

# Dissenting Report by Coalition senators

## Introduction

The Coalition is particularly concerned about the introduction of a National Offshore Petroleum Regulator (NOPR), and does not believe a reasonable case of change from the existing joint system has been made.

## National Offshore Petroleum Regulator

The Coalition is concerned that Western Australia has a better understanding of its own territorial waters, particularly as a large proportion of current and potential offshore gas fields are off the West Australian coast.<sup>1</sup>

It was made clear in the submission for the Western Australian Department of Mines and Petroleum that there is no support in Western Australia for the removal of its role as a regulator of offshore petroleum.

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.<sup>2</sup>

Additionally, the Western Australian Government felt there was no need to change the system. It was felt that the current joint system works perfectly well.

We do not see the merit in shifting the system that we already have.<sup>3</sup>

While the Department of Resources, Energy and Tourism points out that Western Australia remains the only recalcitrant state,<sup>4</sup> it was accepted that WA has a unique interest because...

...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.<sup>5</sup>

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

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

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

4 Mr Peter Livingston, Acting General Manager, Petroleum Regulatory Reform, Department of Resources, Energy and Tourism, *Proof Committee Hansard*, 31 March 2010, p. 13.

5 Mr Peter Livingston, Acting General Manager, Petroleum Regulatory Reform, Department of Resources, Energy and Tourism, *Proof Committee Hansard*, 31 March 2010, p. 11.

WA does not support the establishment of a NOPR and has made it clear that it will not roll in its state waters (comprising the internal and coastal waters) under NOPR's administration. This is significant because over two thirds of offshore petroleum exploration and development occurs off the coast of WA.<sup>6</sup>

It has been suggested that the *Environment and Biodiversity Act (1999) Cth* could be an option for the basis of any regulatory system run by Western Australia. Under the Act, the Commonwealth authorises the State to carry out environmental assessment and only holds its own if there is some disagreement.

A further concern supporting the current joint system of regulation is that any offshore development in Commonwealth waters implicitly involves the State Government as there is a requirement for onshore infrastructure such as towns, ports, railways and airports. A national offshore regulator would not address such onshore requirements for any oil and gas developments regarding land tenure or *Native Title Act* issues which are critical in ensuring the development of offshore gas projects.

The Coalition Senators concur with the view of the Western Australian Department of Mines and Petroleum that...

WA does not believe that to unilaterally impose this amendment is in the spirit of co-operative federalism publicly declared by the current Federal Government.<sup>7</sup>

### **Schedule 1 – Part 3 – Multiple titleholders**

The issue of multiple titleholders does not appear to have been resolved and the Coalition Senators are concerned about this, particularly given the evidence from the Western Australian Department of Mines and Petroleum.<sup>8</sup> It was additionally submitted that...

WA has consistently stressed to the Commonwealth that while the proposed amendments would make title administration easier, WA is concerned that this could be viewed as taking away the property rights of an individual member of a joint venture. Preserving property rights for individual joint venturers is an issue is petroleum commercial joint venture agreements.<sup>9</sup>

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6 Western Australian Department of Mines and Petroleum, *Submission 1*, p. 1.

7 Western Australian Department of Mines and Petroleum, *Submission 1*, p. 2.

8 Western Australian Department of Mines and Petroleum, *Submission 1*, p. 2 and 3.

9 Western Australian Department of Mines and Petroleum, *Submission 1*, p. 3.

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## Sole Risk Issue

The amendments proposed could impact on the sole risk provisions of a joint venture agreement.<sup>10</sup> The Western Australian Department of Mines and Petroleum expressed concern as to the impact on sole risk.<sup>11</sup>

Under the proposed amendments, it is not clear to WA how a joint venturer partner that is not the nominated operator could make an application to drill a well except through the nominated operator. This may not be a feasible approach and WA has suggested that consultation with the legal/commercial areas of the petroleum industry is required on this issue.<sup>12</sup>

## Schedule 1 – Part 1 – Registration Fees

The Bill requires that the Commonwealth retain registration fees to help fund the establishment of the National Offshore Petroleum Regulator (NOPR). While it has already been established that the Coalition Senators are extremely concerned about the introduction of a NOPR, there is additional concern about the fact that the form and function of the NOPR in regard to its operation in the Western Australian offshore area is currently the subject of intense negotiations between the Commonwealth and Western Australia.<sup>13</sup>

Therefore WA cannot agree to the proposed legislative amendment for the Commonwealth to retain registration fees.<sup>14</sup>

## Conclusion

The Coalition believes that the case for changing the existing joint system has not been made and in fact the convincing evidence for the usefulness of preserving the status quo was presented. The introduction of NOPR, without due understanding of the intricacies of the Western Australian petroleum resources industry, would not bode well for the market as a whole.

The Coalition Senators are of the view that as has been the case with so much Rudd Government legislation, this Bill has been put together in haste without sufficient discussion and consultation with stakeholders.

The Coalition will not be supporting the introduction of the National Offshore Petroleum Regulator.

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10 Western Australian Department of Mines and Petroleum, *Submission 1*, p. 3.

11 The Western Australian Department of Mines and Petroleum defined sole risk as a commonly used term in joint venture agreements to cover provisions where one, or some, but not all of a joint venture wish to drill a well.

12 Western Australian Department of Mines and Petroleum, *Submission 1*, p. 3.

13 Western Australian Department of Mines and Petroleum, *Submission 1*, p. 1.

14 Western Australian Department of Mines and Petroleum, *Submission 1*, p. 1.

**Senator Alan Eggleston**

Deputy Chair

**Senator David Bushby**