23 August 2002

Mr Fred Cook
~~Secretary~~
Inquiry into Resources Exploration Impediments
C/- House of Representatives
Standing Committee on Industry and Resources
Parliament House
CANBERRA ACT 2600

Dear Mr. Cook

RESPONSE TO INQUIRY INTO RESOURCES EXPLORATION IMPEDIMENTS

Origin Energy Ltd. (Origin) welcomes this opportunity to respond to the Inquiry's terms of reference. Origin is active in oil and gas production and is engaged in both onshore and offshore exploration. Furthermore, Origin through its 85% owned subsidiary, Oil Company of Australia (OCA), is engaged in extensive onshore exploration in Queensland. The recent activities of Origin and OCA have included the development of coal-seam gas resources in Queensland (Peat, Moura, Fairview and Durham; OCA) and exploration programs in the Bass and Otway basins in Victoria and the Perth Basin in Western Australia (Origin).

This submission addresses selected elements of the Inquiry Terms of Reference from an onshore perspective. Origin considers that issues dealing with offshore exploration impediments will be comprehensively considered by other industry participants (noting that some offshore and onshore issues raised in the terms of reference are complimentary in nature).

Not all of the elements contained within the terms of reference are dealt with in this submission. Cultural Heritage and Native Title are germane to onshore operations in Queensland and on these points Origin offers the following comment.

OCA has previously commissioned research to identify impediments to exploration investments (particularly in Queensland, the key jurisdiction of its operations). A summary of this research is presented below.

1. Native Title

The principal issues raised by native title for resource developers are:

- Security of title; and,
- Delay

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1.1 Security of Title

The *Native Title Act 1993* (NTA) as amended provides improved guidance to security of title questions raised by native title issues. The recent decision by the High Court in *Ward v Western Australia* has provided further certainty in respect of issues concerning extinguishment of native title, how native title and other co-existing rights interact at common law and in relation to the vesting of minerals in the Crown.

The relationship between land access powers contained in State resources and land legislation and the way in which those powers must now be exercised under the NTA is critical to secure outcomes in the resources sector. For example, at least one State Government believes that section 24KA of the NTA may not be able to be used for land access for gas pipeline infrastructure in that State, because of the interaction of the State Pipelines legislation and section 24KA. This is clearly contrary to the stated purpose of section 24KA. Secondly, the interaction of section 24MD(6B) of the NTA and another State's state development legislation creates a situation where a matter may be sent for objection hearing to the independent body only to be thrown out for lack of jurisdiction. The objection may only be heard if the objecting indigenous parties 'so request' (section 24MD(6B)).

These anomalies (and there are no doubt others which will be identified by submitters) require correction to enable certainty of outcome for land access processes entered into in good faith by proponents.

1.2 Delay

The concerns below relate to delays associated with negotiating Native Title and these issues still require the attention of Parliament.

Timely and efficient access to land is critical for project proponents in the resources sector. Without timely access, capital investments can be compromised to the point where investment will flow elsewhere, either to other parts of the country, other industry sectors or overseas.

The negotiations required for access to land for mining and petroleum projects are expensive, time-consuming and are undertaken in an environment of uncertainty. In the absence of agreement, the 'right to negotiate' provisions of the NTA take up to 14 months to complete. If no agreement can be reached in Indigenous Land Use Agreement (ILUA) negotiations, the only fallback option for miners and petroleum producers is to invoke the 'right to negotiate'. If those ILUA negotiations take 9 to 12 months as it is, the overall period for obtaining access to land may be up to 2 years and 2 months. Some companies have therefore elected to run an ILUA and initiate the right to negotiate at the same time- the so-called "Two-track system" to reduce the risks of delay, but clearly at an increased cost.

Greater certainty could be provided by establishing clear deadlines for ILUA negotiations; at the expiry of which, right to negotiate provisions (or National Native Title Tribunal intervention) would be triggered.

The costs of negotiation can be high. As native title is a communal title, a range of interests have to be consulted properly and have to be given time to make an informed decision. This means that for a linear pipeline project of, say, 200 km, there may be five or six overlapping native title interests seeking to be consulted and negotiated with. Each

native title interest group typically provides two or three representatives to attend negotiations, some of which may live nowhere near the proposed route of the pipeline. This means as many as 10, and possibly up to 18, people may need to be paid to attend negotiations.

Authorisation of negotiations by claimant groups, while essential for getting an ILUA registered, could be streamlined. Costs of such meetings can be reduced by documenting existing decision making processes only once, instead of for each future act under consideration. In addition, funding could be provided to representative Bodies to enable multiple authorisations to occur at one meeting.

Consultancy fees are sought by the indigenous representatives to attend meetings. Such fees range between $100 to $200, depending on the project and the negotiated settlement reached about such costs. Accommodation and travel is also paid for these representatives to attend. The project proponent very often pays for the provision of legal advice to native title claimants, to assist the native title claimants to feel more comfortable with regard to the process.

On face value, these costs are not unreasonable, however, they can quickly accumulate. On one petroleum lease negotiation recently undertaken, 6 meetings at $6,000 per meeting of the indigenous negotiating team (10 members) were held. In addition, 3 meetings of the larger claim group (40 to 50 people) were required to authorise the negotiating team to act in accordance with the traditional law and custom of the group concerned. These cost $10,000 each. A project officer from the Representative Body was also funded by the proponent at a cost of approximately $10,000. This officer assisted (very successfully) with the facilitation of the meetings required.

Legal advice to the indigenous groups may cost up to $35,000, but may be as little as $20,000. This figure is largely dependent on the length of time the negotiations take.

Without taking into account the costs of the compensation package or the internal costs of the company, in this example nearly $100,000 has been expended. This is without agreement, or with any certainty of agreement if an ILUA is being sought. Such a sum is a considerable expense when it is unclear if there will be an agreed outcome or a timeframe for agreement. As there are no objective standards of value agreed upon for impact on native title, and no Court precedents to give guidance, astute negotiation is the only means of reaching what must be a mutually acceptable agreement.

Costs of negotiation over future acts are dealt with separately from costs applied to work on native title claims. This is strange not least because Representative Bodies and State Governments are constantly complaining of the lack of resources available to run native title processes. If money was pooled and applied to both sets of processes, better outcomes may result. For example, expenditure on authorisation of claims and future acts could be applied as a block of funding. It simply requires funding by Governments of negotiation and claims expenditure at the same time, rather than at different times.

Recommendations:

- That consideration is given to adopting the party identification aspects of the 'right to negotiate' provisions at the start of ILUA negotiations, to enable a clear and unambiguous identification of the indigenous parties to the negotiations.

- That authorisation processes undertaken for native title claims be made available to future act processes, so that expenditure does not need to occur twice on authorisation processes

- That the National Native Title Tribunal not register claims which clearly involve similar ancestors, to avoid the creation of institutionally embedded claimant groups who ought to be negotiating together, not separately

- That the Government sponsor talks between industry and ATSIC to streamline funding available for future acts and claims. If future acts and claims were not treated separately for funding purposes, expenditure made by proponents could be combined with ATSIC funding to provide more efficient outcomes on both claims and future acts

2. Cultural Heritage

Commonwealth Cultural Heritage powers are another source of uncertainty for investors, and it is the view of Origin that the new Indigenous Cultural Heritage legislation is passed as soon as possible. Various States can then move to pass complementary schemes, to enable the legislation in this area at the State level to be changed.

There are effectively no fallback options with Cultural Heritage issues. If agreement cannot be reached on;

- The amount of Cultural Heritage assessment required; or;
- The number of Aboriginal people required to undertake assessment and/or monitoring of construction work,

then there is currently no instrument for recourse.

The various State Governments are either unwilling or unable to intervene, and the position of Director of Cultural Heritage envisaged by the proposed Commonwealth legislation has not yet been created. This officer will have mediation powers, but they are not yet available.

This can mean substantial delay and in some cases significant expenditure. If no fallback option is available to proponents, they must simply keep negotiating until agreement is reached.

Recommendation:

- That the Commonwealth move to table its proposed indigenous Cultural Heritage legislation as soon as practicable, to end this particular uncertainty. The appointment of a mediator within the framework of Cultural Heritage will assist in the bringing about timely resolution of disputes regarding assessment and monitoring.

3. Relationships with Aboriginal People

Indigenous participants in the application process for exploration leases should be furnished with as many opportunities as possible to enhance their understanding of critical issues for businesses proposing an exploration project.

Assistance in the form of training programs could be provided to Aboriginal groups in order to enhance their participation in negotiations with project proponents. A great part of native title negotiations are spent explaining how investment decisions are made. If an insight can be given to Aboriginal people as to how resource companies decide and plan investments, agreements could be reached more quickly and easily.

Recommendation:

That education be provided by ATSIC in partnership with peak industry bodies to Aboriginal groups, corporations and representative bodies in commercial issues, including how companies make investment decisions, requirements of certainty for giving enough comfort to make investments, resource industry risks, resource industry economic profiles etc

4. Summary

Origin considers that steps need to be taken to streamline the process by which native title and Cultural Heritage issues are dealt with. Consistency across jurisdictions is as important in upstream energy investments as it is in downstream trading and retailing activities.

Uncertainty at the negotiation stage of an investment influences the viability of the economic development of resources. OCA's critical role in developing Queensland's coal seam gas resources will support the development of cleaner electricity generation in that State and delay costly trans-national pipeline projects. These benefits need to be considered as well as the needs and wishes of traditional landowners when assessing the drivers of investment projects.

Origin would be pleased to discuss aspects of this submission with the Inquiry should the opportunity arise.

Yours sincerely

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