
Recommendations

There is no simple, single answer to reducing the unnecessary regulatory burdens on the upstream petroleum sector. The Commission has made a large number of recommendations covering regulatory best practice, institutional reform and specific regulatory areas to address the regulatory issues facing the sector. While all would contribute to reducing unnecessary regulatory burdens, the Commission has identified a number of key recommendations that will be essential to implement if a significant reduction in unnecessary regulatory burdens is to be achieved. These key recommendations are presented below, followed by further recommendations.

Key recommendations

The Commission's key recommendations can be broadly grouped into the following areas:

- improving regulatory practice
- institutional reform (establishing a national offshore petroleum regulator, extending the role of the National Offshore Petroleum Safety Authority and establishing lead agencies)
- environment and heritage
- resource management.

Improving regulatory practice

RECOMMENDATION 10.3

Governments should review and update all existing legislation to ensure it is consistent with the features of best practice regulation and good regulatory design. In particular, updated legislation and its administration should:

- *separate policy advice from regulation where practicable*
 - *where not practicable, for example due to scale particularly in smaller jurisdictions, reliance on appropriate checks and balances and transparency in policy and regulation making processes will be increasingly important*

- *promote the use of objective-based legislation where feasible*
- *ensure approval processes are best practice and clearly defined*
- *set statutory timelines for individual regulatory decisions (any decision should include a ‘stop the clock’ mechanism). There should be two timelines: one excluding periods when the ‘clock’ is stopped and one including all time elapsed. There should also be disclosure of reasons for regulators requesting additional information, and measurement and public disclosure of their performance against these targets*
- *measure and report overall timelines taking into account all stages of key regulatory processes (including scoping, advising, consultation and decisions)*
- *be consistent with the definitions, format and approach of the updated Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cwlth)*
- *provide clear guidelines where feasible on information requirements to assist proponents in efficiently providing the necessary information to allow timely regulatory decisions*
- *ensure reporting requirements are clear, justified, and avoid duplication and overlap with other mandatory reporting requirements.*

Institutional reforms

Establish a national offshore petroleum regulator

RECOMMENDATION 10.7

The Australian Government should establish a new national offshore petroleum regulator in Commonwealth waters, with regulatory responsibility for resource management, pipelines and environmental approvals and compliance. It should be an independent statutory authority and have the following functions:

- *administration of exploration permit, production and pipeline licensing — it would process applications, prepare advice and make recommendations to the Commonwealth Minister for resources*
- *administration and approval of production, well construction and drilling, and pipeline consents — it would have the authority to approve consents for these activities after receiving approvals from NOPSA for safety and integrity aspects of these activities*
- *environmental approvals and compliance.*

The National Offshore Petroleum Safety Authority should remain a separate independent statutory authority for the regulation of offshore petroleum occupational health and safety.

RECOMMENDATION 10.8

The Australian Government should give State and Territory Governments, on a bilateral basis, the option of conferring their existing petroleum-related regulatory powers in State and Territory waters seaward of the low tide mark, including islands within those waters, on the new national offshore petroleum regulator and ultimately the Commonwealth Minister as relevant. The respective powers of the Commonwealth and State and Territory Ministers that would then apply should be similar to those applying to the National Offshore Petroleum Safety Authority.

For States and Territories that wish to opt-in, it would be a requirement that all their relevant State or Territory petroleum Acts fully mirror the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cwlth) and its subordinate regulations, including provisions relating to pipelines.

RECOMMENDATION 10.9

Where States and Territories have agreed to confer their powers in State and Territory waters seaward of the low tide mark, including islands within those waters and pipelines, on the national offshore petroleum regulator and ultimately the Commonwealth Minister as relevant, States and Territories should also have the option to confer responsibility for the regulation of onshore inter-jurisdictional upstream petroleum pipelines. For States and Territories that wished to opt-in, it would be a requirement that their legislative provisions applying to onshore pipelines were harmonised with the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cwlth) where relevant.

RECOMMENDATION 10.10

The current full cost recovery model used for the National Offshore Petroleum Safety Authority should be used to fund any new regulatory agency. As with the National Offshore Petroleum Safety Authority, the cost recovery model adopted for a new regulatory agency should be subject to regular review and appropriate governance arrangements. Only appropriately defined costs associated with regulating the upstream petroleum sector should be recovered by the new national offshore petroleum regulator. Implementation of this recommendation should be associated with the removal of the registration fee for transfers and dealings.

Extend the role of the National Offshore Petroleum Safety Authority

RECOMMENDATION 7.1

The legislated coverage of the National Offshore Petroleum Safety Authority should be extended to include the safety and integrity of offshore pipelines, subsea equipment and wells. If the National Offshore Petroleum Safety Authority is given these additional responsibilities, it would be necessary to ensure the authority was adequately resourced to carry them out.

RECOMMENDATION 7.2

Subject to the outcomes of the current Australian and Western Australian Governments joint inquiry into the 2008 Varanus Island explosion, States and Territories should consider conferring powers on the National Offshore Petroleum Safety Authority to regulate occupational health and safety matters for all State and Territory waters seaward of the low tide mark, including islands within those waters.

Establish lead agencies

RECOMMENDATION 10.6

Where not already implemented, States and Territories should consider establishing a lead agency for petroleum projects. Such an agency would manage an integrated approval process and would require a clear mandate for all relevant areas (for example, resource management, environment and heritage) and clear decision making powers over these areas except in exceptional circumstances. With appropriate governance, experience in South Australia suggests that such an agency can achieve an appropriate balance between enforcing legislative provisions and expediting approvals.

Environment and heritage

RECOMMENDATION 6.1

Specific measures to improve the operation of the Environment Protection and Biodiversity Conservation Act 1999 (Cwlth) include:

- *ensuring the Department of the Environment, Water, Heritage and the Arts provides available information (such as information from previous assessments and relevant scientific studies) on significant environmental risks to the Department of Resources, Energy and Tourism to report with new acreage releases and to proponents seeking approval for a new project (such as pipelines) and in regard to potential processing facilities*
- *developing bilateral assessment agreements between the Department of Environment, Water, Heritage and the Arts and the relevant State and Territory authorities to avoid the potential for duplication in environmental submissions and to streamline approvals for routine activities where a State or Territory has developed adequate local expertise and knowledge and that jurisdiction has appropriate legislation in place*
- *State and Territory Governments should, at an early stage, undertake strategic assessment processes in particularly sensitive areas to identify suitable land to allow the development of probable major resource projects. All strategic assessments should be conducted early and according to clear timeframes.*

RECOMMENDATION 6.5

The Australian Government, in considering applications for a heritage protection ‘declaration’ under the Aboriginal and Torres Strait Islander Heritage Protection Act 1984, should take into account previous State and Territory government assessments and decisions about the same heritage site. The Commonwealth Act should also be amended to accredit State Indigenous heritage regimes that comply with a national set of minimum standards. In addition, heritage agreements should be transferable across operators when title ownership changes, providing the new operator is willing to adhere to the original work program, and the conditions of the original heritage approval.

Resource management

RECOMMENDATION 5.1

Governments should clearly articulate the objectives of intervention in approving the method and rate of petroleum extraction and periodically assess the benefits and costs to ensure such intervention is justified, and that if so, the costs of intervention are the minimum necessary to achieve the governments' objectives. Given that evidence suggests that intervention to revise extraction plans proposed by companies is rare, governments should focus their efforts on companies that are yet to establish a good track record, rather than imposing unnecessary burdens across all companies.

RECOMMENDATION 5.2

To promote regulatory certainty, governments should clarify and clearly articulate the objective/s and make transparent the criteria and processes used in both approving initial retention leases and renewing existing retention leases. In considering any changes to the retention lease system, governments should:

- *assess the costs and benefits (including the possible effects on incentives to explore for petroleum, and any likely resulting gas supply outcomes)*
- *ensure the costs of intervention are the minimum necessary to achieve the governments' objectives*
- *consider more objective tests of commerciality, such as auction mechanisms, where disagreements about commercial assessments arise, to avoid inadvertent expropriation of exploration investments.*

RECOMMENDATION 5.3

Impediments to voluntary, mutually beneficial lease transactions should be removed. In this regard, Australian governments should abolish the registration fee for transfers and dealings as this may have the perverse outcome of inhibiting transfers that might otherwise improve the probability of discovered resources being commercialised expeditiously. This would also be consistent with cost-reflective charging arrangements.

Further recommendations

Listed below are further recommendations the Commission considers will reduce the unnecessary regulatory burden on the upstream petroleum sector.

Resource management and land access (chapter 5)

RECOMMENDATION 5.4

The Australian Government should subject any proposed changes to block graticulation to a full regulation impact statement process with careful consideration of the potential impacts on industry and only so amend the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cwlth) if the regulation impact statement clearly demonstrates a net benefit.

RECOMMENDATION 5.5

The WA Government should ensure its policy on securing domestic gas supplies is clear and transparent with appropriate guidelines and ensure this policy provides net community benefits.

RECOMMENDATION 5.6

State and Territory Governments should mirror amendments resulting from the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cwlth) in coastal waters, and implement nationally consistent legislation for onshore carbon capture and storage as originally endorsed by the Ministerial Council on Mineral and Petroleum Resources in 2006.

RECOMMENDATION 5.7

Governments should update legislation and its administration to ensure relevant offshore State and Territory legislation effectively ‘mirrors’ the Commonwealth offshore legislation as intended. To achieve this objective State and Territory governments should appropriately prioritise and resource legislative drafting processes.

RECOMMENDATION 5.8

In certain circumstances, Indigenous land use agreements have the potential to streamline the native title approval process and reduce the backlog of future act applications. State and Territory Governments should investigate whether such agreements could be used more frequently (including statewide, regional and conjunctive Indigenous land use agreements).

Environment and heritage (chapter 6)

RECOMMENDATION 6.2

The Ministerial Council on Mineral and Petroleum Resources should explore ways of enhancing the effectiveness and transparency of the Environmental Assessors Forum to further improve the consistency of offshore environmental approvals and decision making, particularly in relation to differences in interpretation by individual officials, without compromising the flexibility of the forum. In particular, the Ministerial Council on Mineral and Petroleum Resources should resource the Environmental Assessors Forum to develop consolidated and consistent environmental guidelines (with flowcharts and procedural information) for petroleum activities that are cross-jurisdictional, such as offshore pipelines.

RECOMMENDATION 6.3

Governments should actively manage and release information obtained by proponents as a condition of environmental approvals to enhance the public stock of environmental information and to assist in streamlining future approvals.

- Governments should improve the provision of baseline environmental information for new acreage releases or for new applications for project approvals in relevant areas. Notwithstanding this, governments should only require a company to provide information collected at its expense after that company has acquired its own appropriate approvals.*
- Governments should manage environmental data in a way similar to the current system for geophysical data: with all environmental data relating to Commonwealth, coastal and inland waters residing with Geoscience Australia and all onshore data with the relevant State and Territory agencies. All such information provided by companies at the request of governments should be publicly accessible in the same way as geophysical data, after an appropriate fixed period.*

RECOMMENDATION 6.4

The Ministerial Council on Mineral and Petroleum Resources should task the Environmental Assessors Forum to review the range of onshore environmental regulations to identify scope for streamlining onshore approval processes and associated regulations related to petroleum activities.

All Governments should introduce transparent policy principles for environmental offsets — especially the principle that offsets where practical should be directly related to the damage being offset. In situations where environmental damage cannot practically or sensibly be ‘directly’ offset, other transparent offset mechanisms should be explored — including, for example, the use of an offset ‘fund’, which could be devoted to the highest priority projects in the relevant jurisdiction under transparent and appropriate governance arrangements. There would be merit in introducing nationally consistent principles.

Occupational health and safety (chapter 7)

The Australian Government should clarify whether any significant regulatory uncertainty results from the decision that the Navigation Act would not apply to Australian registered vessels and floating production, storage and offloading vessels when these are operating under the safety case regime. If so, it should act to remove the uncertainty. Reapplication of the Act would impose an onerous regulatory burden and would be unlikely to result in net community benefits.

The Australian Government should clarify occupational health and safety regulations under the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cwlth) to ensure that there is complete clarity about which petroleum-related sea going vessels must be regulated under the safety case regime. In determining which activities are petroleum related and pose sufficient risk to health, safety and the environment to warrant such inclusion, the Australian Government should liaise with the upstream petroleum sector, the National Offshore Petroleum Safety Authority and the Australian Maritime Safety Authority.

The Australian Government should consider whether it is still appropriate to have a Board for the National Offshore Petroleum Safety Authority and, if so, explicitly clarify the role of the Board and communicate this to all stakeholders.

RECOMMENDATION 7.6

State and Territory Governments should make greater efforts to harmonise safety standards, or the interpretation of those standards, for imported upstream petroleum equipment across jurisdictions, whilst giving recognition to appropriate prevailing international standards. Where the application of standards is more onerous than those prevailing in other jurisdictions or comparable countries, efforts should be made to ensure that the application of these more onerous standards provides net public benefits.

A way forward (chapter 10)

RECOMMENDATION 10.1

State and the Northern Territory Governments should make clear the scope of local government's role in the approval of upstream petroleum developments (and other major developments). Where aspects of these developments are already regulated by environmental agencies or major hazard facilities regulators, or when the regulation requires specialist industry knowledge, involvement by local government is not warranted.

RECOMMENDATION 10.2

The Australian Government should implement as soon as possible outcomes from the project to consolidate regulations under the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cwlth).

RECOMMENDATION 10.4

To support the system of objective-based legislation and to minimise regulatory creep governments should:

- *ensure that the intent of legislation is clearly defined at the parliamentary level, including through clear explanatory memorandums and/or objects clauses that are clearly defined*
- *clearly define the powers of regulators in developing guidelines and the intent and style of those guidelines.*

The Australian Government should explore options for the introduction of an electronic approvals tracking system to improve the timeliness, accountability and transparency of approval processes. Such a system should allow for tracking of individual regulatory areas (for example, resource management and environment) as well as the overall approval process. In exploring options, the Australian Government should consider whether additional features should eventually be included as part of the system (for example, licence payments and data submission).

To ensure the system is part of a best practice regulatory regime for the upstream petroleum sector, implementation of an electronic approvals tracking system should only commence once approval processes have been streamlined and are otherwise best practice.

Based on the proof and initial experience of this system, State and Territory Governments should, where possible, adopt the national tracking system.