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Mr. Bill Pender  
Committee Secretary  
Standing Committee on Primary Industries and Resources  
House of Representatives  
Parliament House  
CANBERRA ACT 2600  
By email: [pir.reps@aph.gov.au](mailto:pir.reps@aph.gov.au)

25 July 2008

|                |         |
|----------------|---------|
| Submission No: | 32      |
| Date Received: | 25-7-08 |
| Secretary:     |         |

Dear Mr. Pender,

**Supplementary submission - Inquiry into the Draft Offshore Petroleum  
Amendment (Greenhouse Gas Storage) Bill**

Please thank the Committee for the grant of leave to lodge a supplementary submission.

**1. Issues of sovereign risk**

WWF notes that witnesses from the Australian Petroleum Production & Exploration Association (APPEA)<sup>1</sup> and the Department of Resources, Energy and Tourism<sup>2</sup> argued that a failure to protect the rights of existing title holders would or may have an adverse impact on Australia's reputation as a country with "low sovereign risk".

WWF believes that the concept of sovereign risk is unlikely to have application in the present circumstances. Whether or not a country has a reputation of having low sovereign risk is a question of opinion imputed to future prospective investors. In circumstances where climate change has been recognized as a grave threat to human civilization and the natural environment by all major governments in the world, and by BHP-Billiton, BP, Rio Tinto, Anglo-American and numerous other major mineral, oil, gas, petroleum and other resource companies, and the ANZ Bank, Westpac Bank, Macquarie Bank, National Australian Bank, Commonwealth Bank and numerous other financial institutions, it is very difficult to accept that the hypothetical future investor would find it either unreasonable or indeed surprising that Australian governments take action to facilitate the development of one of the key solutions to climate change – carbon, capture and storage (CCS) fossil fuels – or that such action might have an impact on existing titleholders.

<sup>1</sup> Mr Mullen, Deputy CEO of APPEA. Hansard Friday, 18 July 2008, page 20.

<sup>2</sup> Mr Miller, Policy Officer, CCS Legislation Section, Department of Resources, Energy and Tourism. Hansard Friday, 18 July 2008, page 32.



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2

Indeed a failure to provide governments with the power to take action to facilitate the development of carbon, capture and storage is to provide existing titleholders, who gained their title only for the purpose of winning petroleum, a veto over the creation of a new industry, and indeed a monopoly in that industry wherever an existing title is in existence.

WWF submits that Australia's reputation will be adequately protected if the Government's powers to limit, modify or acquire the rights of existing titleholders are exercised reasonably, that the exercise of the power is subject to judicial review (as is guaranteed by the Australian Constitution in the case of the Commonwealth) and that reasonable compensation is paid if the title or other existing rights are acquired by the Australian Government.

However even if the concept of sovereign risk is applicable in the present circumstances, WWF submits that the High Court of Australia case *Commonwealth v WMC Resources Limited* (1998) 194 CLR 1 suggests that the reputation of Australia is so strong that the cancellation (without compensation) of petroleum permits in the national interest in the very recent past has had no impact on Australia's reputation as a low sovereign risk country. In that case a Western Mining Corporation subsidiary's petroleum exploration permits in the Timor Gap were cancelled without compensation (because they were not "acquired" by the Commonwealth). The premier annual international review of national competitiveness is the IMD *World Competitiveness Yearbook* (<http://www.imd.ch/research/publications/wcy/index.cfm>). In 1997 (the year before the WMC Resources case) Australia was rated the 18<sup>th</sup> most competitive nation in the world. Since then Australia has been successively rated 15<sup>th</sup> (1998), 12<sup>th</sup> (1999), 10<sup>th</sup> (2000), 11<sup>th</sup> (2001), 10<sup>th</sup> (2002), 7<sup>th</sup> (2003), 4<sup>th</sup> (2004), 9<sup>th</sup> (2005) 6<sup>th</sup> (2006), 12<sup>th</sup> (2007) and 7<sup>th</sup> (2008). In other words, a decision to directly impact upon the rights of an oil and gas titleholder in circumstances directly analogous to those at hand had no discernable impact on Australia's international competitiveness.

The Victorian Government has noted in its submission that over 80% of the Gippsland Basin is currently subject to petroleum titleholders. The Gippsland Basin has been identified as one of the key sites for CCS-related storage. Given the severe economic and environmental consequences of climate change, and the clear need for CCS to be part of the solution, it is clearly in the national – indeed international – interest that CCS storage to be given priority over existing petroleum titles and WWF would support the modification or acquisition of those petroleum titles for that purpose. WWF also supports the recommendations of the Victorian Government on page 8 of its submission to this Inquiry.

## **2. Shared Infrastructure**

WWF's submission noted that "*the development of CCS will require a massive amount of infrastructure at capture sites, for transport and at storage sites. In order to facilitate economic, environmentally and socially sound and efficient demonstration and commercialization of CCS, consideration should be given to developing a national interest criterion for selection of storage sites to be licensed for injection*" (pg 12). WWF notes that the Victorian Government (in its submission to this Inquiry) argued that "*the Minister [should] be given powers to direct the*



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*transfer of rights in petroleum infrastructure from the petroleum operator to the CCS proponent*". WWF support this recommendation and submits that the sharing of infrastructure should be considered as part of a "national interest" criterion.

WWF further notes that Part IIIA of the *Trade Practices Act 1974* provides an existing example of a procedure for granting third party access to (privately owned) facilities of national significance in particular electricity grids, natural gas pipelines and telecommunication infrastructure.

### **3. Expert Panel and impact test**

Further to WWF recommendation that an expert panel be established to determine suitability for the issue of a site closure certificate, WWF recommends that the responsibility of the panel be extended to advise the Minister in relation to the application of the "impact test" as proposed by the Victorian Government on page 10 of its submission.

WWF also supports the Victorian Governments recommendation to broaden the "impact test".

Please do not hesitate to contact either me or Ms Kellie Caught, Climate Change Policy Manager (0406 383 277), if you have any queries.

Yours faithfully

A handwritten signature in black ink, appearing to read "Paul Toni". The signature is fluid and cursive, with a large initial "P" and "T".

Paul Toni  
Program Leader Development and Sustainability