

Chapter 2

Use of fees to establish NOPR

The need for a national regulator

2.1 Much of the contention around the bill arises from the issue of whether there should be a National Offshore Petroleum Regulator (NOPR). The bill itself does not establish NOPR; it merely provides an equitable means of funding its establishment. (This may be why the firms who would be regulated by NOPR chose not to make submissions.) Nonetheless, there would be no need for Part 1 of the bill were there not to be a NOPR.

2.2 In 2008, the Productivity Commission was asked to investigate the upstream petroleum sector.¹ Following the release of the Productivity Commission's report,² the Minister for Resources and Energy announced that a single national offshore petroleum regulator would be established and commence operation on 1 January 2012.³

2.3 The Department of Resources, Energy and Tourism (DRET) estimates that the annual administrative costs to the regulators would drop from around \$16 million to \$12 million under a national regulator, but the large savings would accrue to the industry as they faced significantly less compliance cost and shorter approval times.⁴ This would in turn lead to larger and quicker collections of various state and federal taxes. They agreed with the Productivity Commission:

The commission found that... there was considerable scope to reduce the regulatory burden, to remove unnecessary duplication and to provide greater consistency in the regulation across Australia.⁵

2.4 The committee notes that there is an ongoing regulatory burden on states like Western Australia. This will most certainly remain the case while agreement is being sought on the role of NOPR through to final implementation. The committee also notes that only a proportion of this burden has been supported through the registration fees reimbursed to states. For a period of time as negotiations to resolve these

1 Source: <http://www.pc.gov.au/projects/study/upstreampetroleum>.

2 A key recommendation of the Productivity Commission's report was the establishment of a national offshore petroleum regulator.

3 The Hon. Martin Ferguson AM MP, Minister for Resources and Energy, Minister reaffirms government commitment to safety in the oil and gas industry, Media Release, 5 August 2009.

4 Mr Peter Livingston, Acting General Manager, Petroleum Regulatory Reform, DRET, *Proof Committee Hansard*, 31 March 2010, p. 13.

5 Mr Peter Livingston, Acting General Manager, Petroleum Regulatory Reform, DRET, *Proof Committee Hansard*, 31 March 2010, p. 10.

regulatory issues take place the withdrawal of these registration fees will see an increase in the financial burden on the states.

2.5 The Western Australian Government does not support a national regulator and, unless there is further negotiation, will not agree to its territorial waters coming under the administration of NOPR. The argument of efficiency was rejected:

CHAIR—In other words, you can achieve the goal of a more simple and efficient operation but still have the joint authority.

Mr Sellers—That is certainly our belief.⁶

2.6 Beyond that, the argument was basically one of conservatism:

We do not see merit in shifting the system that we already have...⁷

2.7 It was also mentioned that a large proportion of current and potential offshore gas fields are off the coast of Western Australia.⁸

2.8 While they are off Western Australia, much of the current and prospective fields are in Commonwealth not Western Australian waters:

...the bulk of Australia's resources of petroleum are found in the Commonwealth offshore area adjacent to Western Australia. I think that, generally, over 75 per cent of the petroleum resources are in those areas.⁹

2.9 According to DRET, Western Australia is the only recalcitrant state.¹⁰ The establishment of NOPR can still proceed without the involvement of Western Australia, and there will still be benefits from replacing multiple regulators with two regulators, even if a single regulator would be better still.

2.10 Another suggestion was that there could be a single regulator if all other governments agreed to let the Western Australian Government be that regulator.¹¹ The Environment and Biodiversity Act may be an example of how this might work.

2.11 Assistant Professor Tina Hunter puts forward arguments in favour of a NOPR:

This model provides the greatest consistency in decision-making and regulatory enforcement across all jurisdictions, and minimize duplication requirements for all stakeholders. This model has the potential to consolidate existing petroleum expertise. In addition, there could be gain

6 Mr Richard Sellers, Director General, WA Department of Mines and Petroleum, *Proof Committee Hansard*, 31 March 2010, p. 3.

7 Mr Richard Sellers, Director General, WA Department of Mines and Petroleum, *Proof Committee Hansard*, 31 March 2010, p. 4.

8 Mr William Tinapple, Executive Director, WA Department of Mines and Petroleum, *Proof Committee Hansard*, 31 March 2010, p. 4.

9 Mr Peter Livingston, Acting General Manager, Petroleum Regulatory Reform, DRET, *Proof Committee Hansard*, 31 March 2010. See also Mr Tinapple, p. 4.

10 Mr Peter Livingston, Acting General Manager, Petroleum Regulatory Reform, DRET, *Proof Committee Hansard*, 31 March 2010, p. 13.

11 *Proof Committee Hansard*, pp 8 and 15.

from significant economies of scale in administrative and support functions.¹²

2.12 A joint submission by the Australian Workers' Union and the Maritime Union of Australia also welcomed the establishment of NOPR.¹³

Committee view

2.13 The Committee did not hear any compelling argument for having multiple authorities with jurisdictions over national waters and the various state waters. It therefore welcomes the establishment of a national regulator and regrets the hesitancy of the Western Australian Government in cooperating in its establishment.

Funding NOPR

2.14 Part 1 of the bill provides for temporary funding to establish NOPR by amending the Act to enable the Commonwealth to retain registration fees currently collected under the *Offshore Petroleum and Greenhouse Gas Storage (Registration Fees) Act 2006*.¹⁴

2.15 The bill will amend section 76 of the Act which currently states:

(1) This section applies if, during a particular month, the Commonwealth receives an amount (the *received amount*):

a. That is payable under:

- i. Chapter 2, 4 or 7 of this Act (other than an amount paid for the grant of a cash-bid petroleum exploration permit, a special petroleum exploration permit or a section 181 petroleum production license); or
- ii. Section 4 of the Annual Fees Act; **or** [emphasis added]
- iii. Section 5 or 6 of the Registration Fees Act;** [emphasis added]

In connection with a title or other document that relates to:

- iv. A block; or
- v. An infrastructure facility; or
- vi. A pipeline...¹⁵

2.16 The bill proposes that the 'or' in subparagraph 76(1)(a)(ii) be omitted. It also proposes that subparagraph 76(1)(a)(iii) be repealed. (The provisions to be repealed are bolded in the above extract of the bill.)

12 Assistant Professor Tina Hunter, *Submission 4*, p. 6.

13 Australian Workers Union and Maritime Union of Australia, *Submission 2*, p. 2.

14 Currently the Act requires that these fees, as well as the annual fees and other industry fees raised under the Act, be paid by the Government to the states and Northern Territory.

15 Section 76, *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

2.17 Although seemingly insignificant, this change will redirect \$15.3 million in 2010-11 and \$7.7 million in 2011-12 from the states and Northern Territory to the Commonwealth.¹⁶ The Government will use these funds to establish NOPR.¹⁷

2.18 In their submission the Department of Resources, Energy and Tourism stated that:

The legislation establishing NOPR will also establish transparent and accountable, full cost recovery arrangements for the new regulator...The present measure is not part of those on-going cost-recovery arrangements.¹⁸

2.19 Given the Government's intention to establish a full cost recovery arrangement for the operation of the NOPR in the legislation that it will introduce in 2011, the measure contained in Part 1 of the bill will only be effective for a limited period of time. The Department explains that this approach accords with the Productivity Commission's report which identified that these registration fees, which are a 1.5 per cent *ad valorem*¹⁹ tax on transfers and dealings in petroleum titles,²⁰ are inefficient.²¹

2.20 An argument against the bill is that it is premature:

...we consider it inappropriate to continue with the amendments for the Commonwealth to retain the registration fees before an agreement is reached on an acceptable regulatory model.²²

Until there is agreement between the Commonwealth and WA on the establishment of a NOPR, legislation enabling the retention of registration fees by the Commonwealth should not be passed.²³

Committee view

2.21 The Committee sees value in reducing uncertainty by clarifying how the establishment of NOPR will be funded, even while negotiations about the precise powers and role of NOPR continues.

16 Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Bill 2010, Explanatory Memorandum, p. 4.

17 The Hon. Martin Ferguson AM MP, Minister for Resources and Energy, Second Reading Speech, *House of Representatives Hansard*, Wednesday 10 February 2010.

18 Department of Resources, Energy and Tourism, *Submission 3*, p. 3.

19 *Ad valorem* means 'in proportion to the value'. The Productivity Commission recommended that they be replaced by a fee that reflects the actual cost of registering transfers and dealings.

20 DRET, *Submission 3*, p. 3.

21 DRET, *Submission 3*, p. 7.

22 Mr Richard Sellers, Director General, WA Department of Mines and Petroleum, *Proof Committee Hansard*, 31 March 2010, p. 2.

23 Assistant Professor Tina Hunter, *Submission 4*, p. 7.