ATTACHMENT A

THE DEVELOPMENT OF OFFSHORE PETROLEUM REFORMS

Background

1. The Bills propose to amend the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* and associated Acts to implement a regulatory reform model for the upstream petroleum sector in Commonwealth waters. The reforms stem from the Commonwealth Government's response to the Productivity Commission (PC) *Review of Regulatory Burden on the Upstream Petroleum (Oil & Gas) Sector* (April 2009) and have evolved to address stakeholder concerns and the outcomes of the Montara Commission of Inquiry.

Rationale for reform

2. In April 2007, the Australian Petroleum Production and Exploration Association's (APPEA) Strategic Leaders' Report, '*Platform for Prosperity*' identified seven high-value adding priorities to ensure the value of Australia's petroleum is maximised for all Australians and petroleum energy security is delivered. One of those priorities to be progressed as quickly as possible was more consistent and more efficient national petroleum regulation.

3. APPEA called for the PC to carry out a review of the onshore and offshore regulatory framework in order to assist implementation of a more efficient and nationally consistent petroleum regulatory regime. APPEA stated that the case exists for the industry to have its own regulatory and approvals system, possibly in the form of a national regulatory authority. APPEA also stated that the roles of the Joint Authority and Designated Authority warrant review in order to streamline processes, remove duplication and reduce approvals time lines.

4. In 2008 the Council of Australian Governments (COAG) identified the upstream petroleum sector as one of many 'hotspot' areas where overlapping and inconsistent regulation threatens to impede economic activity and agreed that the PC should undertake a review. The PC review commenced in April 2008 and reported in April 2009. The PC identified significant unnecessary regulatory burdens on the sector and its principal recommendation to reduce those burdens was the establishment of a national offshore regulator. The PC also identified significant potential national income gains, in the order of billions of dollars each year, from the implementation of its recommended reforms.

5. Reform of the sector is a COAG priority. COAG agreed to amend the National Partnership Agreement to Deliver a Seamless National Economy (SNE) to include milestones to implement 25 responses agreed by the Ministerial Council on Mineral and Petroleum Resources (MCMPR) and five responses agreed by the Commonwealth relating to the establishment of a national offshore petroleum regulator.

6. The 2008 Varanus Island pipeline explosion and the 2009 Montara incident have also highlighted inadequacies in the Australian offshore petroleum regulatory regime. These inadequacies largely stem from risks of regulatory gaps arising from regulation of safety separate from regulation of integrity, environment and day-to-day operations. It is appropriate for the Commonwealth to lead reform as over 90 per cent of Australia's conventional oil and gas resources are located in Commonwealth waters.

Current Regulatory Arrangements

7. The Commonwealth has responsibility for petroleum operations in Australia's offshore areas beyond three nautical miles from the territorial sea baseline and the states and the Northern Territory (NT) have responsibility in the three nautical mile coastal waters and internal waters and onshore. The Commonwealth and the relevant state or territory jointly administer petroleum activities in Commonwealth waters adjacent to each state and territory through a combination of Joint Authority (JA) and Designated Authority (DA) arrangements and the National Offshore Petroleum Safety Authority (NOPSA). The JA and DAs administer titles and regulate environment plans and day to day operations. NOPSA regulates safety. These arrangements are based on the Offshore Constitutional Settlement (OCS) of 1979.

8. The current arrangements are complex, disjointed, involve inconsistent administration, regulatory duplication and result in regulatory gaps. The quality and quantity of regulatory expertise varies significantly from jurisdiction to jurisdiction. There is very little correlation between the fees paid by industry and the cost of regulation, with the states and the NT normally receiving revenues well in excess of their costs of administration. The current arrangements and proposed new arrangements are detailed in Attachment B and charts indicating work flows under each arrangement are in Attachment C.

PC Recommend a National Offshore Petroleum Regulator (NOPR)

9. The PC's principal recommendation to reduce unnecessary regulatory burden was the establishment of a NOPR in Commonwealth waters responsible for titles administration, environment plans and day-to-day operations. It also recommended that the state and NT Governments be provided with an option to confer their regulatory powers in state and NT waters on NOPR. The PC recommended that NOPR operate on a full cost recovery basis and that the JAs and DAs be abolished and respectively replaced by the responsible Commonwealth Minister and NOPR. NOPSA was to remain independent of NOPR so as to maintain NOPSA's exclusive focus on safety and avoid potential or perceived conflicts in regulatory objectives or priorities.

10. From August 2009, the Minister for Resources and Energy and his Department consulted extensively with jurisdictions and industry about the PC recommendations. Most states either supported or accepted the PC's recommendations. However, WA opposed a national regulator, did not want NOPR to be a statutory authority and preferred reforms within the existing regulatory framework. All jurisdictions and industry wanted a continuing state and NT government role in titles administration. Under the model proposed by the PC, there would be no role for jurisdictions in the regulation of petroleum projects in adjacent Commonwealth waters, which have a significant impact on their economies. This would limit consultation and information sharing that could impact upon supporting state infrastructure, services and related state approvals.

Report of the Montara Commission of Inquiry

11. The Report of the Montara Commission of Inquiry released in November 2010 recommended that, at a minimum, the proposal to establish a national offshore petroleum regulator should be pursued. However, the Montara Report states, "A single, independent regulatory body should be created, looking after safety as a primary objective, well integrity and environmental approvals. Industry policy and resource development and promotion activities should reside in government departments and not with the regulatory agency." An integrated approach to the regulation of safety, integrity and environment, with separate titles administration, was a significant variation from the original PC recommendation.

12. The public interest in the Montara incident demonstrated the community expects the Commonwealth to play a key role in regulating petroleum activities in Commonwealth waters. Under the current regulatory regime, the Commonwealth cannot direct the state or NT how to regulate petroleum activities in Commonwealth waters.

Reform Model in Amendment Bills

13. The Bills propose to implement a single, independent regulator of safety, environment plans and day-to-day operations of petroleum, mining and greenhouse gas storage activities in Commonwealth waters and a National Offshore Petroleum Titles Administrator (NOPTA). The single regulator will be created by expanding NOPSA's functions to include regulation of environmental management and day-to-day operations – becoming the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA). Safety, environment protection and day-to-day operational consents are all concerned with integrity and should be regulated in an integrated manner.

14. States and the NT will have an option to confer their equivalent regulatory powers and functions on NOPSEMA in state and NT waters.

15. NOPSEMA will be solely a regulator of offshore petroleum activities. Where States or the NT confer functions and powers under their coastal waters legislation, the activities of NOPSEMA as regulator of safety, structural integrity and environmental management will be concerned only with the offshore operations of titleholders. The conferral will have no bearing whatever on the State or Territory's right to grant petroleum rights over its three nautical mile seabed. The same will be true if Western Australia confers functions and powers on NOPSEMA in the State's "internal waters" (called "eligible coastal waters" in the Bill). There is therefore no question of a State or Territory "giving up" its petroleum rights.

16. The Bill will enable States, including Western Australia, and the NT to join the Commonwealth in establishing a single regulator of petroleum operations for all offshore waters between the outer edge of the continental shelf and the coastline. The Bill creates the potential to avoid any offshore boundary between regulatory regimes.

17. Under NOPSA's current functions it cannot provide related services and technical advice to third parties on a cost recovery basis. The amendments will enable NOPSEMA to provide assistance on a cost recovery basis to state, NT and international governments and regulators, provided the assistance is within the scope of its functions.

18. The reform model retains the JA as decision maker on key petroleum and mining title decisions to maintain a state role in these decisions. The responsible Commonwealth Minister's view would prevail in the event of a disagreement. Statutory timeframes for key title decisions are to be introduced. The Commonwealth Minister will remain decision maker for greenhouse gas storage titles.

19. NOPTA will make recommendations to the JA on titles as well as administer titles and collect data relating to petroleum, mining and greenhouse gas storage activities in Commonwealth waters. States will have an option to confer their administrative powers on NOPTA.

20. NOPSEMA and NOPTA will provide significant regulatory reform by replacing seven DAs and their Departments and will deliver significant efficiency gains and reduction in regulatory burden. NOPSEMA and NOPTA together provide the integrated approach to regulation and separate titles administration recommended by the Montara Commission of Inquiry.

21. APPEA has called the legislation to establish NOPSEMA and NOPTA a big step forward in developing new regulatory frameworks that comprehensively address efficiency, safety and environmental concerns (APPEA Media Release of 25 May at Attachment D).

Cost Recovery

22. The Government has decided that the costs of regulating petroleum and greenhouse gas storage activities in Commonwealth waters should be recovered from those industries which gain the benefits from those activities. This will ensure that the costs of regulation do not fall upon the wider community. The cost of regulating the offshore petroleum and greenhouse gas storage industries is to be recovered in a two stage process.

23. First, the costs of establishing NOPTA and expanding NOPSA to NOPSEMA will be recovered from industry by the Commonwealth retaining registration fee revenues for a minimum of 24 months subject to the lesser of $30.6 million or the actual establishment costs being recovered. The Minister for Resources and Energy may notify in the Gazette the actual establishment costs within six months of the commencement of NOPSEMA aned NOPTA. $30.6 million is the estimated revenue that would be retained by the Commonwealth during a 24 month period. A Cost Recovery Impact Statement (CRIS) is being undertaken prior to the amendments coming into effect (draft CRIS at Attachment E). The CRIS is expected to be finalised by the end of June 2011.

24. Second, from 1 January 2012, NOPTA and NOPSEMA's fees and levies will be re-set to ensure they operate on a full cost recovery basis. A CRIS will be undertaken prior to resetting the fees. On-going fees and charges will be subject to three yearly reviews.

25. As the petroleum and greenhouse gas storage industries will pay the costs of their regulation, it is appropriate that they are provided full transparency in the raising of revenue from fees and levies and its expense on the regulation and administration of petroleum and greenhouse gas storage activities. Under the current arrangements there is no transparency in the Designated Authority's costs and the revenues from offshore petroleum fees frequently significantly exceed the DAs' costs of administering petroleum titles.

26. Establishing a Special Account for NOPTA and retaining the existing NOPSA Special Account for NOPSEMA will assist in the provision of this transparency. When NOPSA was established in 2005, a Special Account was created to provide the states with necessary assurance to confer their powers on NOPSA. The scope of NOPSA's existing Special Account needs to be expanded to cover its expanded regulatory functions.

Cost Impact on Industry

27. This section provides an indicative cost impact on industry noting that it is difficult to accurately estimate these impacts due to the wide fluctuations in the annual registration fee revenues collected under the current arrangements. For example, over the past five financial years, these registration revenues have averaged about $15 million per year but have varied from about $2 million in 2008-09 to almost $35 million 2007-08.

28. It is estimated that the reforms will result in an on-going cost reduction for industry in the order of $5 million per year after the establishment costs of NOPSEMA and NOPTA are recovered. While the establishment costs are being recovered, industry will incur a cost increase in the order of $10 million per year for about two years.

29. The estimates are based on average registration fee revenues over the past five financial years and staffing levels for NOPSEMA and NOPTA of 108 and 40 respectively.

30. It is expected that the annual net cost reduction for industry is likely to be less than the average annual cost of the registration fees because NOPSEMA will adopt a more robust approach to the regulation and compliance monitoring of the structural integrity of wells and environmental management than has previously occurred.

Table 1: Estimated Cost Impacts on Industry

	Existing Regime full year costs $ million	Establishment Phase (a) Full year costs $ million	Final Regime (b) Full year costs $ million
Registration Fees	15	15	-
Non-registration Fees	7	-	-
NOPSA	15	-	-
NOPSEMA	-	23	23
NOPTA	-	8	8
Total	37	46	31

Notes:

(a) Establishment Phase refers to the period after the commencement of NOPSEMA and NOPTA during which the Commonwealth retains registration fee revenues to recover the establishment costs of NOPSEMA and NOPTA.

(b) Final regime refers to the period following the abolition of registration fees.

31. Within the next six months, the Department of Resources and Energy will prepare a full CRIS process prior for the new fees and levies for NOPTA. Similarly, NOPSA will conduct a full CRIS process prior to determining new fees and levies for NOPSEMA. These processes will provide more accurate indications of the cost impacts on industry.

32. It is also important to note that the cost of industry compliance with regulation (sometimes amounting to millions of dollars for a project) is very modest relative to the full project cost. The PC noted that the main cost to industry from regulation arises from delays in project approvals.

33. The PC found that project approvals are taking longer than a streamlined approvals process would allow, diminishing the present value of petroleum resource extraction in Australia by billions of dollars each year. In its submissions to the PC, the Victorian Government considered a national offshore regulator could reduce the time taken for approving a production licence by about 50 percent to around 6-12 months. The PC considered such reductions in approvals times were a reasonable objective.

34. One of the key objectives of the reforms in the amendment Bills is to reduce unnecessary delays in approvals times. The benefits of reducing approvals times for industry will far outweigh any short term cost to industry while the establishment costs of NOPSEMA and NOPTA are recovered.

Consultation

35. There has been extensive consultation with stakeholders in the lengthy development of these reforms commencing in early 2008.

36. The Productivity Commission Review process commenced in April 2008 and involved numerous informal discussions with stakeholders, an issues paper, 20 submissions, four roundtable meetings, a draft report and a final report in April 2009.

37. The Commonwealth Government sought to develop an all of governments response to the PC Review through the Ministerial Council on Mineral and Petroleum Resources (MCMPR). In August 2009, the MCMPR established a Working Group of officials involving all jurisdictions to develop the responses. MCMPR had agreed 25 responses by the end of 2009 but deferred its consideration of the recommendations for a national offshore regulator pending the outcomes of the Montara Commission of Inquiry. From August 2009 until late 2010, the Commonwealth, at Ministerial and officials level, continued to consult extensively with jurisdictions and industry on the proposed national offshore regulator.

38. The Montara Commission on Inquiry reported to the Commonwealth Minister for Resources and Energy in June 2010 and the Minister publicly released the report together with the Commonwealth's draft response on 24 November 2010. The Commonwealth's draft response included the reform model that is now in the current amendment Bills. Stakeholders were provided three months to comment on the draft response.

39. On 18 February 2011, the MCMPR met to consider the Commonwealth's proposed establishment of a national offshore regulator. While a consensus could not be reached, the Commonwealth Minister advised the Council that, in light of the PC Review and the Montara Report, continuation of the status quo was not a credible option. Accordingly he advised the Council that the Commonwealth would move to implement its proposed reforms in Commonwealth waters. MCMPR agreed to establish a Working Group of officials from all jurisdictions to guide the transition to the new regulatory arrangements.

40. While consensus from all stakeholders on the form of the national offshore petroleum regulator could not be obtained, the reform model adopted by the Commonwealth is a 'best fit' outcome addressing the legitimate concerns raised. The reform model has the support of industry and most jurisdictions.

41. On 25 May 2011, the Commonwealth Government releasing its final response to the Montara Report and also its response to the PC Review. Both of these responses incorporate the reform model that is now in the current amendment Bills.