The Senate

Economics Legislation Committee

Offshore Petroleum and Greenhouse Gas Storage Amendment (Benefit to Australia) Bill 2020

March 2021

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Introduction

Referral of the inquiry

1.1 The Offshore Petroleum and Greenhouse Gas Storage Amendment (Benefit to Australia) Bill 2020 (the bill) was introduced in the Senate and read a first time on 8 December 2020.

1.2 On 4 February 2021, the Senate referred the provisions of to bill to the Senate Economics Legislation Committee (the committee) for inquiry and report by 11 March 2021.

Purpose of the bill

1.3 According to the Explanatory Memorandum (EM), the bill seeks to broaden the objects clause of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the Act) to make the benefit of the Australian community a guiding principle in the interpretation of the Act.[1]

1.4 In her second reading speech, Senator Hanson stated:

> This new object clause I propose is a statement of the obvious…we need all decisions to be made with the good of the Australian community in mind.[2]

Background

1.5 The Act created a framework to regulate offshore activities in oil and gas exploration, recovery and storage, including

(a) exploration for petroleum;
(b) recovery of petroleum;
(c) construction and operation of infrastructure facilities relating to petroleum or greenhouse gas substances;
(d) construction and operation of pipelines for conveying petroleum or greenhouse gas substance;
(e) exploration for potential greenhouse storage formations; and
(f) injection and storage of greenhouse gas substances.[3]

1.6 Presently, the Act makes no mention of a guiding principle that a derived benefit to the Australian community ought to be a guiding principle for the extraction of Australia's finite gas and petroleum resources.

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1 Offshore Petroleum and Greenhouse Gas Storage Amendment (Benefit to Australia) Bill 2020, *Explanatory Memorandum*, p. 1.

2 Senator Pauline Hanson, *Senate Hansard*, 8 December 2020, p. 7083.

3 *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, s. 4.

1.7 Senator Hanson's amendment seeks to enshrine a clause into the object of the Act that states approval of the development of such resources must provide a benefit to the Australian community.[4]

1.8 Senator Hanson states:

> My Bill proposes to add an object clause to section 3 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* or OPGGS, to ensure every part of this very important law is interpreted with the good of the Australian community in mind.
>
> OPGGS establishes the National Offshore Petroleum Titles Administrator or (NOPTA), the national Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) and the Joint Authorities.
>
> This new object clause I propose is a statement of the obvious…we need all decisions to be made with the good of the Australian community in mind.[5]

Provisions of the Bill

1.9 The bill contains one schedule:

- Schedule 1—Amendments.

Schedule 1

1.10 Schedule 1 repeals the objects clause in Section 3 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, and substitutes it with:

> The objects of this Act are:
>
> (a) to provide an effective regulatory framework for:
>
> (i) petroleum exploration and recovery; and
>
> (ii) the injection and storage of greenhouse gas substances in offshore areas; and
>
> (b) to ensure that the exploitation of these natural resources is for the benefit of the Australian community.

Commencement

1.11 The bill will commence on the day after it receives Royal Assent.

Legislative Scrutiny

1.12 The Senate Standing Committee on the Scrutiny of Bills considered the bill and had no comment.[6]

1.13 According to the EM, the bill is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.[7]

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4 Senator Pauline Hanson, *Senate Hansard*, 8 December 2020, p. 7083.

5 Senator Pauline Hanson, *Senate Hansard*, 8 December 2020, p. 7083.

6 Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 1/21*, p. 52.

1.14 The Parliamentary Joint Committee on Human Rights reported that the bill did not raise any human rights concerns.[8]

Conduct of the inquiry

1.15 The committee advertised the inquiry on its website and wrote to relevant stakeholders and interested parties inviting written submissions by 18 February 2021.

1.16 The committee received only seven submissions, which are listed in Appendix 1.

Acknowledgements

1.17 The committee thanks all individuals and organisations who assisted with the inquiry, especially those who made written submissions.

7 Offshore Petroleum and Greenhouse Gas Storage Amendment (Benefit to Australia) Bill 2020, *Explanatory Memorandum,* p. 3.

8 Parliamentary Joint Committee on Human Rights, *Human Rights Scrutiny Report–Report 1 of 2021,* p. 46.

Chapter 2
Views on the bill

2.1 The committee received only seven submissions to the inquiry. Submitters were slightly more in favour of the bills than not. The following discussion on the issues raised by the bill commences with an overview of the Explanatory Memorandum's (EM) supporting statements, followed by the views expressed for and against the bill in the submissions received by the committee.

2.2 The bill, in the words of the EM, 'seeks to broaden the objects clause of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act) to make the benefit of the Australian community a guiding principle in the interpretation of the Act'.[1]

2.3 Specifically, the EM notes that its purpose is to ensure that the National Offshore Petroleum Titles Administrator (NOPTA) and the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), and the Joint Authorities as named in the OPGGS Act (relevant state and federal ministers), take into account when considering the development of Australia's oil and gas reserves, the benefit derived to the Australian community from such developments.

2.4 On this basis, the EM points out that while Australia is now one of the world's largest producers/exporters of liquefied natural gas (LNG), the benefits that transfer to the Australian community appear to be limited. The example provided in the EM to support this claim notes that as the world's largest exporter of natural gas, domestically the price Australians pay for their gas is now higher than the international gas price.[2]

2.5 Furthermore, the EM takes aim at the way in which gas/oil field [retention] leases are managed via NOPSEMA and NOPTA, suggesting that this too represents an inefficient and negative approach to ensuring benefits are derived from the leases to Australians:

> Foreign owned integrated gas businesses currently hoard proven and probable gas leases, some for more than 30 years, when they could be capitalised on by businesses that are ready and willing to go into production. Periodically, these long held leases come up for renewal. The addition to the objects clause should make it more likely that, when these leases come up for renewal, some will not be renewed and will instead become available to businesses willing to go into production.[3]

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1 *Explanatory Memorandum*, [p. 1].

2 *Explanatory Memorandum*, [p. 1].

3 *Explanatory Memorandum*, [p. 1].

Views on the bill

2.6 Of the submissions that supported the bill, all expressed the view that the current legislation requires a central guiding principle that greater economic benefit is derived to the Australian people from Australia's finite gas and petroleum resources. These supporting submissions also, in most cases, outlined some perceived historical shortfalls that have led to possible benefits to Australia being lost. Some have also provided analysis about the economic benefit received as opposed to just noting economic activity.

No Australian ownership of resources

2.7 Professor Clinton Fernandes states that he supports the intent of the bill and provides a discussion on how, in his opinion, 'the Australian public has given a massive financial windfall to oil and gas corporations by funding of geological surveys and petroleum resource studies—via government [funding]—and handing it [the resource] over to small groups of people in control of vast concentrations of wealth and influence'.[4]

2.8 Professor Fernandes quotes a 1970 report prepared by economist Tom Fitzgerald for the then Minister for Minerals and Energy, The Hon R.F.X. Connor MP (Labor), who was heavily supportive of a nationalised approach to oil and gas exploitation in Australia. The report titled *The Contribution of the Mineral Industry to Australian Welfare* assessed the revenue levels received by government from the resource sector and found that 'the government subsidies to the mining companies were more than they [resource sector] paid in tax'. This finding was used widely by the Whitlam Government to support its nationalisation plan through the enactment of the *Petroleum and Minerals Authority Act 1973* (PMA Act).[5]

2.9 Professor Fernandes states that Prime Minister Whitlam used the report in the 1974 election campaign, arguing that Australia was 'paying to be exploited'. Professor Fernandes goes on to note, with Whitlam's defeat in 1975, 'the Fraser government roll[ed] these changes back, and a pro-corporate, low taxing approach was entrenched.'[6]

2.10 Associate Professor David Lee, in his submission, tapped the same vein. He recounted that the PMA Act provided a template for the establishment of an Australian-owned national resources company which the Whitlam Government wished to use to create a national Petroleum and Minerals Authority (PMA). The aim of the PMA was to undertake all upstream and downstream processing—that is, exploration, extraction, refining and

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4 Professor Clinton Fernandes, *Submission 1*, p. 1.

5 Professor Clinton Fernandes, *Submission 1*, p. 3.

6 Professor Clinton Fernandes, *Submission 1*, p. 3.

distribution of all hydrocarbons from the North West Shelf and the Bass Strait, thereby ensuring the benefit was kept for the Australian taxpayer.[7]

2.11 However, in 1975 the PMA Act was held by the High Court not to be a valid law of the Commonwealth.[8] Associate Professor Lee stated this was a lost opportunity, particularly when considering the forgone revenue that would have come with the possible establishment of a national sovereign wealth fund fed from the sales revenues. He wrote:

> The Petroleum and Minerals Authority therefore ceased to operate. The 1973 legislation does, however, provide a template for a possible Australian owned resources company that could help to maintain a higher degree of Australian ownership of resource projects and potentially generate revenue for a Sovereign Wealth Fund.[9]

2.12 Although the Authority was unable to be tested, Associate Professor Lee asserts that if it had been established:

> The PMA could have been an effective vehicle for seeking to retain a minimum level of government and/or Australian ownership of key Australian mineral resources such as those in the North West Shelf.[10]

2.13 Professor Fernandes reaffirmed this position, highlighting the contrast between Australia and Norway in terms of the level of ownership and of revenue both have received from their respective oil and gas fields:

> By contrast, Norway made better use of the oil and gas in its continental shelf. The Norwegian government owns 67 per cent of the shares in Equinor, formerly known as the Norwegian State Oil Company
>
> …
>
> The Norwegian government created the Government Pension Fund Global in 1990 to invest Norway's oil revenue. The Ministry of Finance owns the fund on behalf of the Norwegian people, and determines its investment strategy. The Fund has…more than $1.7 trillion Australian dollars in 2021…for a country with 5.5 million people.[11]

2.14 Professor Fernandes lists a range of actions that he believes could have been undertaken to provide greater benefits to Australians. For example, taking equity stakes in the development of gas fields or insisting on income–

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7 Associate Professor David Lee, *Submission 3*, p. 2.

8 See: *State of Victoria and Another v. Commonwealth of Australia and Another, State of New South Wales and Another v. Commonwealth of Australia and Another, State of Western Australia v. Commonwealth of Australia, and State of Queensland and Another v. Commonwealth of Australia and Another;* 49 A.L.J.R. 243.

9 'Petroleum Authority Act Invalid', *Canberra Times*, 25 June 1975, p. 1.

10 Associate Professor David Lee, *Submission 3*, p. 3.

11 Professor Clinton Fernandes, *Submission 1*, p. 4.

contingent subsidies from miners which could be paid back when incomes reach a certain amount.[12]

Economic contribution vs economic activity

2.15 Economic activity is not the same as economic benefit, as The Australia Institute outlines in its submission. The common perception among average Australians is, according to the Institute, an exaggerated view of the economic contribution that large oil and gas companies contribute to the economy. The Institute states:

> On average, Australians believe that the oil and gas industry (via the [*Petroleum Resource Rent Tax Assessment Act 1987*] PPRT) contributed 10.8% to the Commonwealth budget for the 2018-19 financial year…In reality, the PRRT contributed around 0.2% to the Commonwealth budget, $1.15 billion of the total $485 billion, meaning that Australians overestimate the oil and gas industry's contribution to Commonwealth revenue by a factor of forty-six.[13]

2.16 The Institute draws attention the Senator Hanson's second reading speech noting her mention that '[the Reserve Bank] told me integrated gas projects had done a lot for the measures of investment, and GDP but, little for jobs'. The Institute supports this claim submitting that:

> Oil and gas extraction as an industry has one of the lowest job intensity rates in Australia.
>
> …
>
> Australians overestimate gas industry employment levels as forty times higher than they actually are. Australians on average believe that gas mining and exploration employs 8.2% of the total workforce—however in reality it employs only 0.2% of the 12.5 million people employed in Australia in the year to May 2020.[14]

2.17 Australia, the Institute notes, is currently the world's largest producer of LNG. However, it postulates that there are countries that successfully raised significantly higher revenue by implementing more effective taxation mechanisms or where they are managed as national entities.[15]

2.18 The Institute also observed that the oil and gas companies operating in Australia pay very small amounts of tax overall:

> …many large international companies pay no tax at all in most years, despite profiting from the exploitation of Australian resources. In other

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[12] Professor Clinton Fernandes, *Submission 1*, p. 4.

[13] The Australia Institute, *Submission 4*, p. 5.

[14] The Australia Institute, *Submission 4*, pp. 3, 8.

[15] The Australia Institute, *Submission 4*, p. 5.

> words, they receive a resource without paying its owners, the Australian public.[16]

2.19 For example, the Institute quotes from the Tax Justice Network's (TJN) submission to the Senate Economics Committee's 2017 Inquiry into Corporate Tax Avoidance,[17] that in 2019, Australia overtook Qatar on an annualised basis to become the single largest producer of LNG. The Institute quotes the TJN:

> Even excluding the profits derived from state owned oil and gas companies, Qatar raises around $26.6 billion from the export of LNG. In contrast, Australia raised just over $1 billion from the petroleum rent resource tax in 2018–19.[18]

2.20 The Institute states that economic activity that generates no benefits to Australians from the exploitation of finite resource like oil and gas should be either 'screened out' or 'rejected':

> The [Australian-based] oil and gas industry pays a small amount of tax overall, and many large international companies pay no tax at all in most years, despite profiting from the exploitation of Australian resources. In other words, they receive a resource without paying its owners, the Australian public. Projects that provide no economic benefit to the community should be screened out and rejected under changes that could accompany the passage of this Bill. Projects that provide no economic benefit to the community should be screened out and rejected under changes that could accompany the passage of this Bill.[19]

2.21 Prosper Australia supports the bill noting similar concerns outlined by The Australia Institute. Specifically, Prosper mentions that:

> …Australians are being dudded in a big way in the exploitation of their natural resources by foreign and national gas businesses. In 2020/21 a total of 80.9 million tonnes of LNG were exported under arrangements pathological to Australia's interests. Stewardship of our LNG and petroleum resources has floundered.
>
> It is arguable that this failure commences with offshore leases being granted to tenants under unduly generous terms. It is understood that lease exploration and exploitation involve significant costs, but as the rewards can be significant, there is no excuse for a company to take out a lease to sit on it for a protracted period simply to exclude competitors.
>
> It is apparent that the Objects Clause of the Offshore Petroleum and Greenhouse Gas Storage Act 2006 requires amendment.[20]

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16 The Australia Institute, *Submission 4*, p. 5.

17 Ward (2017) Tax Justice Network—Australia: Submission to Senate Standing Committee on Economics—Inquiry into Corporate Tax Avoidance, p. 2.

18 The Australia Institute, *Submission 4*, *p. 6*.

19 The Australia Institute, *Submission 4*, p. 5.

20 Prosper Australia, *Submission 2*, [p. 1].

2.22 Prosper puts forward what it considers to be an equitable rent arrangement:

> …it is the commercial practice for the rental to be assessed on the basis of a 50/50 split of net maintainable earnings before income tax, depreciation and amortisation [EBITDA]. The landlord receives his/her rent EBITDA; the tenant his/her profit after EBITDA.
>
> …
>
> On this principle Australians are clearly not receiving their proper return on the commercial exploitation of their gas (and petroleum reserves in which there is a relationship). The rental so established would, of course, be reduced by any royalties paid. This principle allows the significant costs of developing gas reserves held under leases to be recovered before the business becomes profitable. The arrangement is equitable between parties.[21]

2.23 Prosper believes the bill should be endorsed and that the object of the bill should be broadened to 'include a public interest requirement'. Prosper also suggests including the following additional amendments to the bill:

> A. The proper 50/50 rental provision of audited accounts as described above.
>
> B. (i) That short-term gas leases only be granted to lessees, and that the leases shall expire if exploitation is not undertaken within the fixed term of the lease.
>
> (ii) That longer term leases be granted once a company has commenced its commercial exploitation of the lease.
>
> These amendments would make the Bill compatible with human rights.[22]

Critique of the bill

2.24 The submissions that expressed views in opposition to the bill generally stated that the new object to the bill would not achieve the intended outcome suggested in the EM.

Amended object

2.25 The Department of Industry, Science, Energy and Resources (the Department) stated that the bill was unlikely to achieve the goals identified and could undermine the safety of the industry:

> In the Department's view, the proposed amendment in the bill is unlikely to achieve the goals identified in the supporting material because the OPGGS Act is not a taxation mechanism or a test for foreign investment.[23]

2.26 In regards to the proposed amendments, the Department explains that 'the object clause of a legislative enactment gives a general intent of the legislation

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[21] Prosper Australia, *Submission 2*, [p. 2].

[22] Prosper Australia, *Submission 2*, [p. 2].

[23] Department of Industry, Science, Energy and Resources, *Submission 5*, p. 6.

and can be called upon to clarify the meaning of a provision where its meaning is unclear'.[24] As such the Department believes the amendment is unclear in its intent:

> The proposed amendment is worded broadly and it is unclear what benefit is being measured or how it could be quantified.[25]

2.27 Specifically, the Department states:

> The broad, unclear wording of the proposed amendment would introduce unacceptable uncertainty for decision-makers and titleholders, and raises the risk that sub-optimal outcomes may arise if safety, well-integrity and environmental outcomes are at the expense of the benefits to be achieved.[26]

2.28 In contrast, the Department explains the value of the present Act's object:

> In the department's view, the beneficial nature of the OPGGS Act is derived from the safe and responsible operation of offshore oil and gas activities, that reduce risks to safety and the environment to as low as reasonably practicable and meet the requirements of good oil field practice and optimal recovery of the petroleum.[27]

2.29 The Australian Petroleum Production & Exploration Association (APPEA) does not support the bill and rejects the claims made in the EM and second reading speeches. APPEA states that it agrees the development of natural resources should be for the benefit of the Australian community though it believes that the 'effect of this amendment, however, will do the opposite and will stymie investment'.[28]

Retention leases

2.30 In addressing the concerns raised in the EM regarding the retention or 'hoarding' of oil and gas leases, the Department made the following observations:

- The OPGGS Act framework seeks to facilitate timely and efficient exploration and development through a coherent and integrated approach. It seeks to provide the industry with sufficient certainty and flexibility to minimise regulatory risk and compliance costs.
- Given the broad wording of the proposed amendment, there is a risk that sub-optimal outcomes may arise if safety, well-integrity and environmental outcomes are at the expense of the benefits to be achieved.[29]

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[24] Department of Industry, Science, Energy and Resources, *Submission 5*, p. 4.

[25] Department of Industry, Science, Energy and Resources, *Submission 5*, p. 4.

[26] Department of Industry, Science, Energy and Resources, *Submission 5*, p. 5.

[27] Department of Industry, Science, Energy and Resources, *Submission 5*, p. 5.

[28] Australian Petroleum Production & Exploration Association, Submission 6, [p. 1.]

[29] Department of Industry, Science, Energy and Resources, *Submission 5*, p. 5.

2.31 APPEA mirrored the Department's concerns on leases stating that:

> Claims that companies are 'hoarding' resources have been proven incorrect, to the Joint Authorities, and changing the objects clauses of the Act, under which hundreds of billions of dollars of investment have been made, drastically increases Australia's sovereign risk for no material gain.[30]

2.32 APPEA drew attention in its submission to work undertaken by the former COAG Energy Council which conducted a review of offshore and onshore retention lease arrangements in 2018, with a report released in March 2018. APPEA noted the key findings of that review, stating:

- there was no evidence gas is being withheld (or warehoused) from development and production;
- tenure regimes in Australia are effective in supporting exploration and development and provide sufficient flexibility to address the challenges of commercialisation presented by individual fields or resources; and
- the average time for a resource to be held under retention lease was 10 years, and approximately 89 per cent of all leases have been renewed fewer than three times.[31]

Gas reservation policy

2.33 Besides the issue of lease retention, the Department also addressed the issue raised in the EM of domestic gas pricing. While not directly mentioned in the EM, the department noted the work it has been progressing on gas reservation policies[32] which exist in Western Australia and have been put forward as a possible solution for East Coast gas pricing. The Department's submission notes that in November 2020 it completed consultation on an issues paper on domestic gas reservation and is preparing advice on the policy options in the first half of 2021.

Benefit & Risk

2.34 Chevron Australia highlight the need, as a large scale project investor/operator, for certainty over the risk of large scale developments:

> To achieve these benefits, Australia must attract major international investors. Few investors have the patience and capital to support LNG projects. Tens of billions of dollars must be spent prior to achieving any return. It may be decades before a project recoups its exploration and development costs, if at all. A range of risks—construction costs, plant

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30 Australian Petroleum Production & Exploration Association, *Submission 6*, p. 1.

31 Australian Petroleum Production & Exploration Association, *Submission 6*, p. 2.

32 Gas reservation is a policy whereby a proportion gas produced in a state/territory is kept from export for domestic use, possibly at a set price. Western Australia has a 15 per cent reservation policy for gas produced in that state. Hence there is a price difference between WA than elsewhere in Australia. See the Industry Department's issue paper: https://consult.industry.gov.au/onshore-minerals/gas-options/.

> performance, reservoir performance, supply, demand and pricing—can render a project uneconomic.
>
> In order to encourage investors to take these long-term risks, Australia must offer stable policy settings that ensure projects have access to adequate resources over the life of a project, which may exceed fifty years.[33]

2.35 Chevron noted that benefits are many and flow at different stages of the life of large scale projects like Gorgon in Western Australia:

> Gas projects span multiple decades. For example, the Gorgon gas field was discovered in 1980, the Gorgon project was sanctioned in 2009, production commenced in 2016 and will operate until around 2070—a 90-year lifespan in total.
>
> Throughout this lifespan, many benefits flow to the community at different project stages.
>
> …the most visible economic surge is during construction. Over the past decade, Gorgon and Wheatstone have delivered:
>
> - More than $60 billion in Australian goods and services
> - Almost 1,000 contracts awarded to Australian companies
> - Almost 19,000 workers employed
> - Over 90,000 direct and indirect full-time equivalent jobs created in Australia
> - $1.5 billion has been spent on exploration activities in Australia
> - Almost $300 million has been committed to community investments
> - More than $53 million has been invested into universities and research institutes to help build local academic excellence and research capability.[34]

2.36 APPEA also states that 'the substantial investment (circa. $450 billion) between 2009 and 2012' that has gone into the development of gas and oil operations in Australia is 'a result of sound, stable and competitive regulatory frameworks that supported the development of resources for the benefit of all Australians'.[35]

2.37 Accordingly, APPEA disagrees with the bill and the EM stating 'it will not deliver additional benefit to the Australian community. In fact, the proposed amendments are likely to have the opposite effect by stifling investment and stranding resources that will not be developed. Undeveloped resources deliver no economic benefit to Australia'.[36]

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[33] Chevron Australia, *Submission 7*, p. 1.

[34] Chevron Australia, Submission 7, pp. 4-5.

[35] Australian Petroleum Production & Exploration Association, *Submission 6*, p. 2.

[36] Australian Petroleum Production & Exploration Association, *Submission 6*, p. 2.

2.38 In conclusion, APPEA recommends that the Bill be rejected, and instead suggests that 'Government and Members should work with industry to understand the commercial drivers and requirements for resource development to occur in Australia'.[37]

2.39 Chevron also contends that any change to the legislative framework is likely to put at risk future investment in the petroleum industry.

> Any changes in legislation or regulatory practice which put at risk long-term access to resources will diminish the many community benefits of ongoing petroleum investment.[38]

2.40 The Department states in its conclusion that it believes that making changes to the OPGGS Act will not have the intended outcome the bill is seeking to achieve:

> The proposed amendment would not impact on taxation outcomes as the OPGGS Act does not impose fiscal (taxation) obligations on petroleum titleholders. It only imposes cost recovery fees and levies associated with the administration of petroleum titles and activities. Royalty requirements are imposed and payable under separate legislation.[39]

Committee comment

2.41 The committee acknowledges the concerns raised by the submitters regarding historic issues with the design and regulation of the offshore oil and gas industry in Australia, and that there have been avenues where successive governments could have done more regarding the assurance that greater benefits flow to the Australian community.

2.42 While some of the evidence received displays concern for a lack of specific benefit to Australia, the evidence received in submissions suggests that there is no benefit in changing the current Act, as the issues raised are already explicitly addressed in the government's legislative framework. In fact, some submissions suggest that there could be a detrimental effect if changes where to occur.

2.43 The committee notes the department's view, that the proposed amendment would introduce an unacceptable degree of uncertainty for both decision-makers and titleholders due to the broad wording of the proposed amendment. Specifically, the committee is concerned that introducing such a broad and undefined clause into the object of the Act simply introduces a legal pathway for challenges to any decision of the relevant Minister and/or regulators. Rather than providing additional benefit to the Australian

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37 Australian Petroleum Production & Exploration Association, *Submission 6*, p. 3.

38 Chevron Australia, *Submission 7*, p. 9.

39 Department of Industry, Science, Energy and Resources, *Submission 5*, p. 5.

community, it seems likely that the proposed clause would tie the industry to a continuing round of court challenges and project cancellations.

2.44 Likewise, the issues raised regarding the suggested 'legal theft of our oil and gas'[40] are noted by the committee. However, the committee does not agree that further changes are warranted to this Act in the taxation treatment that already exists in other acts

2.45 Taxation treatment is not a responsibility of the OPGGS Act but rather fits within the legislation under the purview of the Treasurer such as the Petroleum Resource Rent Tax (PRRT) and company taxation arrangements. The PRRT is a profits-based tax and specifically recognises the large investments required to explore for, and produce, oil and gas resources.

2.46 The committee is comfortable with the current arrangements in regard to state royalty provisions and the present structure of the petroleum resource rent tax.

Recommendation 1

The committee recommends that the bill not pass.

Senator Slade Brockman
Chair
Liberal Senator for Western Australia

[40] *Senate Hansard*, 8 December 2020, p. 7083.

Dissenting report by Senator Rex Patrick

Economic pillage and plunder, but government doesn't care

Introduction

1.1 I thank the Secretariat for the work they have done in relation to this inquiry. I can't thank the Government members of the Committee who have got it so wrong.

1.2 For decades the (predominantly) international oil and gas companies operating in Australian waters have engaged in economic pillage and plunder on a national scale and nothing has been done to stop it.

1.3 While this is the fault of successive governments' inaction, it is the Morrison Government which is dealing with this specific bill, and it seems as though it is happy to turn a blind eye—'Nothing to see here!'

1.4 It is entirely reasonable that Australians receive full and fair compensation for the removal and export of the nation's finite resources. Sadly, this is not happening. Of course, industry doesn't agree in its submissions, and the Government has adopted the position of their pay masters.

Intent of the bill

1.5 The intent of the Offshore Petroleum and Greenhouse Gas Storage Amendment (Benefit to Australia) Bill 2020 is to make the benefit to the Australian community a guiding principle in the intent of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the Act).

1.6 It would do this by broadening the objects clause of the Act. The current Act says:

> The object of this Act is to provide an effective regulatory framework for:
>
> (a) Petroleum exploration and recovery; and
> (b) The injection and storage of greenhouse gas substances in offshore areas.

1.7 This bill adds:

> And to ensure that the exploration of these natural resources is for the benefit of the Australian community.

1.8 These additional words are entirely inoffensive and yet the Government won't agree to it. I am left reaching for the statute books to examine what the legal burden for treason and treachery is.

Industry's distorted view

1.9 The balance is all wrong, with the scales firmly tipped in favour of the exploration and extraction companies. Unsurprisingly, these companies are very happy about this as it helps them to maximise profits for their shareholders and is a key reason why industry doesn't want change.

1.10 Industry believes it is the model corporate citizen. Chevron's submission outlines what they do in terms of the purchase of goods and services, the number of contracts they write, the workers they employ, the amount they invest in exploration and the money they contribute to communities and research. Apparently, this is enough.

Taxes tell the true story

1.11 Industry tries to spin advantage to Australia but declines to spell out the corporate tax situation. Australian Tax Office tax transparency data over the period 2013/14 through 2018/19 tells of the steal:

(a) ExxonMobil Australia—$56b in revenue (rounded) with not tax paid;
(b) Chevron Australia Holdings—$28b in revenue with no tax paid; and
(c) ConocoPhillips Australia Gas Holdings—$7b in revenue with no tax paid.

1.12 There are more companies that have paid no tax on the back of billions in revenue. There are others that have fared a little better, but still fail to meet their social licence requirement:

(a) Woodside Petroleum—$43b in revenue with only $1.2b tax paid;
(b) Santos—$23b in revenue with only $3m tax paid; and
(c) Beach Energy—$6b in revenue with only $360m tax paid.

1.13 The promise of future taxes and royalties persuades Government regulators and authorities to hold off in anticipation. Though in the past few years the ATO has been pursuing some of the oil and gas companies that have employed suspicious accounting practices to minimise tax payments.

1.14 The ATO has had some success in the Federal Court, and most notably against Chevron who was instructed to repay in excess of $300 million plus costs to Australian taxpayers.

1.15 In 2019 Australia became the largest supplier of liquefied natural gas, yet the financial year 2018–19 delivered a paltry $1 billion through the Petroleum Resource Rent Tax (PRRT).[1] By comparison Qatar generated $26 billion in the same period from less gas.

[1] The Australia Institute, Submission 4, pp. 6.

1.16 The industry is taking us to be mugs.

But wait, there's more

1.17 We're now seeing the taxpayer bear the brunt of ageing assets that are being cast aside.

1.18 Woodside Petroleum dumped a floating production storage and offloading (FPSO) asset, the Northern Endeavour, on a small and undercapitalised company in 2016.

1.19 The National Offshore Petroleum Safety and Environmental Management Authority's (NOPSEMA) intervention as the regulator drove the new owner of the Northern Endeavour into liquidation. The end result is the FPSO is now 'laid up' in the Timor Sea, being crewed and maintained in 'lighthouse mode' at taxpayer expense, awaiting decommissioning.

1.20 The costs will be borne by the taxpayer. It has cost more than $100 million already and the total decommissioning cost has been estimated to be between $350 million and $1 billion.

1.21 Unbelievably, the Government has been paying Woodside Petroleum consulting fees to advise them on how to deal with what is, properly, their mess.

1.22 Woodside's conduct is grossly immoral, bordering on criminal, and what the Government has done is mind-numbingly stupid.

NOPTA's role

1.23 The National Offshore Petroleum Titles Administrator (NOPTA) carries responsibility for '*implementing effective field development review and performance monitoring strategies in order to secure optimum petroleum recovery for the benefit of the Australian community*'.[2] There are three issues associated with this responsibility:

(a) there is no defined or transparent mechanism to determine and report that *optimum petroleum recovery* has occurred;
(b) there is no definition of, or guidance for, the '*benefit of the Australian community*'; and
(c) the linkage between '*optimum petroleum recovery*' and '*benefit of the Australian community*' is not defined, and does not equate to ensuring Australia secures an equitable benefit.

1.24 All of this limits the ability of effectively assessing NOPTA's performance.

1.25 Noting the bill's proposed changes to the Act put into law what NOPTA purports to strive for, it is surprising that this was not covered in the

[2] NOPTA, *Annual Report of Activities 2018-19*, p. 9.

Department's submission, the inference being they, like industry, are comfortable with the current arrangements.

1.26 Noting the current lack of transparency in relation to reservoir and field extraction data, it is impossible to determine if '*optimum petroleum recovery'* has in fact been achieved.

1.27 Codifying into law the requirement will ensure that the exploration of these natural resources is for the benefit of the Australian community and will force NOPTA to take what they suggest is a mandate in a much more serious way.

The report

1.28 Government senators recommend Australia continues with the status quo, on the basis that the issues the bill is trying to rectify are better dealt with in tax legislation. However, the bill does not aim to alter the taxation regime. What it aims to do is to ensure the benefit to Australia forms part of the assessment in granting titles.

1.29 A glaring oversight of the Committee's report, and one that makes it quite a disingenuous representation of the OPGGS Act, is that it fails to report that the OPGGS Act, amongst other things:

> Provides for the grant of the following titles:
>
> (a) a petroleum exploration permit;
> (b) a petroleum retention lease;
> (c) a petroleum production licence;
> (d) an infrastructure licence;
> (e) a pipeline licence;
> (f) a petroleum special prospecting authority.[3]

1.30 This makes it relevant for amending the Act to ensure the benefit to Australia is a consideration.

Recommendation

1.31 The current regime being applied to gain Australians a fair and equitable return for the nation's finite resources is severely broken.

1.32 Once our finite oil and gas resources have been depleted, they're gone, the associated economic activity will cease, the industry will depart our shores and we will have lost any ability to maximise the economic return.

1.33 How can it be in our interest to let companies extract our resources that cannot do so profitably?

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[3] *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, s. 4.

1.34 The bill doesn't go anywhere near far enough, but is a step in the right direction. We need to stop this economic pillage and plunder.

Recommendation 1

The bill should be passed.

Senator Rex Patrick
Independent Senator for South Australia

Additional comments by Pauline Hanson's One Nation

1.1 I am disappointed the Committee does not support the proposal to increase the supply of natural gas to Australia and consequently create jobs for Australians.

1.2 Little to no economic benefit is received from our vast reserves of offshore oil and gas, because of the design of the gas tax laws and the narrow focus of the OPGGS Act.

1.3 In 2019 decisions made under the OPGGS Act forced a small Australian oil and gas business out of business and as a consequence the government is now the owner of the remaining liabilities. These liabilities include the floating platform in the Timor Sea known as the Northern Endeavour, and the costs of decommissioning of the subsea oil and gas structures which feed the floating platform.

1.4 This folly by NOPSEMA decision makers is costing the Australian taxpayer $4 million dollars a week to keep the Northern Endeavour in non-production mode and the estimated clean-up costs of up to a billion dollars. The Walker Report into this folly was a whitewash. Shockingly no expert independent evidence has been offered as to the environmental risks posed by giving the Australian owners of the Northern Endeavour, the opportunity to fix any outstanding issues.

1.5 The Departmental submission, in effect represents NOPTA and NOPSEMA. The Department argues unacceptable uncertainty for decision makers and titleholders of oil and gas leases if they are asked to consider the Australian community in their decision making.

1.6 On behalf of Australians I say what about the owners of the petroleum assets. Australians see economic activity but get little or no economic benefit from offshore oil and gas leases in the hands of foreign owned multinationals off the coast of Western Australia. Adoption of the proposal made in the bill might prevent another catastrophe like the Northern Endeavour, but would also address the issue of decommissioning costs expected to exceed $25 billion dollars in the next few years.

1.7 I have no doubt there are Australian companies willing to put long held leases into production if they were given the opportunity. I have had representations from them as has the government. This would increase the supply of gas to Australia and create jobs.

Senator Pauline Hanson
Pauline Hanson's One Nation

Appendix 1
Submissions

1 Professor Clinton Fernandes
2 Prosper Australia
3 Dr David Lee
4 The Australia Institute
5 Department of Industry, Science, Energy and Resources
6 The Australian Petroleum Production & Exploration Association (APPEA)
7 Chevron Australia