



10 June 2011

Committee Secretary
House of Representatives Standing Committee on Agriculture, Resources, Fisheries
and Forestry
Parliament House
CANBERRA ACT 2600
AUSTRALIA

cc: The Secretary, Senate Standing Committee on Economics

Offshore Petroleum and Greenhouse Gas Storage Act Amendments

Thank you for the opportunity to make a submission on the introduction of Bills relating to the administration and regulation of petroleum and greenhouse gas storage operations in Commonwealth waters.

APPEA is the peak national body representing the Australian oil and gas exploration and production industry. Its members account for almost all of Australia's oil and gas production and account for annual production valued at over \$26 billion.

The regulatory arrangements that apply to Commonwealth and State waters are particularly important to the industry as over 90 percent of Australia's oil and gas resources are produced from Commonwealth waters with most brought onshore for processing. As a result, most operations are subjected to a complex multi-jurisdictional regulatory regime. APPEA has been working with jurisdictions to improve the efficiency, effectiveness and timeliness of the regulatory system as the means for securing the robust and professional oversight of the industry's activities.

The Montara Commission of Inquiry's Report (June 2010) reinforced the need for substantial improvements to be made. In particular, the Commission of Inquiry found wanting the application, implementation and administration of the offshore petroleum regulatory regime.

Given the time available, APPEA has not been able to fully assess the legislative impact of the proposed amendments to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGSA). As the OPGGSA provides the legislative framework for all of Australia's upstream offshore industry's operations, APPEA is in the process of seeking a thorough legal review of the proposed amendments. It will take some time to be in a position to provide detailed comments on the package of Bills before Parliament, including in relation to the proposed cost recovery implications. These will be provided to the Committee once finalised.

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Yours sincerely

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**Submission by the Australian Petroleum Production and
Exploration Association to the**

**House of Representatives Standing Committee on Agriculture,
Resources, Fisheries and Forestry Inquiry into**

Offshore Petroleum and Greenhouse Gas Storage Act Amendments

Background

The proposed amendments to the *Offshore Petroleum & Greenhouse Gas Storage Act 2006* relate to the administration and regulation of operations in Commonwealth waters, and replace the state and Northern Territory based Designated Authorities (DAs) with the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) (which will itself replace the National Offshore Petroleum Safety Authority (NOPSA).

APPEA understands that the proposed amendments will transfer the functions of state DAs in relation to the administration of offshore titles to the National Offshore Petroleum Titles Administrator (NOPTA) (to be located within the Department of Resources, Energy and Tourism).

As APPEA understands it, there is to be no change to the Joint Authority arrangements with respect to petroleum titles that have been in place since 1980 and that the Joint Authority will continue to make the major decisions under the Act concerning the granting of petroleum titles, the imposition of title conditions and the cancelling of titles, as well as core decisions about resource management and resource security.

Specifically, the package of Bills include:

- Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011;
- Offshore Petroleum and Greenhouse Gas Storage (Registration Fees) Amendment Bill 2011;
- Offshore Petroleum (Royalty) Amendment Bill 2011;
- Offshore Resources Legislation Amendment (Personal Property Securities) Bill 2011; and
- Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies Legislation Amendment (2011 Measures No. 2) Bill 2011.

Through the processes of industry consultation on a range of issues associated with this reform, the rationale for the establishment of NOPSEMA has been well aired, including in the 2009 Productivity Commission Report recommendations and the Montara Commission of Inquiry Report and Final Recommendations from Government. APPEA's concerned that the same level of industry consultation has not occurred in relation to the decision to establish NOPTA.

New National Offshore Petroleum Safety and Environmental Management Authority

On the release of the Montara Commission of Inquiry's Report, the Commissioner raised real and serious concerns in relation to regulatory disconnects created by separate regulation of safety, environment and well integrity. The Commissioner's assessment made a compelling case for the establishment of a single integrated offshore regulatory authority.

To rectify the regulatory shortcomings that it identified, the Commission recommended a number of changes to the offshore regulatory regime including establishing a single integrated independent authority, with a properly functioning Board, responsible for safety, well integrity and environmental plans. Through this package of Bills, the Commonwealth Government has moved to implement the bulk of the Commission's recommendations in relation to these matters.

The Joint Authority and the National Offshore Petroleum Titles Administrator

During its discussions with State and Commonwealth Governments around the future of offshore petroleum regulation, APPEA specifically sought to ensure that as part of any regulation reform, State Governments would maintain a role in decisions relating to oil and gas developments in Commonwealth waters by retaining their powers and authorities under the existing Joint Authority arrangements. It is APPEA's view that the role of State Ministers in determining the circumstances and conditions under which major projects will proceed, particularly if they are brought to shore, should be retained.

APPEA understands that under this National Regulator Bill, the existing Joint Authority arrangements will be maintained, ensuring that Ministers retain existing powers to adjudicate on matters such as retention leases, production licences and exploration permits through the existing Joint Authority arrangements. However, day to day technical regulation of the industry and provision of technical advice to both Commonwealth and State Ministers in Commonwealth waters will transfer from State Government agencies to NOPSEMA.

Transitional Arrangements

The industry would appreciate early clarification of arrangements for making the transition from the existing regime to the new NOPSEMA/NOPTA regime. Transition arrangements for all aspects of offshore exploration and production activity need to be considered including the effect on the approval process for seismic and drilling activities; new project approvals and construction activity; and arrangements for reporting and payments of levies and fees.

It will be important to ensure that during the transition phase that adequate governance and assurance frameworks are in place to ensure the new regulators have adequate capability to administer functions and powers in offshore waters. This is of critical importance since any failure of title administration would have serious negative consequences for the industry.

Institutional Arrangements and Need for Ongoing Tangible Regulatory Reform

Also important is that the reform delivers tangible, demonstrable and measurable improvements including inter- and intra-jurisdictional consistency, substantially improved efficiency, less decision points and the removal of duplication.

Regardless of the institutional arrangements put in place to regulate Australia's offshore oil and gas sector, APPEA has continued to urge jurisdictions to adopt regulatory reform measures identified through numerous recent reviews that could be addressed in the short term.

While significant progress has been made by jurisdictions, further efforts are sought in a number of areas including:

- Streamlining, simplifying and removing duplication from a number of *Offshore Petroleum and Greenhouse Gas Storage Regulations*, with a thorough review of the remaining regulations under the OPGGSA undertaken as soon as possible;
- establishing a primary point of contact/case manager within each relevant state/territory to facilitate the approvals process for each project as is the case in South Australia;
- granting major project facilitation to large projects, as is the case in Queensland, and enabling regulators to fast track the development of projects of state and national significance; and
- providing greater recognition under the *Environmental Protection and Biodiversity Conservation Act* (1999) for the day to day regulation by the DAs.

Accreditation of NOPSEMA under the EPBC Act

While NOPSEMA is being established to deliver stronger linkages between safety, well integrity and environmental regulation, APPEA understands that there is the potential for the accreditation of NOPSEMA under the EPBC Act for petroleum activities. This would allow NOPSEMA to undertake assessments for a wide range of operations and the auditing of EPBC conditions.

Such an accreditation is strongly supported by APPEA and is consistent with the Government commitment to cut red tape. It would also address a key finding of the Montara Commission. Duplication would be removed as all critical elements relating to the environmental management and operations of the industry would be thoroughly examined and inspected by a single, world class, highly experienced regulator. This could substantially improve regulatory timeliness and cost (to both industry and government), potentially further streamlining the effectiveness and efficiency of the offshore petroleum regulatory regime.

Regulatory Levies and Full Cost Recovery

Oil and gas are unlike other commodities in that they provide a critical underpinning to the Australian economy. Importantly, the Australian community also gains a significant direct fiscal benefit from the exploration and development of Australia's petroleum resources through a variety of taxes and charges applied to the industry amounting to approximately \$8 billion every year.

APPEA and its members are strongly opposed to full cost recovery being applied to the regulatory functions associated with the control, administration and technical oversight of the industry's operations. While there is a benefit to the industry from regulatory third party oversight of the industry's operations, the industry remains of the view that there are substantial public benefits associated with the regulation and oversight of the industry.

The industry strongly believes that the significant public benefits derived from the effective and efficient oversight of the industry represents a public good that should be recognised through at least some publicly funded contribution.

During consultation regarding potential changes to the regulatory structure, APPEA expressed the view that there is a strong expectation from the industry that any changes should ensure:

- costs are shared by industry and government;
- efficiencies are maximised through close associations between existing regulators and systems;
- a more cost effective regime, that does results in a lower overall cost to the industry; and
- funding is transparent and governance arrangements provide accountability of expenditure, including to those who contribute the funds, and to ensure that all money collected is utilised exclusively for the regulation of the industry.

It is a significant concern to APPEA that under the current full cost recovery funding model, there is no obvious incentive to reduce current or future operating costs, or to identify cost efficiencies in the establishment of the new bodies. If funded from consolidated revenue, the Commonwealth is incentivised to manage both the establishment and operating costs of the new regulatory system.

Importance of Strong Governance and Accountability Processes

While there has been some discussion with APPEA on transitional and establishment costs, it is not possible for the industry to assess the degree to which efficiencies will be maximised, how the new regime will be more cost effective, or what accountability mechanisms will be put in place. APPEA members strongly believe that, if the industry is to fund its regulation, effective governance arrangements and accountability mechanisms are essential. It is also important to clarify how performance is to be assessed and monitored.

Environment Plan Levies

With regard to *environment plan levies*, APPEA is concerned that, unlike the safety case levy, there is no provision made for an investigations levy. As a result, environmental incident investigations would need to be funded through the environment plan levy, suggesting that those companies that are not the subject of an environmental investigation would be subsidising those that are.

In addition, there is potential for NOPSEMA's activities to be expanded to include participation in condition setting on environmental approvals to meet the provisions of the *Environment Protection and Biodiversity Conservation Act 1999*. If this is the case then how this function is to be funded is unclear.

Registration Fees to Cover Establishment Costs

APPEA understands that the establishment costs of NOPTA and NOPSEMA will be recovered through retaining the "ad valorem registration fees" paid by the industry from 1 July 2011 to 30 June 2013 or until the establishment costs have been recovered. At this point the "ad valorem registration fees" would be removed and replaced with a set fee that reflects the actual costs of NOPTA and NOPSEMA operating on a full cost recovery basis.

The industry notes that *ad valorem* registration fees were to be removed some time ago, and that this was also recommended by the Productivity Commission in its 2009 Review of Regulation of the Upstream Oil and Gas Industry. The industry suggests the inclusion of a sunset clause to ensure that the registration fees are removed by 1 July 2013.

Also of concern is the potential for the industry, through payment of registration fees, to pay more than it actually costs to establish the new regulatory bodies. As currently worded, registration fees will be retained for a minimum of two years and that the Commonwealth will retain \$30.6 million. As APPEA understands it, while the Department of Resources, Energy and Tourism estimate that establishment costs will be approximately \$29 million, the Department of Finance appear to have only provided some \$23 million. Regardless, both estimates are less than the \$30.6 million that will be retained, generating a profit for the Commonwealth for establishing the new regulators. This discrepancy needs to be addressed with any residual returned to the industry.