

Dear Sir/Madam

PRODUCTIVITY COMMISSION (PC) REVIEW OF REGULATORY BURDEN ON UPSTREAM PETROLEUM (OIL & GAS) SECTOR: REPORT RESPONSE

1. THE PC SHOULD SPEAK CLEARLY FROM THE AUSTRALIAN GOVERNMENT PERSPECTIVE WHICH SEEKS SUSTAINABLE DEVELOPMENT ACROSS THE BOARD, NOT FROM THE SHORT-TERM PERSPECTIVES OF THE SHAREHOLDERS OF PETROLEUM PRODUCERS OR RELATED INVESTORS

The PC report of the review of the regulatory burden on upstream petroleum (oil and gas) sector is unclear in regard to the industry management structure it is recommending. One needs to read the whole report in order to understand its early parts. For example, in the discussion entitled 'desirable objectives for an institutional model' (p.xxxiii), the need to 'separate policy formulation and advice from regulatory administration' is referred to without giving the reader a clear idea of the model context in which the separations should occur. Neither could I understand the discussion of the regulator options which follow in the rest of the chapter. However, the discussion of the rationales for government regulation, which briefly addresses 'public goods' is unacceptable. Box 3.1 states:

Public goods exist where provision for one person means the product is available to others at no additional cost. Public goods are characterised by being non-rivalrous in consumption (that is, consumption by one person will not diminish consumption by others) and non-excludable (that is, it is difficult to exclude people from benefiting from the good). Given that exclusion would be physically impossible or economically infeasible, the private market is unlikely to provide these goods to a sufficient extent. The nature of public goods makes it difficult to assess the extent of demand for them. Common examples include flood-control dams, national defence and street lights (p. 30).

The above perspective is what one might expect from Daniel Plainview, the oil man in the recent movie, 'There Will Be Blood', rather than from Australian government in 2008. Government is established to seek the public good for current and future generations – which is economic, social and environmental. Government does not envisage the public good as 'similar analytically' to 'externalities or spillovers'. The PC appears to be the subject of the regulatory capture it deplors on page 33. The report seems like the tool of oil company shareholders thinking of their short term profits and very little else. In the matters discussed by the report, government ideally represents the long and short term economic, social and environmental interests of Australian communities, including workers, customers and their supporting environments. Oil and gas management structures should reflect the broad national requirements placed on governments and apply these in specific regional contexts, to maximise the achievement of all national goals. Competing interests in how land or water and its resources are utilised must be addressed together for best results. This is addressed again later.

Currently, however, the summary of the PC proposals is worrying because the report gives the strong impression the PC is working for oil company interests, not government. The PC appears uninterested in any innovation to make anybody's production more sustainable, but just sees regulation as a hindrance it wants to be rid of, rather than as any potential incentive for more innovative and cleaner production. For example, on page 29 the PC discusses crude oil and condensate, natural gas, LNG, LPG and the countries to which these products are sent without providing any idea about what these products are used for, their cost, their impact on the environment, their substitutability and their general level of sustainability. This disinterest in the relative merits of oil and gas products from any social or environmental perspective appears typical of the report. Yet such information may be vital for good carbon pollution trading and offset development.

In this unclear and unpromising management context, the second report recommendation, 5.2, is particularly disturbing. It is that governments should introduce 'lighter handed' regulation of retention leases by increasing the period of the initial lease from five years to 15 years, with renewals for a period of ten years (to reduce uncertainty and enhance the incentives to invest in exploration). Although I have no difficulty in believing there is massive dysfunctional overregulation in the upstream petroleum (oil and gas) sector, and that many of the suggestions in the report are very sensible in this context, it is difficult not to see recommendation 5.2 as merely being a request for many more cowboy-style operations which can always be assisted by secrecy, no matter what the costs to others operating in the same arena or in any related one. This cannot achieve good practice.

Chapter 5 states that under Australian law, petroleum resources are owned by the Crown (i.e. by government (p. 69)). Therefore government, not the private sector oil company, ideally manages all operations conducted upon the resources it owns. Government ideally also manages such operations competitively, in the public interest, by contracting mining companies to extract and market oil and gas to government specifications. The first PC recommendation (5.1) is 'Governments should clearly articulate the objectives of intervention in approving the method and time of petroleum extraction and periodically assess the benefits and costs to ensure such intervention is justified'. However, this is ideally undertaken in regional management contexts where competing interests in the management of land and water are first considered to meet national and regional goals which are social and environmental as well as economic. The related response I have recently made to the draft of the Inquiry into Government Drought Report is attached. It urges government to plan agriculture, mining and eco-tourism in their regional land matrix contexts nationally and internationally and also to consider carbon trading and offset development in the context of the land matrix regionally, nationally and internationally to reduce global warming and other goals of sustainable development. A consistent management approach should be taken in the upstream petroleum (oil and gas) sector. The NSW WorkCover Authority management relationship between government and insurance companies provides a potential model for achieving all goals competitively.

This submission aims to position Australia to achieve all related national and international goals more effectively, through managed and targeted competition and evaluation of the outcomes, according to triple bottom line accounting requirements,

which are economic, social and environmental. Farming, mining, waste management, communication development, education and research are ideally addressed in a related fashion. The PC states that governments play a 'stewardship' role in petroleum resource management. However, government's 'stewardship' of land and water goes beyond the management of any petroleum resources under them. Petrol is ideally managed in this broader context, in which petrol companies are also primarily conceptualised as competing subcontractors which pay the government royalties during their operations. Chapter 5, entitled 'Resource management and land access', is constructed wrongly in this ideal management context, and from the narrower, short-term perspective of oil company shareholders. From a government view it should be called 'Land management and resource access', so competing interests in land and water are discussed clearly, instead of being ignored except as irritants to full steam production driven as the appointed contractors would like.

In the current context, where even the PC appears to be confused about who it is supposed to be serving, it is not surprising that industry participants find 'a lack of clarity of policy intent and definition of good oilfield practice' (p.79). I assume that good oilfield practice is ideally that which meets the stated aims of oilfield legislation. I also assume that these aims are ideally to meet the interests in sustainable development of current and future generations of communities, workers and customers in environments which are involved in or affected by production and consumption of oil and gas. The PC proposals for change in the industry are ideally reconstructed in this wider context of national and international legislative aims, including carbon trading and offset development. Current recommendations appear driven by company shareholders. I have no idea why the WA Government states 'The concept of 'good oilfield practice' balances the competing objectives of maximising both net present value and ultimate recovery' in cases where 'the interests of operators may diverge from those of regulators' (p. 83). I assume the regulators ideally expect the operators to serve regulatory goals, in the same way that I expect a building contractor to build the house I want, not something else it prefers. It is important to understand such issues if governments are being requested to introduce 'lighter handed regulation of retention leases by increasing the period of the initial lease from five years to 15 years, with renewals for a period of ten years'.

2. RESOURCE MANAGEMENT IS IDEALLY STRUCTURED TO MEET THE GOALS OF OTHER MINISTRIES AS WELL AS THOSE OF RESOURCES, ENERGY AND TOURISM IN ORDER TO MAXIMISE ACHIEVEMENT OF SUSTAINABLE DEVELOPMENT ACROSS THE NATIONAL BOARD

In regard to the upstream petroleum (oil and gas) sector, ExxonMobil stated that the company supports the National Offshore Petroleum Safety Authority (NOPSA) concept 'in which a single regulator provides national coverage and the onus is placed on each enterprise to develop and implement processes that meet regulatory requirements' (p.163). I know nothing about oil and gas production or NOPSA operation but from a purely theoretical perspective the model seems good to me as long as the concept of safety involves consideration of health issues which may have long term, as distinct from traumatic effects. This point is made because state occupational health and safety (OHS) acts specifically use both words. Earlier legislation ignored the long term effects of working with potentially dangerous

chemicals and generally only considered traumatic injuries. Chemicals affecting community and environmental health and must be addressed in order to minimize their threats.

It is stated that NOPSA has a board which reports to the responsible minister. However, the responsible ministers and their representatives on an ideal board should be considered to include not merely the Minister for Resources, Energy and Tourism but also the Minister for Agriculture, Fisheries and Forestry; the Minister for Environment, Heritage and the Arts; the Minister for Climate Change and Water; and the Minister for Infrastructure, Transport and Regional Development and Local Government. One of the reasons that approvals currently take so long is likely to be because many forced to deal with them in secretive isolation have little or no idea what they are talking about. In this context their only wish may be to avoid doing something which comes back to bite them. Many may live in procrastinating anxiety, mired in apparently incomprehensible red tape. (I have worked in the public service and know what such mandated ignorance is like. I ignored the rules and talked to anybody I thought might provide sensible information. This may be tricky, but at least one develops some idea of concerns in the real world.)

Chapter 9 entitled 'Models for a national regulator' suggests there may be some benefits from intergovernmental competition in regulatory regimes. Australian governments, however, have repeatedly committed to national standards. Business has long pointed out that the necessity to tailor its production to many different regulatory regimes is part of its problems rather than the solution to them. The concept of regulatory competition totally contradicts the desired trajectory of Australian development since 1990, when the Australian Council of Australian Governments (COAG) began review of legislation to develop national standards for health and environment protection, including related occupations and training, disability services, social security benefits and labour market programs (Premiers and Chief Ministers 1991). From both Labor and Liberal perspectives, good governance requires clear separation of government policy from its administration, with the former driving competitive, transparent, service provision (by oil and gas companies) so all may identify the economic, social and environment related outcomes. Hilmer's report into a national competition policy, defined competition as, 'striving or potential striving of two or more persons or organizations against one another for the same or related objects'(1993, p.2). This is ideal for triple bottom line accounting.

Competition is ideally designed upon a national platform of standards, with the aim of equal treatment for the private and the public sector service provider, unless another course of action appears to be in the public interest. Against this logic, freedom of information principles have so far been applied only to the public sector while the Trade Practices Act ignores Hilmer's definition of competition and has many related problems. However, do not start going further backwards, especially as Australia has struggled to come so far. The subsidiarity principle needs to be considered in the context of the regional land matrix referred to earlier, in which local government and surrounding communities may be considered as being of equal or more relevance than state governments for questions of oil and gas production. Current concepts of 'designated authority' and 'joint authority' appear outdated and require consideration in the ideally emerging national context. Figure 9.1 entitled Potential upstream

petroleum regulator models on p.214 and discussed at the beginning of the report, is not very comprehensible.

On page 214 the report states that although coal seam methane projects could be considered a mining activity, such activities could be considered under NOPSA style models. In this context it would also be good to consider the views of Rivers SOS and others concerned about longwall coal mining. The lobby group claims this underground mining is having a devastating impact upon rivers, swamps and aquifers and calls upon government to implement a regulatory system that counterbalances mining approvals with a legislated one kilometre protection zone for rivers, streams and swamps. The group also seeks to expose the mining industry to greater public transparency and accountability, by providing greater access to all environmental reporting and standardising the community consultation process. Such concerns are important to take into consideration in any planned approach to the land and related sea matrix. The current international financial crisis, where the increasingly blind led the blind until disaster struck, appears to be the natural time to design and implement production to meet national and international goals related to sustainable development more effectively and competitively. Perfect information is necessary for this, not increasing ignorance. The latter serves mainly the rich financial speculators of the world, not its producers or others. Nations ideally try to emerge from this control to gain improved, competitive production.

The management structure of the petroleum regulator should aim to support the regulator's legislative goals. One major difference between a statutory authority and a private sector company is that the former has the basic aim of serving regulatory goals and the board is drawn from the key stakeholders and other stakeholders. The statutory authority is not driven primarily by profits and has no shareholders. Its board reports to the appropriate ministers but normally performs independently, according to normal commercial principles, unless achieving the legislative goals clearly requires some other action, which should be made clear to all. If the elected government wishes to interfere in the board's management and related administration in any way this also must be done openly, so the action can be openly judged by all Australian communities. This management structure is the one best designed to gain the effective implementation of competition policy, as envisaged by Hilmer, to achieve the goals of sustainable development – economic, social and environmental - by triple bottom line accounting. The requirements of carbon pollution reduction and related offset trading are ideally considered in this context. Please consider related discussion of drought policy attached. (This is labelled Telstra because it also deals with the need for effective communication. The other file, labelled health and education, discusses carbon pollution reduction.)