

Chapter 3 — Roles of government

Federal and State legislation

3.1 The North West Shelf project operates under a variety of Federal and State laws.

3.2 Petroleum exploration and production outside the three nautical mile limit, is subject to the provisions of the *Petroleum (Submerged Lands) Act 1967* (PSL Act).¹ That legislation forms the ‘mining code’ which applies to all NWS fields.

3.3 Under the PSL Act, a joint authority for fields adjacent to each State has been established with the relevant Federal and State minister as the mechanism to decide questions of title including grant, renewal and transfer of exploration and production rights. The day-to-day administration and supervision is delegated to the State by the Federal Government, however, the final responsibility for decisions taken under the joint authority provision lies with the Federal Minister for Primary Industries and Energy.

3.4 The WA Government plays a major role within the three nautical mile limit in relation to the issue of leases, power generation, collection of royalties, infrastructure provision, labour and safety regulations and environmental considerations.

3.5 Since the 1960s Western Australia has used a system of State agreements to regulate the use of local industry in major projects. The relevant legislation with respect to the North West Shelf project was the *North West Gas Development (Woodside) Agreement Act 1979–85*. An important point is that this legislation only applied to the onshore component of the project.

3.6 In its 1998 resources policy, the Federal Government announced its intention to review the PSL Act. This review is expected to encompass the acreage release program, strategies to encourage exploration investment, compliance with competition principles and the devolution of administrative responsibility to appropriate State and Territory Governments.² The review is expected to be completed by the end of 1999.

3.7 The information which follows deals with permits, local content policies, major project facilitation and industry assistance programs. Discussion of the NWS project’s contributions to the taxation system may be found in Chapter 4.

1 DPIE: submission 32.01, p 11 and DPIE handbook, *Petroleum exploration and development in Australia*, various pages

2 Resources policy statement, February 1998, pp 19, 20 and 29

Permits

3.8 The Department of Primary Industries and Energy (DPIE) annually publishes information relevant to potential investors and to others interested in the oil and gas sector. This includes information on taxation, royalties, environmental matters, petroleum potential, maps, geological data and details of offshore areas available for petroleum exploration during the current year.

3.9 A primary responsibility of the Federal Government in relation to offshore gas and oil projects is the issue of exploration permits.

3.10 The 1989 report of the Standing Committee on Industry, Science and Technology found that the primary criterion for issue of exploration permits was: to maximise the assessment of petroleum potential in the permit area. There were secondary criteria which only came into effect if no applicant could be identified as superior when assessed against the primary criterion. These secondary criteria included the intent to source goods and services in Australia, the willingness of foreign companies to transfer skills and technology to Australians and the intention to undertake research and development in Australia.³

3.11 The rules applying to the 1997 release of acreages available for exploration retain the first criterion. DPIE stated that, since there had been no cases in the decade to 1996 which required the application of the secondary criteria to determine a successful bid, it had been replaced by a new secondary criterion which assesses exploration work proposed for the second half of the six year permit. It would appear that DPIE have successfully avoided any broader commitment to Australian industry: all pretence at harnessing this resource to benefit Australian employment and industry has been stripped away.

3.12 Since it is a Federal Government decision whether to issue an exploration permit or not, the DPIE information kit may present a good opportunity to do more than merely make a passing reference to the local content policy. It is inappropriate that DPIE officers do not concern themselves with Federal Government policy relating to maximising local industry participation and indeed this is against the one-stop government shop strategies being applied to a broad range of services.

3.13 At the very least, DPIE officers should promote governmental expectations with respect to local content actively and early in discussions.

3.14 After gazettal of an oil or gas discovery, the exploration company has the right to apply for a production licence,⁴ which it may choose to sell to another company. Any conditions attaching to that licence transfer to the developer. The location of the discovery is made public through the gazettal process. In the Communication section of Chapter 4, the briefing sessions run by developers for suppliers is described.

3 1989 IST report, p 19

4 If the discovery is not considered to be commercial in the short term, the discoverer may apply for a retention lease.

3.15 Recommendation 3.1

The Committee recommends that the Minister for Primary Industries and Energy direct his Department to require those seeking exploration permits or licences if their project proceeds to production to commit themselves to:

- **maximising opportunities for local industry involvement and providing details of how this will be achieved;**
- **providing data which will allow analysis of value added in Australia;**
- **maximising the transfer of skills and technology to Australians; and**
- **undertaking research, development and design in Australia to the maximum extent possible.**

3.16 Recommendation 3.2

The Committee recommends that the Federal Government use information gathered as part of permit processing to ensure Australian industry is aware of forthcoming major oil and gas project requirements.

Major projects facilitation

3.17 A major projects facilitation unit was set up in DIST in 1992 to counter an industry perception that government approval processes were prone to delays, duplication, conflict and uncertainty. It provides a facilitation service for viable new developments requiring Federal Government approval where capital expenditure is expected to be at least \$50 million. This unit did not play a role in the first three phases of the NWS gas project but is expected to be involved in the expansion of the project.

3.18 The Prime Minister appointed Mr Bob Mansfield to undertake the role of major project facilitator, to ensure that ‘speedy approvals are given to major nation-building investment proposals which conform with Government policy’.⁵ Mr Mansfield reports to the Prime Minister and his secretariat is provided by DIST.

3.19 In mid – 1997, DPIE set up its own unit to promote ‘minerals processing and energy projects, including commodity/ technology/ service export packages’.⁶ It will enable DPIE ‘to be more active in promoting major project development in resources and energy and will act as a readily identifiable contact and coordination point for key projects’.⁷

3.20 It is not clear why it is necessary for there to be this duplication at the Federal level to deal with major project facilitation or how it will streamline the

5 Howard, Hon. J: *House of Representatives Debates*, 5.3.97, p 2011

6 DPIE handbook: *Petroleum exploration and development in Australia*, 1997, p 21

7 DPIE: submission 32.03, p 1

processes. What does seem clear is that a contrary message is being sent to applicants for petroleum permits: the existence of three separate major project initiatives and contact points in the 1997 DPIE handbook, *Petroleum exploration and development in Australia*, does not suggest efficiency.

3.21 This is an example of the multiplicity of groups set up by Federal and State Governments, many of which appear to have a very narrow focus or to overlap each other.

3.22 Recommendation 3.3

The Committee recommends that the Federal Government set out clearly the functions of the Federal and State organisations involved in major project facilitation and their relationship with each other.

Industry assistance programs

3.23 There is evidence, dating from reports published in the early 1990s, indicating firms lack knowledge of even the most common programs to assist industry and confusion about how to access programs.

3.24 In 1995 AusIndustry was launched to provide Australian business with a single point of contact for information and referral services on research and development, innovation, access to advanced technologies, business and strategic planning, quality programs, benchmarking and business networking. Through this single access point over 500 business assistance programs run by Federal and State levels of government and the private sector could be accessed.

3.25 Mr Higgins, Secretary to DIST stated to the Committee that over 7 000 firms receive support through AusIndustry annually and that \$100 million will be provided in business assistance this financial year.⁸ The Committee is concerned that this activity level has not produced stronger outcomes with respect to local content outcomes.

3.26 In 1997 Mr David Mortimer, TNT Chairman, headed a review which examined the Government's financial support for business. The review stated that this overarching program was essentially a 'bandaid' over a cumbersome system of ad hoc policies and programs delivered largely in isolation from each other, resulting in perceptions of inequity and inconvenience and cost to firms trying to access them.⁹

3.27 The Mortimer review recommended changes in the funding emphasis, delivery of programs and their management. It proposed that programs be delivered by a single administrative unit within the relevant agency (DIST, DPIE

8 Higgins, R, Secretary to the Department of Industry, Science and Tourism: *Transcript of private briefing*, 26.6.97, p 7

9 Mortimer, D: *Going for growth*, June 1997, pp 190 – 191

and Austrade), which would also be responsible for consistency of approach within the agency.¹⁰

3.28 In response to the Mortimer review, the Government announced in December 1997 the allocation of \$11 million a year over four years to promote this country as an investment location. A new agency, Invest Australia, will be responsible for providing advice on strategic direction and analysis of investment opportunities and proposals, existing major projects facilitation functions, national investment promotion activities and coordination with State and Territory Governments on investment promotion and facilitation. The Prime Minister also announced that Mr Mansfield will be a strategic investment coordinator, responsible for liaising with relevant Departments through a streamlined process and will identify and advise Cabinet about structural impediments which may justify policy changes.¹¹

3.29 The Committee welcomes the announcement of these initiatives, but notes that the duplication between DPIE and DIST in relation to major project facilitation still exists (see paragraph 3.3.19). The Committee also notes that these initiatives do not appear to address concerns about the lack of cohesion referred to in paragraph 3.3.26.

3.30 Research by the Bureau of Industry Economics (BIE) indicated that some types of services are better received by industry through peak bodies. For example, the BIE report on business linkages in Australia stated:

... industry associations appear to have a better record in providing assistance relating to operational or efficiency outcomes, while governments are better in helping firms to access markets.¹²

3.31 The Committee suggests that the Federal Government make better use of these existing networks.

3.32 Any changes need to:

- establish clear lines of accountability and measurable performance criteria to ensure value for money;
- be marketed to industry; and
- be streamlined to reduce administrative costs and provide a 'one stop shop' to industry.

10 Mortimer, D: *Going for growth*, p 191

11 Investing for growth, address by the Prime Minister, Hon John Howard MP, Canberra, 8.12.97

12 Bureau of Industry Economics: *Beyond the firm*, AGPS, Canberra, 1995, p 264

3.33 Recommendation 3.4

The Committee recommends industry assistance programs be delivered by a single administrative unit within the relevant agency (the Department of Industry, Science and Tourism; Department of Primary Industries and Energy; and Austrade), which would also be responsible for consistency of approach within the agency.

3.34 Recommendation 3.5

The Committee recommends any changes to industry assistance programs be marketed to industry and streamlined to reduce administrative costs and provide a 'one stop shop' to industry.

Local content

National policy

3.35 Following the 1989 Committee report on the NWS, an agreement was reached by all State and Federal industry ministers meeting as the Australian Industry and Technology Council (AITC). This generated a policy relating to participation by the domestic industry in major projects. Inter alia, it stated that local industry should be given full and fair opportunity by developers to participate in major projects. Such projects should offer wider economic benefits through industry development, in addition to royalty and taxation returns. Mandated levels of local content, prescribed skills, technologies and other standards, and legislation to make the policy binding on developers were specifically rejected in the policy.¹³

3.36 In the general context of economic reform, the Federal Government during the period 1983 to 1996, as a means of promoting international competitiveness, steadily reduced assistance to local industries. Government policy has been that the primary responsibility for ensuring industry participation in resource development rests with the private sector.

3.37 The 1990 AITC policy for industry participation in major projects has been criticised for being loosely worded, never reviewed, its operation not being monitored and having been deliberately ignored by a number of project developers.¹⁴

Considering the advances in technology, skills and industrial development and the positive effect on the balance of payments in Australia that could be

13 Australian Industry and Technology Council, *Development of consistent Commonwealth and State Government policies on Australian industry involvement in major projects*, 1990 (exhibit 16)

14 HEMA: submission 26, p 7

achieved through this policy, HEMA has recommended to the Federal Government that it strengthen the existing National Policy by bringing it to the attention of developers prior to them undertaking a major project and asking them how they intend to give effect to the existing policy by working with Australian industry. If they are unable to do so they should be asked to give reasons why this cannot be achieved.

Such a step would not interfere with developers' operations, would not involve any added costs and could serve to identify weak areas in Australia's ability to supply into various projects. In which case, HEMA maintains a win win situation for both developers and Australian industry could be reached.¹⁵

3.38 In a 1991 speech, the then acting Deputy Secretary of the Department of Industry, Technology and Commerce (DITAC), Mr A Bain enunciated the role of government as 'to establish the macro- and micro-economic conditions within which industry operates. Given those conditions, it is up to industry to determine its own strategy for being involved (or not involved) in major projects'.¹⁶ Woodside has advocated the same objective.¹⁷ Notwithstanding the establishment of other government-sponsored forums involving industry, this policy of non-intervention appears to have continued at the Federal level over the last six years.

National Liaison Group

3.39 The National Liaison Group (NLG) was established specifically for the NWS project at the initiative of the Federal Government after renegotiation of the domestic gas agreement in 1985. It provided an active forum for the joint venture partners, unions, industry and Federal and State governments to raise issues of concern and disseminate information on the project to Australian industry. The NLG was jointly chaired by the Federal Minister for Resources and the (WA) Minister for Resources Development, with a secretariat provided by the latter Minister's department.¹⁸

3.40 Some witnesses to the inquiry spoke of it being a successful mechanism in raising the levels of Australian content in the North West Shelf project.¹⁹ Woodside on the other hand stated that the NLG made no difference to its decisions.²⁰ However, in opposing the re-introduction of a similar mechanism, Mr Agostini, the General Manager of Woodside's North West Shelf Operations, later

15 HEMA: submission 26, pp 7–8

16 Bain, A, Acting Deputy Secretary, DITAC: address at a seminar on local content, Sydney, 13.2.91 (one of the papers contained in exhibit 13)

17 Agostini, D, Woodside: *Transcript of evidence*, p 62

18 DPIE: submission 32.01, pp 11-12

19 HEMA: submission 26.01, p 2. DRD: submission 33.01, p 9. AMWU: submission 30, p 7.

20 Woodside: submission 23, p 25

said that the NLG did cause certain actions with respect to the Goodwyn A platform:

Ultimately, it became more interventionist in terms of causing certain results. The Goodwyn modules in Jervoise Bay were the ultimate outcome of that intervention. That we see as negative. We have suggested in our submission, and I did again today in my opening statement, that that is a destructive process and does not add to, in fact it has the potential to detract from, the viability of resource projects. We would not recommend that it be repeated.²¹

3.41 The NLG was wound up in 1993 following the effective completion of Phase III of the project.²² This also marks the end of reporting of local content levels to the Federal Government.

Oil and Gas Consultative Group on Local Content

3.42 The next initiative following the Committee's 1989 report was the formation in 1990 of the Oil and Gas Consultative Group on Local Content (OGCG). Its purpose is:

to facilitate competitive Australian industry's participation in oil and gas developments and production in Australia, ... by

- *encouraging the opening of opportunities to supply major packages to developers;*
- *encouraging the development of supplier capabilities; and*
- *providing an informal forum for mediating issues between parties represented by members of the OGCG.²³*

3.43 A major difference between this and the NLG forum is the fact that Ministers do not chair OGCG meetings. Also NLG secretariat support was provided by the WA public service, not DITAC/ DIST.

3.44 There is some uncertainty whether the OGCG has ever effectively operated. DIST has stated that it is not an effective mechanism but could not indicate the use of any formal evaluation procedures in making this judgement.

21 Agostini, D, Woodside: *Transcript of evidence*, p 64

22 Woodside: submission 23 p 17

23 Holthuyzen, M, FAS Industry B Division, DIST: letter to the Committee Secretary, dated 23.4.97, p 2

3.45 While not disbanding the OGCG, the department has ceased to provide secretariat support. The OGCG has had only one meeting since August 1994. The contrast between the significant role listed at paragraph 3.3.42 and DIST's behaviour is stark and not adequately explained. DIST's 'information paper' presented to the Committee in March 1997 neglected to mention that the OGCG is virtually moribund.

3.46 It is difficult to see how the department can justify its view that it encourages Australian industry participation if it continues to render inoperative the forum established to achieve that end.

WA policy

3.47 The West Australian Government's legislation and practices apply to all of the NWS project's onshore plant et cetera. In July 1996 the State Government attempted to overcome some of the perceived shortcomings of the national local content policy by releasing a State policy which, among other things, contains more monitoring procedures.²⁴ It is a statement of expectations aimed at encouraging the use of local industry, encouraging best practice and opening lines of communication between sections of the major resource project industries. It does not expect developers to pay a premium by buying local goods and services.

3.48 Complementary to this policy is the establishment of a WA local content advisory group, which addresses the need for developers to understand State and Federal policies and their obligations to comply, including reporting and active monitoring. Woodside stated the view that:

In developing its policy on local content, the Western Australian government has acknowledged that economic efficiency is not enhanced by government intervention and that the key to increasing the levels of local industry participation is to work with industry to ensure that local goods and services are competitive in terms of quality, quantity and price.

As a result, the Western Australian government's policy on local content is based on the principle of full, fair and reasonable opportunity for local suppliers to compete with outside suppliers and is consistent with the policy position that Woodside has applied to local industry participation since the inception of the North West Shelf gas project.²⁵

24 WA Government: submission 11, p 5 and appendix 1
25 Agostini, D, Woodside: *Transcript of evidence*, p 62

3.49 The WA Trades and Labour Council expressed its view of the policy in the following terms:

*We have seen the State Government's policy on local content and we believe it is a waste of time. This State Government's policy is full of expectation: it expects the developers to do the right thing. As far as we are concerned, it is just Rafferty's rules out there. The developers just go and do what they like without any checks or balances.*²⁶

3.50 This view is supported by Dr Evan Jones, an academic from Sydney University:

At least, the policy is on paper, and it embodies the full and fair opportunity to participate in all phases of development projects. However, there has already occurred some subtle watering down of the 1995 11 point draft. In particular, requirements on specifications, reporting and relations with other (international) parties have been watered down in the recently released pamphlet Promoting Western Australian Capabilities: local content.

*All these issues are extremely important to a workable local content policy. When phrases like 'reasonable', 'as far as practicable', 'providing regular reports', are newly embodied in the policy, one can only infer that the parties to whom the policy is addressed are aware of the desirability of continuing to enhance their operational flexibility in the face of contrary political imperatives. Further, one is forced to infer that the resource companies are still dragging their heels and are entering into this process with something less than the desirable attitude (deference to due process?). Constant vigilance and political toughness from all levels of government are thus in order down the track.*²⁷

Information collection and use

3.51 The Committee believes that the effectiveness of current policy and the desirability of alternative policy options cannot be evaluated properly without comprehensive information about contracts which have been let and the amount of

26 Ferguson, J, Assistant State Secretary, Australian Manufacturing Workers Union: *Transcript of evidence*, p 85

27 Jones, E: submission 21.01, pp 6 – 7

value added in Australia in the performance of those contracts. For that information to have credibility, it should be collected in a transparent manner which eliminates any perception of bias or distortion.

3.52 It is essential that information about possible future contract requirements also be provided to Australian industry at the first possible opportunity. Evidence was received regarding the Western Australian Government's policy and practice. As previously mentioned, the policy is a statement of expectations aimed at encouraging the use of local industry, encouraging best practice and opening lines of communication between sections of the major resource project industries. The WA Government has published, implemented and followed up the policy. The Committee received no evidence suggesting that industry perceived the WA Government's actions as burdensome. The Committee believes that it would not be onerous to expect at the Federal level at least the same level of commitment to measuring local content as displayed by the WA State agencies.

3.53 Information about future contract requirements and the amount of value added in Australia in contracts being undertaken or completed should be provided by industry to DIST. It should then be analysed by appropriate groups (such as ISONET) to identify market opportunities for the provision of goods and services, facilitation of technology transfer and value-adding.

3.54 A system which could be considered by DIST was detailed in the 1994 report on Government purchasing by the Committee. The Department of Defence developed a purchasing database and information system to contain information relating to:

- contract value;
- contractor name;
- industry segment;
- country in which expenditure occurs;
- actual expenditure on the contract, and
- Australian industry involvement commitments (where applicable).²⁸

3.55 Recommendation 3.6

The Committee recommends that a working group consisting of the Department of Industry, Science and Tourism and relevant State Government agencies develop an agreed national methodology for assessing and validating Australian local content. The Committee anticipates that such a methodology would involve analysis below the primary level of contract and indicate the amount of value adding that takes place in Australia.

28 House of Representatives Standing Committee on Industry, Science and Technology: *Buying our future*, March 1994, p 114

3.56 Recommendation 3.7

The Committee recommends that a local content group be established in the Department of Industry, Science and Tourism to bring about attitudinal change towards the use by petroleum developers of competitive Australian goods and services. This group should collect information about:

- **future requirements of petroleum developers for goods and services; and**
- **the nature and value of contracts let by the developers and the amount of value added in Australia in the execution of those contracts.**

The local content group, in conjunction with ISONET, should identify market opportunities for Australian industry and promote value adding in Australia and the transfer of technology to local industry.

3.57 Recommendation 3.8

The Committee recommends that the Oil and Gas Consultative Group on Local Content be reactivated, be properly resourced by the Department of Industry, Science and Tourism and continue its role with the Minister as Chair.

Co-ordination

3.58 In the 1989 report, the Standing Committee on Industry, Science and Technology recommended that strategies be put in place between the two major departments at the Federal level, DPIE and DITAC, to ensure cohesive action and consultation occurs across the Federal level. The Government response indicated that no action would be taken in this respect. During the current inquiry the Committee heard evidence that:

... no departments work with each other. If there is cross-referencing, it is minimal. The Department of Primary Industries and Energy is not concerned with industry policy. It never has been.²⁹

3.59 Mr Geoff Suttie, from the WA Department of Resources Development, commented on the Federal bureaucracy's performance, and DIST's in particular, in the following manner:

Where there is not a lot of activity ... is in Canberra There is virtually no activity that I am aware of there at all: in fact there is negative activity ...³⁰

29 Dowe, R, HEMA: *Transcript of evidence*, p 101

30 Suttie, G, DRD: *Transcript of evidence*, p 44

3.60 This lack of adequate performance was reinforced in the Committee's view by DIST's inability to provide the Committee with timely evidence on any of the terms of reference for this inquiry. The Committee received a submission from DIST at a private briefing in July 1997, and then only as a result of pressure applied over some months. In his analysis of the standard of DIST's submission, Dr Evan Jones, an academic commentator, stated:

Well, it's really not good enough. There is a text-bookish element to this submission that is entirely inappropriate for the seriousness of the problem at hand. This element indicates that either the Department does not take parliamentary inquiries seriously or that departmental personnel are out of their depth.³¹

3.61 The Committee hopes that DIST, in recognition of Parliament's right to investigate current policy, will be better prepared to provide pertinent and timely background information and satisfactory analysis to the Committee's next inquiry.

3.62 The Committee believes that the performance of the Federal bureaucracy, and DIST in particular, has deteriorated since the 1989 parliamentary inquiry. If industry participation levels since that time have improved, and the Committee is not convinced this is the case, neither DIST nor DPIE could reasonably claim credit. The Committee can only conclude that DIST is no longer a key player in maximising opportunities for local industry participation in major projects and that the important policy action has shifted to Western Australia.

31 Jones, E: submission 21.02, p 1