

**Submission to Productivity Commission**  
**Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector**  
**From Nexus Energy Limited**  
**August 2008**

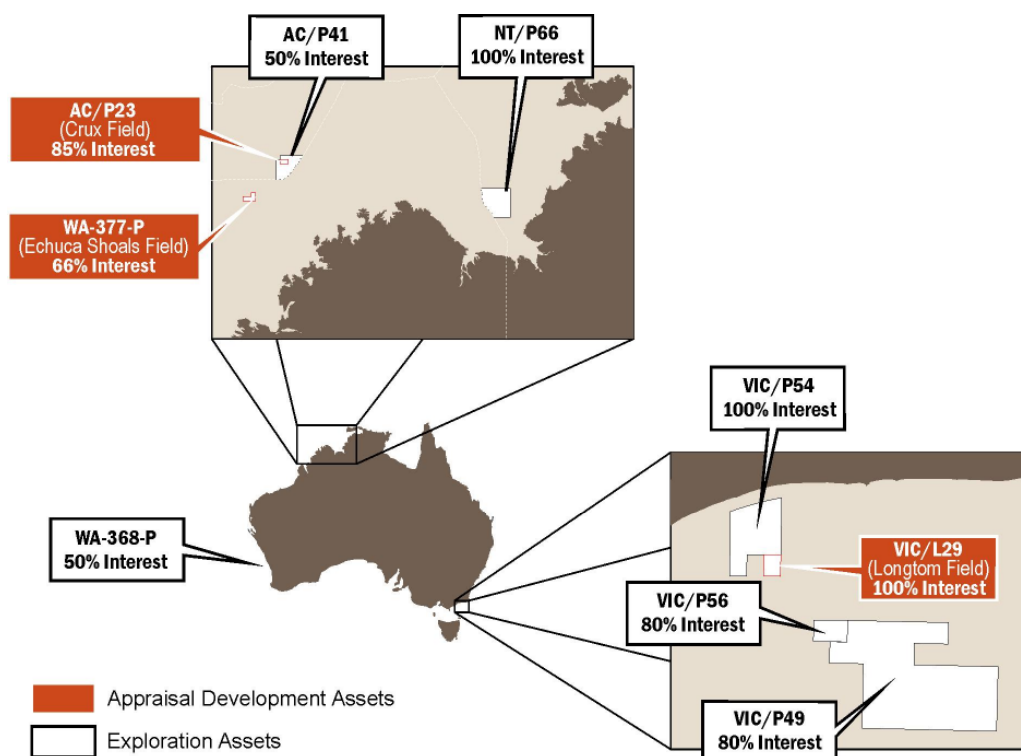
**Company background**

Nexus Energy Limited is a Melbourne-based, Australian Stock Exchange listed oil and gas company (ASX:NXS). In 2007 Nexus entered the ASX200 following a period of exceptional growth driven by the company’s value adding asset strategy. 2009 looms as an important year in the company’s history as it makes the transition from explorer to producer.

The company has assembled a portfolio of high quality assets, in two key regions:

- Gippsland Basin, offshore Victoria; and
- Browse Basin, off the north west coast of Western Australia;

The current key focus for Nexus is the development of the Longtom gas project (Nexus 100%) in the Gippsland Basin with first production scheduled for Q2 2009, followed by the Crux liquids project (Nexus 85%) in the Browse Basin which is scheduled to commence production in late 2010. These assets have provided Nexus with experience in the three jurisdictions of Victoria, Western Australia and the Northern Territory.



**Location of Nexus' assets**

Nexus is also looking at further gas development potential in the greater Crux area and/or Echuca Shoals which may potentially result in opportunities to export LNG.

For a company of its size, Nexus has a unique asset strategy combining high equity positions and operatorship. This has resulted in significant growth for the company over the course of the past four years as it moves assets towards development.

This level of growth has seen Nexus become a top 10 oil and gas company in Australia with a market capitalization of about \$1 billion. The Melbourne based workforce at Nexus has also grown considerably and is expected to continue to expand from around the current 80 FTE (full-time equivalent) to 144 by mid-2009 when production from the company's Longtom asset comes on stream

## Introduction

The Productivity Commission has asked industry to comment on a whole range of issues regarding regulatory burden on the upstream petroleum sector. Nexus has limited its comments to those areas where it has expertise and can add value.

## Existing Regulatory Arrangements

- **Approvals do happen**

The current regulatory regime has been established for several years. Whilst regulatory approvals do happen in Australia without undue political interference, they often need guidance and lobbying to ensure they progress through the process in a timely and efficient manner.

- **Helpful individuals**

Having the right, skilled, trained and professional people in place is an essential ingredient for an efficient and effective process. Certain key individuals, especially within the Designated Authorities, actively facilitate industry through the approvals process, reducing time and stress for all parties. However, the approvals process should not have to rely on the good will of key individuals to achieve the desired outcomes. A simplified process with clear process flow charts and guidelines would help to reduce the need for government facilitators.

- **Specified timeframes**

Certainty of process and timeframes are important aspects of any approvals system, especially for small to medium companies such as Nexus to raise finance. Such companies do not have the financial resources of larger companies to afford lengthy Government deliberations.

Some aspects of the OHS regulations specify actual timeframes for actions and decisions to be made which helps to achieve timely outcomes. The concept of statutory time frames for agencies to make specific decisions throughout the regulations should result in a more expedient and cost effective process.

- **Complex approvals process**

Nexus is currently in the process of developing the Longtom gas field, Gippsland Basin, offshore Victoria. This is a relatively straight forward petroleum development, with a subsea well head and pipeline in Commonwealth waters only. Even with this relatively simple project, the regulatory requirements process (developed in 2006) as outlined in Attachment 1 is complex.

Where petroleum activities cross jurisdictions from offshore to State/Territory waters and into onshore facilities there is a significant increase in regulatory requirements and processes. The 2007 DITR draft report on the consolidation of regulations under the *Petroleum (Submerged Lands) Act 1967* identifies many areas of duplication and regulatory overlap. Implementing these recommendations would make significant steps to streamline the approvals process.

- **Under resourced agencies**

Regardless of the regulatory system and model in place, it needs to be operated by government agencies that are adequately resourced with appropriate numbers of competent and professional staff. All government agencies that Nexus deals with are suffering to some degree from a lack of resources. Irrespective of the commitment of Government staff, delayed or poor decisions are often made due to this lack of resources.

- **Consistent lack of consistency**

A consistent lack of consistency is a common theme when dealing with the variety of agencies across the various jurisdictions. In many cases, this appears to be due to a personal interpretation of the legislation/regulation rather than an organisation/Australia wide policy decision. Such inconsistencies between Designated Authorities may be resolved through discussions at the Upstream Petroleum & Geothermal Committee, but the Committee has limited ability to enforce contentious decisions. Even within NOPSA, state to state inconsistencies occur even when there is a hierarchal reporting structure to enforce the implementation of organisation wide policy decisions.

Consistent decisions on the same issue throughout Australia would help to achieve certainty of process.

- **Specified timeframe to make a decision**

Some aspects of the approvals process, especially in the safety aspect under NOPSA, have a specified time frame to make a decision. Many other aspects, especially in the final stages of the approvals process with the Designated Authorities, do not have timeframes associated with them. This issue is compounded in related legislative approvals, such as State planning systems (E.g. Environment Effects Statements, Victorian Civil and Administrative Tribunal (VCAT)) and the Commonwealth *Environment Protection and Biodiversity Conservation* (EPBC) Act. As mentioned previously, the concept of statutory time frames to make specific decisions throughout the regulations should result in a more expedient and cost effective process.

The complexity of the various approvals required for the range of possible projects is highly variable; hence it is difficult to make a general statement on how long the approval process should take. However, a period of four weeks for a decision by Government and/or Ministers to progress to the next stage in the process would be a reasonable benchmark to aim for.

- **Focus on paper work**

Nexus is committed to appropriately documented safety cases and environmental plans as an important aspect of conducting business in Australia. Onsite assessments of operational safety and environmental issues need to adequately test compliance with the plans. Currently, there is an over emphasis on completing the paper work rather than on ensuring appropriate onsite compliance.

- **Sovereign risk**

The government currently releases acreage in the annual gazettal process that has had very little scrutiny or checking from the Government's own environmental departments. Consequently, there is a reasonably high risk that a company could take on acreage and spend a considerable amount on exploration only to find that they can never obtain environmental approval to develop the field. This could be the case even with an operator meeting all required regulations and following best international practices for their operations.

The government needs to screen the acreage for potential environmental issues before it is released for gazettal. There is quite a reasonable expectation by industry that if the government releases an area for exploration, it should ultimately be able to obtain approvals to explore and produce from the acreage as long as the operator complies with the required regulations. This is currently not the case in Australia, and poses a risk to Australia being seen as a politically stable and fair place to explore and produce oil and gas.

## Compliance costs

### **Fees used as a tax**

Significant fees to the Commonwealth Government are generated through the standard administration of the regulations and legislation. For example, to register an *Application for approval of a Dealing*, the regulator can levy a fee on the 1.5% of the transaction under the *Petroleum (SL) Registration Fees Act*. For a multi million dollar project, this can be a considerable amount of money. This is a transaction tax rather than a fee for services provided by Government.

The structure and range of fees, falling under four separate Acts each with individual regulations and guidelines, is unnecessarily complex and should be simplified.

Nexus supports the concept that fees should be set at cost recovery levels to support the efficient administration of the legislation and appropriately fund the proposed new centralised regulatory authority, rather than being directed into Consolidated Revenue. The levies currently charged by NOPSA as part of their Safety Case assessment are reasonable and should be used as a guide for the level of any future fees.

- **Increased costs due to time delay**

The approvals for Nexus' relatively simple Longtom gas field project have taken 2+ years and cost over A\$1million. Whilst it could be argued that this is a relatively small percentage of the total project cost, the capital cost of the project has increased by about 50% during this period. This has a significant impact on a small to medium company that is raising debt and equity finance to develop the project.

It is the time taken to wade through the process and the implications for project financing that is the real cost to a small to medium company, rather than the actual dollars expended in ensuring compliance.

## Legislative and administrative reforms

- **Harmonisation**

Nexus recognises the potential benefits of harmonising legislation with the aim to obtain one approval for the various aspects of projects covering the different State and Commonwealth jurisdictions.

Nexus supports the COAG priority of harmonising OHS laws across jurisdictions.

- **Extending the NOPSA model**

The centralised NOPSA model for a national upstream petroleum regulator has great potential to increase the consistent application of legislation and regulations. It will need to be adequately resourced with experienced, professional staff that are equipped with

appropriate policy guidelines. This should assist in a consistent interpretation of the regulations.

A staff reporting structure that encourages nationwide consistency should be more achievable in a central agency model than the current system where inconsistent application of regulations between DA's is attempted to be resolved at twice yearly committee meetings. There are numerous examples of variability in the application of data submission standards and environmental guidelines between different DAs for no apparent reason. This causes confusion and uncertainty for industry.

Gains in efficiency with a centralised national upstream petroleum regulator will be achieved primarily if actions/decisions are made by the one authority rather than duplicating the current DA/JA process.

- **One stop shop**

The resources industry in many areas of Australia has requested a "one stop shop" to streamline approvals at various times in the recent past. Governments have to be careful that attempts to facilitate projects do not become another layer of bureaucracy which industry has to negotiate. Attempts to establish a "one stop shop" in the past have not always achieved industry's ambitions. Such an organisation needs the power to enforce decisions and ensure timeframes are met by government decision makers. This can be politically difficult to achieve.

An example of a one stop shop is the Western Australia Government's Office of Development Approvals Coordination. Its role is to advise, assist and guide project proponents through the process of obtaining government approvals. Whilst the Office provides great assistance in facilitating and mapping out the approvals process, its inability to enforce timely decisions by other government agencies causes industry frustration.

Nexus welcomes the opportunity to provide input into the Productivity Commission review. In conclusion, the following key points are made:

- The current approvals process is too complex and needs simplification.
- Government regulatory authorities are generally under resourced, often resulting in delays and poor decisions.
- There is a consistent lack of consistency in decision making between the regulatory authorities.
- Specified, enforceable timeframes are required for government agencies to make timely decisions.
- Onsite assessments of operations are required to test industry compliance.

- Government should review new acreage prior to release to ensure that there is a reasonable expectation for environmental approvals to be obtained for exploration/production activities.
- Fees raised in administering the regulations and legislation should be set at a cost recovery level and used to adequately resource government regulatory bodies.
- It is the additional time taken to gain approvals and the implications for project financing that is the real cost for small to medium companies.
- Harmonising legislation across jurisdictions is an important step to achieving consistency.
- A centralised upstream petroleum regulator has potential to increase consistency and timely decision making.
- Real gains in efficiency of the approvals process will only be gained if decisions are made by the one authority.
- A one stop shop to streamline approvals will only be able to make a step change to improve the approvals process if it has the power to enforce decisions within specified times.

# Attachment 1

## Longtom Offshore Development Approvals

