Furthermore, State accreditation by the Commonwealth under a national set of Indigenous heritage standards, would reduce the likelihood of appeals to Commonwealth for review of State Indigenous heritage approval processes in respect to consent for the use of land.

Draft Recommendation 6.6

All Governments should introduce transparent policy principles for environmental offsets — especially the principle that offsets where practical should be directly related to the damage being offset. In situations where environmental damage cannot practically or sensibly be 'directly' offset, other transparent offset mechanisms should be explored — including, for example, the use of an offset 'fund', which could be devoted to the highest priority projects in the relevant jurisdiction under transparent and appropriate governance arrangements. There may also be merit in introducing nationally consistent principles.

It is important that the Productivity Commission notes that in Western Australia's jurisdiction, environmental offsets can be included in the Environmental Protection Authority's conditions of approval. The Department

also understands that the Ministerial Council on Mineral and Petroleum Resources is aware of the importance in using environmental offsets and therefore, this Ministerial Council should be consulted in this regard.

7 Occupational health and safety

In the Commission's discussion of environmental compliance, page 155 of the draft report states that:

> *"Adding environmental regulation to NOPSA's areas of responsibility could allow the agency's existing operational and engineering knowledge to be used in regulating environmental compliance."*

DMP argues that this will not increase the efficiency of regulation as NOPSA safety officers are not qualified to conduct environmental compliance without formal environmental training (i.e. Environmental Science degree). Consequently, NOPSA would need to employ environmental specialists who are currently not part of NOPSA and would therefore gain limited benefit from NOPSA's existing knowledge. It is agreed that there would be opportunity in that model for environmental regulators to leverage on the engineering skills of the safety regulators. However this can be done through normal communications between NOPSA and the Designated Authorities and does not require a restructure in order to address the matter.

On this issue, page 156 of the Commission's draft report also states that:

> *"There are also some important synergies. For example, engineering and operational aspects of pipelines related to safety and preventing emissions are likely to be relevant to preventing environmental damage."*

DMP believes the existence of potential synergies is true only to the limited extent of preventing leaks and ruptures. As an example, assuming an offshore pipeline, important environmental aspects during construction that have no synergy with safety include seabed disturbance, acoustic disturbance to marine fauna, seabed smothering and turbidity from dredging, discharges of oily water and chemicals to the ocean and oil spill response requirements that focus on the prevention of environmental impact.

Related to this point, page 156 of the draft report states:

> *"When NOPSA undertakes health and safety system audits of offshore facilities, it is likely there would be little additional difficulty in combining these with environment-related compliance checks of the same facilities."*

As stated earlier, DMP believes that NOPSA safety officers would not be qualified to conduct environmental compliance without formal environmental training. The Commission's statement underestimates the skills and knowledge required by environmental professionals to undertake

environmental audits of petroleum activities. Officers in DMP who have been involved in combined health, safety and environmental audits prior to the formation of NOPSA, advise that there is little synergy as the aspects which need to be reviewed are markedly different.

Experience with combined safety and environmental audits has shown that it is far more efficient to split the agenda to ensure time is used most efficiently without excessively burdening a facility's personnel during the audit. Also, aspects of the environmental audit tend to become overshadowed by the safety matters. Consequently, the quality of the environmental inspection can be compromised, as can the quantity and quality of environmental information included in the report.

Therefore, DMP strongly disputes the Commission's assertion on page 156 of the draft report stating that:

> *"There is also some potential risk that expanding NOPSA's role beyond OHS could diminish the emphasis on safety present in a single 'role' body. However, this risk seems to be fairly low."*

DMP would argue that the risk of diminished safety emphasis is extremely low. In fact, as indicated above, based on DMP's experience (prior to the formation of NOPSA), the real risk is in having environmental issues being overshadowed by safety issues. It is acknowledged of course that in all circumstances safety of personnel is paramount and always the first priority. However this ethos appears to affect resourcing available to environmental regulation. So even if there is any potential synergy in combining health, safety and environmental regulation, the tendency is for environmental matters to assume a lower priority in the organisation which could potentially result in compromised environmental outcomes. Therefore, any proposed recommendations to combine environment and safety regulatory functions should give detailed consideration to the structures in place to ensure environmental regulation is not compromised.

Therefore, DMP agrees with the statement below on page 156 of the draft report:

> *"However, the extent to which efficiency can be increased by combining OHS regulatory competencies and environmental compliance competencies is unclear."*

Although the draft report itself draws this conclusion, it is not clear why the Commission's report proceeds to recommend that NOPSA take on responsibility for environmental compliance regulation. This should be clarified in the final report.

Expanding NOPSA's role to include environmental compliance also implies splitting the current integrated roles of environmental approvals and compliance. This would also not achieve any reduction in regulatory burden

on the petroleum industry and is discussed in further detail below in response to Draft Recommendation 7.1

Draft Recommendation 7.1

The legislated coverage of the National Offshore Petroleum Safety Authority should be extended to include the integrity of offshore pipelines, subsea equipment and wells. Governments should also expand its responsibilities to include offshore environmental compliance regulation. If the National Offshore Petroleum Safety Authority is given these additional responsibilities, it would be necessary to ensure the authority was adequately resourced to carry them out.

DMP strongly supports the extension of NOPSA's coverage to include the integrity of offshore pipelines and subsea equipment. Since NOPSA's formation, Western Australia has argued that the offshore safety regulator's responsibility should be expanded to include integrity of offshore pipelines and subsea equipment. This position was based on Western Australia losing expert personnel to the Commonwealth safety authority at a time of high levels of industry activity.

However, well integrity impacts on several issues including resource security, environment, security of supply, resource management and safety. Given the range of impacts, further work is currently being undertaken by the Upstream Petroleum and Geothermal Subcommittee to clarify regulatory responsibilities between NOPSA and the Designated Authorities. This work will be led by the Commonwealth in consultation with the States.

On the issue of expanding NOPSA's role to include the integrity of offshore pipelines, subsea equipment and wells, it is not clear if this role also extends to initially assessing and accepting environmental plans or to only act as an inspectorate checking for compliance with conditions of an accepted plan.

DMP strongly disagrees with the recommendation to expand NOPSA's role to include environmental compliance. In addition to the earlier reasons for the inefficiency of having NOPSA include environmental compliance, this recommendation also implies splitting the current integrated role of Designated Authority environmental officers into separate roles for approvals (Designated Authority) and compliance (NOPSA). DMP cannot identify how this proposed recommendation would achieve any reduction in regulatory burden on the petroleum industry. No apparent benefit or streamlining is possible through such a recommendation which, if followed through, would be detrimental for the following reasons:

- <u>Delays in approvals through need of additional information:</u> Currently, Designated Authority environmental officers gain valuable experience through on-site compliance auditing, which contributes back into their approvals role. Officers with on-site experience have a good understanding of the nature and scale of operations and management systems together with the nature and scale of the potential environmental impacts associated with them. Consequently, such

officers require less clarifying information on operational details and environment risk mitigation measures during the approvals process.

Removing the compliance auditing function from officers who carry out approvals will result in delays due to the requirement for additional clarifying information. DMP's experience in dealing with officers from the Western Australian Environmental Protection Authority (WAEPA) and from Department of the Environment, Water, Heritage and the Arts (DEWHA) who only carry out approvals with no on-site experience is that considerably more time, effort and expense is required in providing additional information to these officers to meet the required level of understanding regarding risks presented by petroleum activities.

- Increase in number, irrelevance and prescription of approval conditions:
  Industry feedback to DMP indicates that officers with on-site experience are more pragmatic in setting approval conditions by virtue of their understanding of operational details and constraints. On-site experience provides a 'reality check' for officers allowing them to take a more holistic approach to setting conditions resulting in fewer, targeted, objective, systems-based conditions that are highly relevant to field operations.

  Officers with on-site experience have confidence in the management systems and personnel they have observed during on-site audits resulting in a positive feedback mechanism into the approvals process. Conversely, officers without on-site experience have less confidence in site personnel and systems, leading them to set more, irrelevant and prescriptive conditions to give their agencies confidence that operations will be managed in a certain way. Such officers may overestimate the nature and scale of impacts leading to overly onerous conditions. Again, this has been DMP's experience in dealing with WAEPA and DEWHA which only carry out approvals without on-site experience. On the other hand, these agencies can potentially underestimate the nature and scale of impacts leaving the industry exposed to potentially poor environmental outcomes.

- Double-handling of projects:
  The concept of separating compliance from approvals has been implemented in WAEPA and DEWHA. In these agencies, once a proposal is approved, all subsequent management is passed on to compliance officers, thereby requiring two separate teams to become familiar with the project. DMP's experience in observing and interacting with these agencies highlights inefficiencies in this structure resulting from double handling and lack of familiarity with the key issues of the project. Due to the nature of the petroleum industry, activities may often change at short notice (e.g. change of vessel, change of drill fluid and change of timing). This requires an update to the previously approved Environment Plan, often within 24 hours.

The Productivity Commission should therefore note that this recommendation will result in double-handling of any amendments to projects and ongoing liaison due to the operator being required to advise both the approvals agency and the compliance agency of the amendment or additional information, thereby ***increasing*** duplication in the process. From the operator's perspective, rather than having one contact point within the Designated Authority for environmental matters, they would now conceptually have different contact points in different agencies for varying aspects of any one single proposal. This will increase the likelihood for miscommunication and errors in both the compliance and assessment stages of projects. There may also be phases of the project, where it is unclear which agency has the lead regulatory role resulting in both agencies becoming involved in the same phase of the project. An example of this situation would be during extended commissioning of projects where the construction and commissioning is underway while the operations approvals are still continuing. There may also be numerous amendments to the Environment Plan which become apparent during commissioning and need to be dealt in a rapid response time from both agencies. In this situation it could be unclear as to which agency is the lead regulator.

DMP's experience is that amendments to proposals are much more likely to be delayed through the approvals process where numerous agencies and numerous individuals need to be involved. Streamlining the process so that one environmental case officer in a single agency could manage the approval, amendments and compliance would avoid double-handling under the one set of legislation, allow an individual officer to be familiar with all aspects of the project and result in a far more efficient process for both industry and government.

DMP's experience therefore is that it is ***not*** beneficial to separate compliance from assessment.

Draft Recommendation 7.4

State and Territory Governments should make efforts to harmonise safety standards, or the interpretation of those standards, for imported upstream petroleum equipment across jurisdictions, whilst giving recognition to appropriate prevailing international standards. Where the application of standards is more onerous than those prevailing in other jurisdictions or comparable countries, efforts should be made to ensure that the application of these more onerous standards provides net public benefits.

DMP supports the recommendation to standardise safety regulations and the clear application of Australian Standards across all jurisdictions.

However, the example on page 165 of the Commission's Draft Research Report is based on an inaccurate representation of facts concerning a specific

matter in Western Australia in relation to the example provided by Australia Worldwide Exploration (Western Region) (AWE).

The explanatory notes related to this recommendation comprise information provided by AWE arising from their experience in the importation of a new drilling rig from the United States. AWE has selectively presented the position with the inference that delays and cost increases are all associated with differing regulatory requirements between States. The drill rig in question, actually did not meet:

1. Australian Standards for electrical equipment in hazardous areas (zone compliance); or
2. Australian wiring codes for electrical equipment in general; and
3. had significant electrical and mechanical quality control issues which led to the significant cost impositions and delay in start-up.

DMP finds it difficult to accept that any State would be prepared to allow new equipment which does not meet Australian Standards/Codes to operate, particularly when the proponent was advised of the requirements prior to purchase of the rig.

The Commission's draft report implies that Western Australia applies regulatory requirements which are more onerous compared to other jurisdictions. This misrepresents the facts because while Western Australia may have differing hazardous areas (zone compliance) distances, in the example cited the problems arose from the fact that the equipment and wiring simply did not comply – it was not a matter of zone compliance distances.

The issue of electrical equipment - hazardous zone compliance and electrical wiring compliance has been a particular problem with many of the rigs brought into Australia. The Australian Standard on electrical equipment hazardous zone compliance is based on an Internationally recognised set of standards specified by the International Electrotechnical Commission (IEC) related to the level of protection required for electrical equipment which might be exposed to flammable atmospheres – in this case around drilling rigs.

Fatalities in Australia and overseas arising from inadequate electrical equipment hazardous zone compliance are strong supportive reasons why this is a serious safety issue and why Australian Standards (based on International Standards) should be universally applied across all jurisdictions.

Corrigenda:

Table 7.1 - Major onshore OHS legislation (Western Australia)

- The *Occupational Health and Safety Act 1984* is actually titled the *Occupational Safety and Health Act 1984* (OSHA).
- In Western Australia neither the *Dangerous Goods Safety Act* nor the *Dangerous Goods Safety (Major Hazards Facilities* [MHF]*) Regulations*

specifically deal with occupational safety and health as their focus is major accident events and societal risk whereas the OSHA applies to all dangerous goods sites, including MHFs.

- Principal legislation in Western Australia covering onshore OSH comprises:
    - Occupational Safety and Health Act 1984;
    - Mines Safety and Inspection Act 1994;
    - Petroleum and Geothermal Energy Resources Act 1967; and
    - Petroleum Pipelines Act 1969.

The above legislation (with the exclusion of the Mines Safety and Inspection Act) should also be included in the Commission's Draft Research Report Draft "Table B.1 Legislation relevant to upstream petroleum activities" on page 262.

8 What impact are impediments having?

In the Commission's estimation of the economic costs of project delays, the primary data source is based on petroleum fields discovered in Australia up to 1987. Also, the cash flow modelling employed appears to be based on simply 'time-shifting' the production profile of a petroleum project and it is not clear how the modelling accounts for changes in the time profile of capital and operating costs. These issues, combined with speculation on the appropriate discount rate and period of over which to discount the value of a project, brings into question the veracity of any values derived on the costs of regulatory impediments.

10 A way forward

A quote from Apache Energy's submission on page 241 of this chapter states that "*More than half of the Retention Leases in WA are 'pending renewal*" and "*… no decision has been made either to grant or to refuse their renewal*".

This appears to imply that there is a bottleneck in processing retention leases and ignores the status of the retention lease issue. The facts surrounding retention leases are that Western Australia currently has 41 retention leases in force comprising eight in the State area and 31 in the Commonwealth area. Of these, 21 (or 78 per cent) have only come up for renewal within the last six to seven months.

In the State, two of the four retention lease renewals became due at the end of December 2008 and one at the end of August 2008. In the Commonwealth area, the number of retention leases due for renewal was four at the end of May 2008, eight in August 2008, one in October 2008 and five in December 2008.

It is also acknowledged by economists and petroleum industry analysts that retention lease renewals over the last two years have become:

1. A politically charged issue with heightened interest involving commercial decisions and implications for potential sovereign risk; and
2. Much more complex to commercially analyse for grant or renewal purposes. Technological advances mean that gas and oil fields which hitherto were too remote to develop are now technically feasible and commercially viable. Coupled with expanded new markets and higher oil and gas prices means that the consideration of a petroleum company's submission for retention lease renewal is not as simple an exercise as it was in the past. It now involves examination of increasingly complex economic models based on variable forecasts, engineering and marketing scenarios, often requiring continued supply of supplementary technical and commercial information.

Therefore, the volume of leases falling due for renewal in the same period, coupled with the factors outlined above, are the issues which require careful consideration rather than simplistic criticism of the renewal process.

The quote from Apache Energy's submission on page 241 of this chapter also states that "*Apache has a pipeline Licence which expired in 2005 for which we have sought approval but DoIR has not yet renewed it*."

The pipeline licence in question is PL12 covering Varanus Island and has been pending since 22 December 2005. During the last four years numerous requests have been made to Apache to submit an Environmental Management Plan (EMP) to facilitate renewal of the licence. Two formal letters were also forwarded to Apache Energy Limited on 19 October 2007 and 29 July 2008. Apache has recently advised that it plans to submit the EMP by the end of 2008. To date this has not been received.

Draft Recommendation 10.1

State and the Northern Territory Governments should make clear the scope of local government's role in the approval of upstream petroleum developments (and other major developments). Where aspects of these developments are already regulated by environmental agencies or major hazard facilities regulators or when the regulation requires specialist industry knowledge, involvement by local government is not warranted.

DMP strongly supports this recommendation. DMP believes that local government does have a legitimate role to play in the approval of minor works and processes associated with an upstream petroleum project. Many of these items are within the traditional responsibility of local governments which have the expertise and local knowledge to deal with these matters. However, DMP agrees that local governments' role can stray beyond its level of expertise in the approval of upstream petroleum developments.

Local governments' involvement in a project will vary according to the location of the project and its strategic impact on the economy. DMP suggests that in order to clarify local governments' role in the approval of upstream petroleum developments the following proposals should be considered:

- A draft standard Memorandums of Understanding (MOU) template could be developed by a government's lead approval agency to be utilised by petroleum developers and local government bodies responsible for the area of the development. The MOUs would clarify roles and timelines for both parties and provide mechanisms for dispute resolution.
- Guidelines – resource and environmental agencies, industry and local government develop guidelines outlining the scope and role of all parties in the approval of upstream petroleum development.

Draft Recommendation 10.2

Governments should review and update all existing legislation to ensure it is consistent with the features of best practice regulation and good regulatory design. In particular, updated legislation and its administration should:

• separate policy advice from regulation

• promote the use of objective-based legislation where feasible

• ensure approval processes are best practice and clearly defined

• set statutory timelines for individual regulatory decisions (any decision should include a 'stop the clock' mechanism). There should be two timelines: one excluding periods when the 'clock' is stopped and one including all time elapsed. There should also be disclosure of reasons for regulators requesting additional information, and measurement and public disclosure of their performance against these targets

• measure and report overall timelines taking into account all stages of key regulatory processes (including scoping, advising, consultation and decisions)

• be consistent with the definitions, format and approach of the updated Offshore Petroleum Act 2006 (Cwlth)

• provide clear guidelines where feasible on information requirements to assist proponents in efficiently providing the necessary information to allow timely regulatory decisions.

DMP has comments on two parts of this recommendation.

• promote the use of objective-based legislation where feasible

DMP supports the use of objective based-legislation where feasible and introduced the *Petroleum (Submerged Lands) Act 1982* safety regulations and drilling regulations based on the Commonwealth models in 2006-2007. Introduction of objective-based onshore petroleum safety regulations awaits finalisation of the drafting process.

As the busiest offshore jurisdiction, DMP has always provided substantial input into the Commonwealth regulatory program. DMP recognises that the

benefits of participating in the process assists the development of the State's subsidiary petroleum legislation.

DMP has long recognised the need for objective-based regulations based on the Commonwealth Management of Environment (MOE) regulations. However, amendments to the three Western Australian petroleum Acts to allow for the drafting of petroleum environment regulations are still outstanding and are contained in the petroleum omnibus Bill close to finalisation mentioned in the response to Recommendation 5.4.

In addition, Western Australia has taken the lead role in the development of the Commonwealth's objective-based drilling regulations and chaired the working group developing the objective-based draft resource management regulations. The resource management regulations would have provided suitable models for Western Australian petroleum legislation. However, given limited drafting resources, following commencement of the consolidation of Commonwealth regulations, Western Australia now awaits completion of this consolidation before drafting equivalent resource management regulations .

• ***be consistent with the definitions, format and approach of the updated Offshore Petroleum Act 2006 (Cwlth)***

DMP supports this recommendation and as stated in response to recommendation 5.4, currently has the *Petroleum and Energy Legislation Amendment Bill* close to completion at the initial drafting stage. The Bill amends all of the State's petroleum legislation – the *Petroleum (Submerged Lands) Act 1982, Petroleum and Geothermal Energy Resources Energy Act 1967* and the *Petroleum Pipelines Act 1969.* The main part of the Bill covers the important common petroleum mining code amendments since 1994 to the State's three petroleum Acts up to, but not including, the Commonwealth's plain English rewrite.

This Bill will align the Western Australian *Petroleum (Submerged Lands) Act 1982* as far as practicable with the Commonwealth legislation although it is recognised that further amendments will be required to accommodate minor policy changes and the greenhouse gas regime for coastal waters area. In keeping with the State's commitment to the common mining code, consistency of the common definitions, format and approach are maintained across the State Acts as far as possible.

Currently DMP has no plans to mirror the format of the Commonwealth's *Offshore Petroleum and Greenhouse Gas Storage Act 2006* given the range of outstanding State petroleum, geothermal and greenhouse gas storage legislation drafting required and the resources needed for such an exercise.

Draft Recommendation 10.3

To support the system of objective-based legislation and to minimise regulatory creep governments should:

- ***ensure that the intent of legislation is clearly defined at the parliamentary level and that objects clauses are clearly defined***
- ***clearly define the powers of regulators in developing guidelines and the intent and style of those guidelines.***

DMP supports the importance of clearly defining the intent of the legislation at parliamentary level. DMP believes that if legislation is well drafted (both primary legislation and regulations) it is unnecessary to include objects clauses. It is therefore the practice in Western Australia to not include such clauses. Regulators need to be especially vigilant in the development of regulations, because if an issue is not dealt with by the substantive provisions of the legislation, provisions dealing with an issue cannot be read into the legislation merely because the issue is mentioned in the objects clause.

DMP also supports the second sub-point. As part of the State's commitment (through COAG) to implement better regulatory review processes, Western Australia's Department of Treasury and Finance recently gained Cabinet approval to implement a best practice regulation system. This new gate keeping process will ultimately apply to all new and amending regulatory instruments including acts, regulations and guidelines. Implementation of this process will occur progressively from April 2009.

Draft Recommendation 10.4

The Australian Government should explore options for the introduction of an electronic approvals tracking system to improve the timeliness, accountability and transparency of approval processes. Such a system should allow for tracking of individual regulatory areas (for example, resource management and environment) as well as the overall approval process. In exploring options, the Australian Government should consider whether additional features should eventually be included as part of the system (for example, licence payments and data submission).

Based on the proof and initial experience of this system, State and Territory Governments should consider, where possible, adopting the national tracking system.

DMP supports this recommendation and welcomes the opportunity to further develop and enhance its local systems should a national tracking system be adopted.

In 2008 DMP:

- Introduced the Petroleum and Geothermal Register (known as PGR) online to the public. This system has been designed to streamline and simplify business processes for recording, tracking, searching and

maintaining information relating to Petroleum and Geothermal titles; and

- streamlined its approval processes by developing an approvals monitoring system.

With the PGR system for the first time industry is able to pay State and Commonwealth Annual and Title Search fees online. This has simplified current business payment allocation processes through the lodgement of electronic payments. Previously, only cash and cheque payments were accepted for petroleum related fees.

This electronic register also tracks the progress of applications and monitors the approvals process for wells, surveys, access authorities and Special Prospecting Authorities in accordance with the "Keating Review" timeline recommendations. The system:

- enables parallel processing by internal and external assessors;
- identifies where delays occur either internally or externally;
- ensures that applications are progressed whilst staff are on leave;
- prevents steps in the approval process from being missed;
- assists management to monitor staff workloads and re-allocate duties as required; and
- provides a more effective reporting system.

Draft Recommendation 10.6

The Australian Government should establish a new national offshore petroleum regulator in Commonwealth waters, with regulatory responsibility for resource management, pipelines and environmental regulation. It should have the following functions:

- ***administration of exploration permit, production and pipeline licensing — it would process applications, prepare advice and make recommendations to the Commonwealth Minister for resources***
- ***administration and approval of production, well construction and drilling, and pipeline consents — it would have the authority to approve consents for these activities.***

The new national offshore petroleum regulator should also incorporate the National Offshore Petroleum Safety Authority, which would continue to regulate offshore petroleum occupational health and safety.

DMP acknowledges that there could be benefits from establishing a new national offshore regulator. However, this recommendation is not supported. In terms of Commonwealth/State relations, this recommendation undermines the cooperative federalism model as represented by the Offshore Constitutional Settlement of 1979 and dismantles the Designated Authority/Joint Authority structure. Despite submissions from some

commentators, DMP believes that the existing Designated Authority/Joint Authority structure has worked well since its inception.

Currently, environmental regulation of petroleum activities both onshore and offshore, in Commonwealth and State waters including the islands, is managed by a single branch within the Western Australian Designated Authority. This is regardless of the Commonwealth/State jurisdictions involved. Therefore, concerns with separating State and Commonwealth assessments into different agencies are similar to those raised above in relation to separating compliance from approvals. Any project which crosses jurisdictional boundaries (e.g. pipelines and seismic surveys) will be required to double handle the approvals process through both State and Commonwealth approvals agencies. Currently these can be efficiently handled though one assessment conducted by Western Australia.

DMP believes that the intent to have a national regulator has been flagged by the Commonwealth choosing to utilise the mechanism of the Responsible Commonwealth Minister rather than the Designated Authority/Joint Authority in the recent greenhouse gas storage amendments to the former *Offshore Petroleum Act 2006*. Although it excludes pipelines (which remain the responsibility of the Designated Authority), the Responsible Commonwealth Minister will regulate the release of greenhouse gas acreage, grant of titles, resource management and environment issues and occupational health and safety matters via NOPSA.

If implemented, recommendation 10.6 has the potential to severely reduce the critical mass of the State's regulatory capability. The new Commonwealth Authority would be resourced to attract and retain quality staff beyond the engineering and safety specialists of NOPSA – including environmental assessors, geologists and support staff. As with the establishment of NOPSA in 2004/2005, this has the capacity to strip out offshore and onshore expertise and experience at the State's expense for regulation of the onshore industry. Offshore and onshore expertise and experience often reside with the same staff and cannot be easily separated. In some jurisdictions this could lead to the new Authority regulating the onshore sector by default due to a lack of human resources.

Draft Recommendation 10.7

The Australian Government should give State and Territory Governments, on a bilateral basis, the option of delegating their existing petroleum-related regulatory powers in coastal waters to the new national offshore petroleum regulator and ultimately the Commonwealth Minister as relevant. The governance arrangements that would then apply should be similar to those applying to the National Offshore Petroleum Safety Authority.

For States and Territories that wish to opt-in, it would be a requirement that their State or Territory offshore petroleum Act fully mirrors the Offshore Petroleum Act 2006 (Cwlth) and its subordinate regulations, including provisions relating to pipelines.

Draft Recommendation 10.8

Where States and Territories have agreed to delegate their coastal water powers, including pipelines, to the national offshore petroleum regulator and ultimately the Commonwealth Minister as relevant, States and Territories should also have the option to delegate responsibility for the regulation of onshore inter-jurisdictional upstream petroleum pipelines. For States and Territories that wished to opt-in, it would be a requirement that their legislative provisions applying to onshore pipelines were harmonised with the Offshore Petroleum Act 2006 (Cwlth) where relevant.

It is anticipated that the issues covered by draft recommendations 10.7 and 10.8 will be the subject of the Joint Federal-State Independent Inquiry into the effectiveness of the regulation for upstream petroleum operations with a focus on the incident at Varanus Island.

Recommendations to deal with the issues raised in the Commission's Report will arise from this process.

Draft Recommendation 10.9

The current full cost recovery model used for the National Offshore Petroleum Safety Authority should be used to fund any new regulatory agency. As with the National Offshore Petroleum Safety Authority, the cost recovery model adopted for a new regulatory agency should be subject to regular review and appropriate governance arrangements.

DMP has no specific comment on recommendation 10.9 in the offshore context pending the outcome of the Joint Federal-State Independent Inquiry into the effectiveness of the regulation for upstream petroleum operations with a focus on the incident at Varanus Island. However, it is important to note the differences between the scale of the offshore industry and the onshore upstream petroleum industry. One could argue that the introduction of a full cost recovery model would risk inhibiting further development of the onshore industry, with an element of public good provision reflected in the current scale of fees and charges.