DEPARTMENT OF MINES AND PETROLEUM'S SUBMISSION:
OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE LEGISLATION AMENDMENT (MISCELLANEOUS MEASURES) BILL 2010

As an overarching comment on the Bill, WA is concerned at the almost indecent haste with which these amendments have progressed and the lack of meaningful consultation with the States, in particular those jurisdictions with extensive front line experience. The Bill was circulated to the States for comment in mid January which was not conducive to soliciting informed comments from stakeholders. There was also inadequate time for consultation with other stakeholders in the petroleum industry.

Whilst the WA Department of Mines and Petroleum supports many of the amendments in the *Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Bill 2010*, the following submission outlines the Department's concerns as to the impact on industry and regulation of activities.

Schedule 1 - Part 1- Registration Fees:
The purpose of these amendments is to allow the Commonwealth to retain registration fees to help fund the establishment of the National Offshore Petroleum Regulator (NOPR).

Whilst it is understood that the Commonwealth's preferred position as announced on 5 August 2009 is to establish a NOPR, it should be noted that the form and function of the NOPR in regard to its operation in the Western Australian offshore area is currently the subject of intense negotiations between the Commonwealth and the State. It is therefore inappropriate to hastily continue with these changes before agreement is reached on an acceptable model. Passage of these amendments would appear to pre-empt any decision on NOPR and threatens the good will and co-operation required to resolve the NOPR issue. WA has been advised that the NOPR proposal is not expected to be considered by COAG until the middle of this year.

WA does not support the establishment of a NOPR and has made it clear that it will not roll in its state waters (comprising the internal and coastal waters) under NOPR's administration. This is significant because over two thirds of offshore petroleum exploration and development occurs off the coast of WA. Therefore WA cannot agree to the proposed legislative amendment for the Commonwealth to retain registration fees.

In addition, the loss of registration fee revenue for WA will come at a time when the State will be required to commit funding to infrastructure development for Gorgon and other major projects and it has been suggested that advance royalty payments be sought from the Commonwealth to ease WA's financial burden for these developments. The registration fee revenue that is the subject of these amendments has averaged $10.3 million per annum over the last five years. WA's Department of Treasury and Finance have been informed of the proposal. The WA Treasury has claimed that the transfer fees affected by this amendment are stamp duties on the transfer of titles and it is not appropriate to remove these fees while stamp duties apply to other similar transactions.

Further, as WA is the only jurisdiction with the staff expertise to complete these complex assessments, there is the expectation that WA will still be required to undertake the registration fee assessments and compliance checks without receiving any benefit. It should also be noted that this is not purely a financial issue as the assessment of registration fees also considers whether dealings and transfer proposals are in the national interest.

Lastly, WA does not believe that to unilaterally impose this amendment is in the spirit of co-operative federalism publicly declared by the current Federal Government.

Schedule 1 - Part 2 - Functions of the Safety Authority

WA has for some time recommended the inclusion of non-occupational safety and health (OSH) structural integrity of facilities and pipelines as a part of the National Offshore Petroleum Safety Authority's (NOPSA) responsibilities. However, WA does not totally support this amendment as well integrity and well approvals involve resource or reservoir management issues which are not considered to be a NOPSA responsibility. WA, along with the Victorian Department of Primary Industries, has consistently maintained this view at Ministerial Council of Minerals and Petroleum Resources Upstream Petroleum and Geothermal Sub Committee (UPGS) meetings. Currently both well integrity and well approvals are a part of the well operations management plan (WOMP) regulations and conditions on titles administered by the Designated Authority (DA). Integrity covers a broad range of activities and there are concerns regarding the following matters which will require clarification:

- Even if the WOMP and well approvals go to NOPSA there is still the requirement for the DA to assess the drilling applications and well design and construction matters to ensure compliance with the operator's commitments related to the Field Development Plan, geological and reservoir engineering uncertainties or licence/permit conditions.
- NOPSA and the DA's have different but overlapping areas of responsibility in relation to well integrity. Two layers of bureaucracy will not benefit operators and is not in accordance with the Productivity Commission recommendations. Since well integrity and well approval matters are already covered in the WOMP, WA emphasises that it would not be appropriate to include them in NOPSA's responsibilities.

The addition of sub-clause 646(gb) is partially supported as it means that NOPSA will have non-OHS structural integrity functions conferred to it except for well integrity under WA's *Petroleum (Submerged Lands) Act 1982*. However, WA does not support amendment clause 10 which inserts "occupational health and safety matters in connection with" in paragraphs 646(a) and (b). Section 646 'Safety Authority Functions' is a very important part of the Act which should clearly and concisely describe NOPSA's functions. This section would benefit from a rewrite together with the inclusion of a simplified outline so that the reader is not forced to descend into a definitional labyrinth to establish the parameters of the Safety Authority functions. Again WA's view is that additional consultation with the states and the petroleum industry would have allowed resolution of these issues and more effective regulation.

Schedule 1- Part 3 - Multiple titleholders – new Part 9.6A & ss 775A - 775E

This matter was discussed at senior officer level at the UPGS meetings in Darwin on 4 June 2009 and Melbourne on 13 October 2009. WA does not believe that a

consensus was reached at either meeting and does not agree with the multiple titleholder amendments proposed in the Bill.

WA has consistently stressed to the Commonwealth that while the proposed amendments would make title administration easier, WA is concerned that this could be viewed as taking away the property rights of an individual member of a joint venture. Preserving property rights for individual joint venturers is an issue in petroleum commercial joint venture agreements.

The amendments have the capacity to impact on the sole risk provisions of a joint venture agreement. “Sole risk” is a commonly used term in joint venture agreements to cover provisions where one, or some, but not all of a joint venture wish to drill a well. Under the proposed amendments, it is not clear to WA how a joint venture partner who is not the nominated operator could make an application to drill a well except though the nominated operator. This may not be a feasible approach and WA has suggested that consultation with the legal/commercial areas of the petroleum industry is required on this issue.

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