

**South Australian Government
Submission to the
Productivity Commission
Draft Research Report:
Review of Regulatory Burden
On the Upstream Petroleum
(Oil and Gas) Sector**

Prepared by Department of Primary Industries and Resources SA on behalf of
the South Australian Government

INTRODUCTION

The South Australian Government makes the following submission to the Productivity Commission's (PC) Draft Research Report (draft report) released for public comment on 4th December 2008 on the Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector.

This submission provides comment in relation to the following 4 areas under which the draft report has proposed its recommendations.

- Resource Management and Land Access;
- Environment and Heritage;
- Occupational Health and Safety; and
- Way forward (Legislative and Administrative Improvements).

Regulatory Philosophy and Principles

The following background information on the philosophy and principles adopted in the regulation of the upstream petroleum industry in South Australia is provided to give an appreciation of the context in which this submission has been made.

The onshore oil and gas industry in South Australia is governed by the *Petroleum Act 2000* (Petroleum Act) which since its promulgation in September 2000 has earned the reputation as best practice legislation throughout the industry¹. This legislation is administered by the Petroleum and Geothermal Group within the Department of Primary Industries and Resources South Australia (PIRSA). In summary the legislation is objective-based and was developed on the basis of a regulatory philosophy advocating State intervention (regulation or otherwise) in the private sector is only justified where it can be demonstrated that there exists or is likely to exist a market failure². That is, where an industry or individual companies are not motivated to voluntarily deliver outcomes which do not compromise the public interest.

South Australia subscribes to the view that where there is a demonstrable absence of economic incentives to do otherwise, negative impacts of industry activities – referred to as negative externalities – are likely to be passed onto other sectors of the community. Such externalities include unsafe work places, land, air and water pollution, deprivation of use of land and other resources by co-existing land users and misinformation to other stakeholders that may impede their ability to make informed decisions on the impact of activities on their interests.

¹ APPEA Submission to Productivity Commission July 2008 Issues Paper, p.14

² Malavazos, M. *The South Australian Petroleum Act 2000 – principles and philosophy of best practice regulation*, MESA Journal 21, April 2001
(http://www.pir.sa.gov.au/___data/assets/pdf_file/0004/27580/pet_act_2000_mj21_apr01.pdf)

This regulatory philosophy has been embraced in the *Petroleum Act 2000* through the adoption of the following 6 key principles in keeping with the requirements of the OECD policy recommendations on regulatory reform³:

- Certainty;
- Openness;
- Transparency;
- Flexibility;
- Practicality; and
- Efficiency

Specifics of how these principles relate to the Petroleum Act are detailed in Box 1 (Attachment #1) and the OECD council policy recommendations on regulatory reform are elaborated on in Box 2 (Attachment #1). South Australia believes these principles are features of regulatory best practice.

GENERAL COMMENTS

Before commenting on the specific draft recommendations the South Australian government submits the following general comments, the last 7 of which were provided in South Australia's submission to the PC's July 2008 Issues Paper. These in turn capture the essence of South Australia's specific comments on the draft recommendations.

- 1) South Australia concurs with the Productivity Commission's statement in its draft report that the findings of this review very much echo those of previous reviews on this matter, in particular the Keating review⁴. Therefore, South Australia cautions that without demonstrable commitment at state, territory and federal government levels, implementation of the final recommendations to reduce unnecessary regulatory burdens on the sector may render the same fate as those of preceding reviews.
- 2) Above all, a one-stop-shop approach to the grant of land access and activity approvals fosters efficiency without reducing stringent standards for ecologic, social, heritage and economic outcomes⁵. The need for a one-stop-shop or lead agency is seen as a critical ingredient by industry as part of addressing current inefficiencies and approval delays experienced in some Australian jurisdictions⁶.
- 3) Transparent, objective-based regulation ought to be the foundation for land access and activity approvals, and capturing co-regulatory approval requirements.

³ Policy Recommendation of the Council OECD: *Council Recommendation* (http://www.oecd.org/LongAbstract/0,3425,en_2649_34141_1826379_1_1_1_1,00.html)

⁴ Independent Review Committee 2002, *Review of Project Development Approvals System*, Final Report (Dr Michael Keating AC, Chairman), Perth

⁵ Goldstein, B. A., Alexander, E., Cockshell, C.D., Malavazos, M., and Zabrowarny, J. *The Virtuous Life-Cycle for Exploration and Production (E&P): Lead and Lag Factors*, APPEA Journal, V47, pp 387 – 402

⁶ Australian Financial Review, *Red Tape hurts \$100bn energy projects*, 2 December 2008

- 4) Guidelines for, and adherence to best practice consultation processes can foster efficiency without reducing stringent standards.
- 5) Agencies with a role in land access and activity approval processes ought to be sufficiently resourced to have capacity to administer its roles effectively within reasonable timeframes.
- 6) Harmonising legislation between States, the NT and the Commonwealth remains a high priority – with the proviso that harmonisation does not result in retrograde legislation / regulations.
- 7) To have a realistic chance to implement reforms to improve efficiency in the co-regulation of the upstream petroleum sector, agreement will need to be reached between key Ministerial Councils, including but not limited to: Minerals and Petroleum Resources; Energy; and Environmental Protection, Heritage and Conservation.
- 8) A framework for ‘rethinking regulation’ to reduce regulatory burdens may be focussed on one or all of the following areas⁷:
 - a) Removing co-regulatory inefficiency and administrative burdens (i.e. higher than necessary costs in achieving regulatory objectives),
 - b) Reconsidering and potentially narrowing regulatory scope (the regulatory objective is not appropriate or it is not an appropriate area for government regulation),
 - c) Reducing regulatory complexity (where regulations attempt to address all possible circumstances, or the body of regulation includes references to multiple separate standards – leading to increased compliance costs and reducing people’s tendency to comply voluntarily), and
 - d) Revising the degree of regulatory stringency (the cost/benefit of regulatory standards versus social welfare).

COMMENTS ON DRAFT RECOMMENDATIONS

In light of the philosophy and principles adopted by South Australia in the regulation of the upstream petroleum industry discussed in the introduction, South Australia provides the following comments on the draft recommendations.

Resource Management and Land Access

Draft Recommendation 5.1:

Governments should clearly articulate the objectives of intervention in approving the method and timing of petroleum extraction and periodically assess the benefits and costs to ensure such intervention is justified

⁷ Deighton-Smith, R. 2008. What do we mean by ‘Rethinking Regulation’. The Australian Journal of Public Administration, 67(1), pp 41-56.

South Australia Comment: South Australia concurs with this recommendation and it supports the need for any government intervention in the area of regulating the extraction and management of the reservoir to be subject to the market failure test. The negative externalities referred to in the introduction of this submission need to be clearly identified through this test to justify any chosen regulatory intervention.

It was through the application of this test when South Australia was developing its existing Petroleum Act that it realised that there was no or very little evidence to suggest that industry incentives to develop and extract resources to an optimal level would be contrary to the public interest. Hence it was decided to remove all prescriptive resource management requirements specified in the previous Act (*SA Petroleum Act 1940*) as this was acknowledged not to be an area of market failure requiring regulatory intervention. However, to cover the unlikely exceptional case, one clause was introduced in the Act to replace all the previous prescriptive provisions requiring industry to adopt good industry practice in carrying out its activities (which include resource extraction and development activities).

The SA government supports the need for the government, as the asset owner on behalf of the community, to maintain its role in the collection and provision of pre-competitive data. The primary purpose of this role is to facilitate exploration investment and the subsequent extraction and economic return to the community through jobs and royalty payments.

Draft Recommendation 5.2:

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 incentive to invest in exploration).

South Australia Comment: The intent of the openness principle described above with respect to the allocation of title is to ensure that the threat of unnecessary sterilisation of exploration acreage is avoided and that open competition to exploration acreage is maximised. Hence the size of exploration licence areas and length of terms were reviewed and adjusted accordingly in the development of the South Australian Petroleum Act. Furthermore the concept of the retention licence was introduced for onshore South Australia in the Petroleum Act for the purpose of giving licensees greater flexibility than was afforded in the previous Act to exploit uncommercial resources at the time of discovery at some future time.

South Australia is of the view that there needs to be a balance between these two requirements, that is, encourage and maintain healthy acreage competition on the one hand and preserving investment incentive on the other. South Australia believes that the currently adopted position for 5 yearly renewals of retention licences subject to the 15 year commerciality test is optimal for this purpose. Therefore South Australia submits that it does not see the need to increase the period of initial retention lease terms from 5 to 15 years. That said, requirements put upon Retention Licence holders to justify

renewal ought to be transparent and efficient, to minimise costs for both Government and Industry.

Draft Recommendation 5.3:

State and Territory Governments should mirror amendments resulting from the Offshore Petroleum Amendments (Greenhouse as Storage) Bill 2008 in coastal water, and implement nationally consistent legislation for onshore carbon capture and storage as originally endorsed by the MCMPR in 2006.

South Australia Comment: South Australia intends to mirror such amendments in its coastal water legislation at a convenient time in the future. South Australia was closely involved in the development of the Australian regulatory principles for carbon dioxide capture and storage⁸ and as a result is a strong proponent for their adoption across all Australian jurisdictions. In South Australia onshore gas storage regulation is administered under the Petroleum Act and amendments are currently being drafted for tabling before Parliament in early 2009 to strengthen these provisions which will in turn strengthen the consistency with the MCMPR principles.

Draft Recommendation 5.4:

Governments should update legislation and its administration to ensure relevant offshore State and Territory legislation effectively 'mirrors' the Commonwealth offshore legislation as intended.

South Australia Comment: South Australia intends to proceed at a convenient time in the future with amendments to its coastal water legislation to mirror Commonwealth offshore legislation.

Draft Recommendation 5.5:

There is evidence that in some circumstances Indigenous Land Use Agreements can 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 state wide, regional and conjunctive Indigenous land use agreements).

South Australia Comment: South Australia supports the adoption of ILUAs as an effective and efficient means for administering Native Title Act requirements. Currently for the onshore petroleum industry South Australia has one ILUA in place and is expecting to have another 2 agreements in place by early 2009.

Draft Recommendation 5.6:

To avoid potentially lengthy delays, State and Territory Governments should, at an early stage, undertake strategic assessment processes in particularly

⁸ MCMPR, Australian Regulatory Principles: Carbon Dioxide Capture and Geological Storage

sensitive, resource rich areas to identify suitable land to allow the development of major resource projects.

South Australia Comment: The South Australian Government is considering, and discussing with the Commonwealth, areas in which strategic assessment processes under (S. 146) the EPBC Act or through additional bilateral agreements can be applied. This work is consistent with reforms agreed by COAG and being implemented through the Business Regulation and Competition Working Group and the South Australian Government's red tape reduction commitments.

Furthermore, in keeping with the COAG recommendations, through the Seamless National Economy National Partnership South Australia along with other jurisdictions will be developing by mid 2009 implementation plans on opportunities for undertaking strategic assessments in sensitive resource rich areas.

Environment and Heritage

Draft Recommendation 6.1:

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

- *ensuring the Department of 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)*
- *developing bilateral assessment and approval agreements between the Department of Environment, Water, Heritage and the Arts and the Designated 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.*
- *where strategic assessments are proposed for particular regions, these should be conducted early and according to clear timeframes and should not prevent proponents from pursuing approvals for existing projects.*

South Australia Comment:

As per the response to R 5.6, the South Australian Government is considering, and discussing with the Commonwealth, areas in which strategic assessment processes under (S. 146) the EPBC Act or through additional bilateral agreements can be applied.

In relation to petroleum industry proposals, South Australia's experience has revealed that one of the key limitations in the operation of the EPBC Act is the

apparent lack of certainty and clarity on what would constitute a significant impact on matters of NES. Based on the South Australian Petroleum Act model and applying the 'clarity' and 'certainty' best practice principles, the operation of the EPBC Act could be improved through the adoption of criteria similar to those used under the South Australian Petroleum Act for assessing environmental significance as part of the environmental approval process⁹. These criteria provide an auditable and transparent assessment process for PIRSA decision-making to other agencies and stakeholders. The environmental significance assessments carried by PIRSA using these criteria are publicly available on PIRSA's web based environmental register¹⁰.

Draft 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. In addition, the forum should be directed to develop consolidated and consistent environmental guidelines (with flowcharts and procedural information) for petroleum activities that are cross-jurisdictional, such as offshore pipelines.

South Australia Comment: South Australia supports this recommendation and will continue to be represented and remain actively involved in the EAF through the Petroleum and Geothermal Group within PIRSA.

Draft Recommendation 6.3:

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 related to petroleum activities.

South Australia Comment: South Australia supports this recommendation and will continue to be represented and remain actively involved in the EAF through PIRSA.

South Australia has already taken a lead role on EAF to assist expediting a review into a number of onshore approval and compliance processes for the onshore petroleum industry across all jurisdictions. The aim of this initiative is to improve consistency across the onshore jurisdictions.

⁹ Guideline in the use of PIRSA Environmental Significance Criteria:
<http://www.pir.sa.gov.au/petroleum/legislation/regulation/level>

¹⁰ Environmental Significance Assessments (ESA) for all Environmental Impact Reports:
http://www.pir.sa.gov.au/petroleum/environment/register/seo_eir_and_esa_reports

Draft Recommendation 6.4:

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.

- *For example, by improving the provision of baseline environmental information for new acreage releases or for new applications for project approvals in relevant areas.*

South Australia Comment: South Australia sees no issue with this recommendation. This requirement is consistent with the requirements under SA's Petroleum Act (section 106), where in line with the transparency principle, environmental information such as Environmental Impact Reports and environmental research and monitoring information is made publicly available on the PIRSA environmental register¹¹.

Draft Recommendation 6.5:

Indigenous heritage Acts in all jurisdictions should require the consideration of previous decisions made in relation to the same heritage site by other jurisdictions. In addition, the Commonwealth Act should be amended to accredit State Indigenous heritage regimes that comply with a national set of minimum standards.

The South Australia the *Aboriginal Heritage Act 1988* (the AHA) which applies to the protection of Aboriginal heritage is currently being reviewed. Two of the Guiding Principles that underpin the review are relevant in this instance. First, new legislation should better integrate the management and protection of Aboriginal heritage into the land development process as a whole in order to ensure the orderly and timely consideration of Aboriginal heritage issues in any development process, including petroleum exploration and extraction. Second, new legislation should complement the *Native Title Act 1993*, so that the processes for consultation and negotiation with Aboriginal people in the two Acts do not require separate compliance, as is currently the case.

With regard to amendment of the *Aboriginal and Torres Strait Islander Protection Act 1984* (Cth), the South Australian Government supports any proposals by the Commonwealth to work with State and Territory governments to better integrate their respective legislative regimes.

Draft Recommendation 6.6:

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,

¹¹ <http://www.pir.sa.gov.au/petroleum/environment/register>

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 may also be merit in introducing nationally consistent principles.

South Australia Comment: South Australia supports this recommendation and acknowledges the difficulties and impracticalities that can be faced when attempting to establish direct offsets for environmental damage caused. In an attempt to address such impracticalities South Australia under the terms of the *Native Vegetation Act 1991* and *Native Vegetation Regulations 2003*, has adopted the environmental offset concept (Significant Environmental Benefit (SEB)) where licensees who clear native vegetation are required to either:

- Undertake an on ground project approved by the Native Vegetation Council (NVC) which achieves a SEB at the site of the operations or within the same region (of the State), to offset the vegetation clearance caused as a result of the approval; or
- Make a payment into the Native Vegetation Fund of an amount considered by the NVC to be sufficient to achieve a significant environmental benefit. Those funds must be used by the NVC to achieve an SEB within the same region where the clearance occurred.

South Australia concurs with the recommendation for the need for transparency in the governance arrangements and policy for such offset requirements. In South Australia, transparency in relation to SEB calculations for the onshore petroleum and mineral industries is upheld through Native Vegetation Council guidelines¹² that outline the policy governing the SEB calculation methodology.

South Australia is currently seeking ways to strengthen the transparency in the administration of the Native Vegetation Fund and its effectiveness in achieving SEB outcomes.

A Working Group under the Ministerial Council for Minerals and Petroleum Resources' (MCMPR) Standing Committee of Officials is currently preparing a position paper on Environmental Offsets for the minerals and petroleum sectors. This includes a draft set of common principles for national application. The EAF has provided input into this draft and input from the Minerals Council of Australia has been sought. The paper compiles input from international, national and agency experience in resource sector management and has distilled key elements from existing legislation, policy documents and position papers.

It is expected that this position paper will be finalised in 2009 for presentation to MCMPR. It is also expected that such a paper may be considered with the current EPBC review on Environmental Offsets in the development of a nationally and interdisciplinary consistent approach to offsets, particularly a set of principles of application. South Australia has a lead role in the development of this position paper for MCMPR.

¹² Guidelines for a Native Vegetation Significant Environmental Benefit Policy for Clearance of Native Vegetation associated with the Minerals and Petroleum Industry, September 2005
http://www.pir.sa.gov.au/_data/assets/pdf_file/0003/30990/native_veg_policy.pdf

Occupational Health and Safety

Draft Recommendation 7.1:

The legislated coverage of the National Offshore Petroleum Safety Authority should be extended to include the integrity of offshore pipelines, subsea equipment and wells. Governments should also expand its responsibilities to include offshore environmental compliance regulation. 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.

South Australia Comment: South Australia concurs with the recommendation for NOPSA to have coverage for all matters relating to safety in the offshore area. This will greatly assist in achieving greater efficiency through a one window to government for all matters relating to safety. South Australia also concurs that when extending NOPSA jurisdiction to include other offshore activities not currently under its ambit such as pipeline, seismic and other geoscientific exploratory activities, subsea equipment and wells, consideration needs to also be given to ensuring adequate resourcing.

Draft Recommendation 7.4:

State and Territory Governments should make 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.

South Australia Comment: South Australia supports this recommendation because the focus of objective-based legislative regimes, such as the SA Petroleum Act, is for licensees to demonstrate achievement of desired outcomes. In line with the principles of efficiency and practicality, the aim of any such demonstration is that equipment is “fit for purpose” rather than any strict compliance to the letter of onerous standards.

Way forward (Legislative and Administrative Improvements)

Draft 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.

South Australia Comment: From a minimising regulatory overlap point of view South Australia supports this recommendation. However, South Australia

submits that like all other relevant stakeholders, any concerns and issues that local government may have on any such developments need to be addressed through the relevant approval processes. To achieve and maintain the necessary trust of any such stakeholder group through effective consultation is essential if their concurrence to devolving their approval rights to other regulators is to be successful.

Under the Petroleum Act, in line with the openness and efficiency principles local government involvement and input, like any other stakeholder, is sort through various provisions of the Act. These include the environmental approval and assessment process and where relevant land owner notification provisions.

Draft Recommendation 10.2:

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*
- *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 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.*

South Australia Comment: South Australia supports any initiative that will deliver legislation consistent with features of best practice regulation. As mentioned in the introduction of this submission South Australia believes the 6 principles of its petroleum legislation are features of best practice regulation.

Separate Policy Advice from Regulation

South Australia submits that providing these principles are adhered to in the policy formulation and in the administration of the regulations for majority of circumstances there is little need to separate policy advice from regulation. South Australia holds the view, that in relation to the regulation of the upstream petroleum sector in particular, any such separation will in fact be counterproductive. In a highly technical industry such as this industry, any disconnect between the policy-makers and those administering the legislation,

is very likely to foster many of the very deficiencies this review is seeking to address. That is, policy-makers removed from operational aspects of the regulatory process are likely to face major challenges in developing an appreciation for the type of regulatory framework that would be appropriate and effective for the relevant industry. The very success of the South Australian upstream petroleum regime has largely been for reasons contrary to what this recommendation is suggesting, that is, the regulatory policy has been developed by those who administer it. This has also greatly contributed to the success of South Australia's lead agency or one-stop-shop concept as discussed below. Any attempt to separate policy from regulation could threaten the one-stop-shop and also exacerbate the current resourcing strain experienced by regulatory agencies trying to retain competent and experienced personnel.

Furthermore, South Australia contends that any risk of regulatory capture can be mitigated through the openness and transparency principles. That is, as detailed in Box 1 (Attachment 1), effective stakeholder consultation in developing the regulatory objectives to be achieved and public reporting of industry performance against those objectives.

Draft Recommendation 10.3:

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 and that objects clauses are clearly defined*
- *clearly define the powers of regulators in developing guidelines and the intent and style of those guidelines.*

South Australia Comment. As has been recognised and acknowledged in chapter 10 of the draft report, the South Australian petroleum legislation is objective-based and therefore South Australia supports this recommendation.

South Australia supports the need to ensure that guidelines developed are clearly not misconstrued as regulations.

Draft Recommendation 10.4:

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).

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

South Australia Comment: South Australia supports this recommendation where it can be demonstrated that it is appropriate and cost-effective to do so.

Draft Recommendation 10.5:

Where not already implemented, States and Territories should consider establishing a lead agency for petroleum approval processes. 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.

South Australia Comment: As acknowledged in chapter 10 of the draft report, South Australia (PIRSA) is widely seen as a model to emulate for the one-stop-shop. Therefore South Australia supports this recommendation and stresses that its success depends on the extent to which the lead agency can attain the confidence and trust of other state regulatory bodies. To achieve such trust the lead agency must display genuine openness and transparency in its decision-making and engagement with the other agencies.

PIRSA has sought to reinforce this openness and transparency through MoU's and Administrative Arrangements with other relevant agencies and this has had considerable success. However, this has not eliminated the need in some cases for separate or overlapping licensing, in particular with some of the state Environment Protection Act requirements. PIRSA continues to work at enhancing and reinforcing these intra-agency relationships to maintain its lead agency role in South Australia. The ultimate success of the lead agency approach is to instil sufficient trust and confidence to eliminate the need for dual or multiple licensing and consenting requirements under separate legislation with all approval decision-making devolved to the lead Agency. South Australia submits that critical to eliminating multiple licensing/consenting is the need for the lead agency to have access to all relevant expert advice within government to enable it to make well informed decisions. By eliminating separate licensing, a major challenge to achieving this is the need to establish appropriate funding arrangements for such advice services between the lead agency and the other agencies. Failure to do so would render the lead agency to an approval facilitating role, which as asserted under draft finding 10.5 in chapter 10 of the draft report, would have limited impact on streamlining the approval process and improving the timeliness of decisions.

Even for South Australia this continues to be a challenge.

Draft Recommendation 10.6:

The Australian Government should establish a new national offshore petroleum regulator in Commonwealth waters, with regulatory responsibility

for resource management, pipelines and environmental regulation. It should 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.*

The new national offshore petroleum regulator should also incorporate the National Offshore Petroleum Safety Authority, which would continue to regulate offshore petroleum occupational health and safety.

South Australia Comment. South Australia endorses this recommendation on the grounds that in relation to an area subject to Commonwealth jurisdiction, a national offshore regulatory institution will efficiently deliver consistent application of relevant regulations. Such administration should also cover seismic and other geoscientific exploratory activities.

Draft Recommendation 10.7:

The Australian Government should give State and Territory Governments, on a bilateral basis, the option of delegating their existing petroleum-related regulatory powers in coastal waters to the new national offshore petroleum regulator and ultimately the Commonwealth Minister as relevant. The governance arrangements 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 their State or Territory offshore petroleum Act fully mirrors the Offshore Petroleum Act 2006 (Cwlth) and its subordinate regulations, including provisions relating to pipelines.

South Australia Comment. South Australia endorses this recommendation as it will greatly facilitate consistency in the regulation of all submerged land activities. Furthermore, such an arrangement will deliver efficiencies through avoidance of duplication in regulatory resources at state and federal levels.

Draft Recommendation 10.8:

Where States and Territories have agreed to delegate their coastal water powers, including pipelines, to the national offshore petroleum regulator and ultimately the Commonwealth Minister as relevant, States and Territories should also have the option to delegate 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 Act 2006 (Cwlth) where relevant.

South Australia Comment. South Australia is willing to consider such a recommendation subject to ensuring that the features of the applicable

Commonwealth legislation mirror or are at least demonstrably consistent with the South Australian Petroleum Act principles of best practice. Furthermore, as a result of its demonstrated success in major cross-jurisdictional pipeline approvals under the Petroleum Act, such as the SEA Gas pipe line and the more recent QSNLink, South Australia would be reluctant to support any national framework that would be unable to duplicate this level of success.

A foreseeable challenge in delegating such responsibility to a national regulator will be the need, at least in the case of South Australia, to preserve the effective interrelationship with other state legislation. The effectiveness of this interrelationship with the onshore petroleum legislation has been a key contributor to the success of pipeline approval timelines achieved in South Australia. One possible way of achieving this is by establishing links with other onshore state legislation and the national regulator through the existing onshore regulator. In the case of South Australia this could be achieved through amending existing MoUs and Administrative Arrangements to incorporate the national pipeline regulatory requirements. Furthermore, to preserve existing relationships and trust the state petroleum regulator can through a bi-lateral agreement take on a co-ordinating role between the national regulator and the other state agencies.

ATTACHMENT #1

BOX 1: PETROLEUM ACT 2000 REGULATORY PRINCIPLES

Certainty

The rights conferred by licences are certain and will not be subject to unreasonable change or challenge. Also the regulatory objectives and obligations under the regulatory regime are uniform, clear and predictable to all licensees.

Openness

Decision-making processes are not exclusive and the legal rights of all stakeholders are not unfairly compromised. This entails the need for fair and equitable processes for the:

- allocation of title rights;
- managing of rights of other land owners with overlapping land rights;
- managing of rights of title holders to access land for the exploration and development of regulated resources;
- provision of access to natural resources governed by this legislation where surface access within the licence area may be restricted by the sensitivity of the natural environment or other previously established rights;
- stakeholder consultation on the establishment of the environmental protection objectives; and
- appeal rights to those affected by decisions made under the legislation.

Transparency

The objects and intent of the regulatory regime are clearly communicated and understood by all stakeholders. Also, stakeholders are provided with the opportunity to input into the development of these objects and intent.

The decision-making processes are visible and comprehensible to all stakeholders and that industry performance in terms of compliance with the regulatory objectives is apparent to all stakeholders.

Flexibility

There is sufficient flexibility in the types of licences that can be granted so as to more adequately reflect the purpose of the activities to be undertaken and the stage of development of the resource under the licence.

The level of intervention (including enforcement) needed to ensure compliance is determined on the basis of the individual company being regulated and the outcomes needed to be achieved.

Practicality

The regulatory objectives are achievable and measurable.

Efficiency

The compliance costs imposed on both government and the company by the regulatory requirements are minimised and justified. Distributional effects across society of company negative externalities is minimised and companies remain liable for the costs of such externalities. An appropriate rent is paid to the community of South Australia from the value realised from the exploitation of its natural resources.

BOX 2: OECD COUNCIL POLICY RECOMMENDATIONS ON REGULATORY REFORM¹³

1. Adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation.

- Establish principles of "good regulation" to guide reform, drawing on the 1995 OECD Recommendation on Improving the Quality of Government Regulation. Good regulation should: (i) be needed to serve clearly identified policy goals, and effective in achieving those goals; (ii) have a sound legal basis; (iii) produce benefits that justify costs, considering the distribution of effects across society; (iv) minimise costs and market distortions; (v) promote innovation through market incentives and goal-based approaches; (vi) be clear, simple, and practical for users; (vii) be consistent with other regulations and policies; and (viii) be compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels.
- Create effective and credible mechanisms inside the government for managing and co-ordinating regulation and its reform; avoid overlapping or duplicative responsibilities among regulatory authorities and levels of government.
- Encourage reform at all levels of government and in private bodies such as standards setting organisations.

2. Review regulations systematically to ensure that they continue to meet their intended objectives efficiently and effectively.

- Review regulations (economic, social, and administrative) against the principles of good regulation and from the point of view of the user rather than of the regulator.
- Target reviews at regulations where change will yield the highest and most visible benefits, particularly regulations restricting competition and trade, and affecting enterprises, including SMEs.
- Review proposals for new regulations, as well as existing regulations.
- Integrate regulatory impact analysis into the development, review, and reform of regulations.
- Update regulations through automatic review methods, such as sunseting.

3. Ensure that regulations and regulatory processes are transparent, non-discriminatory and efficiently applied.

- Ensure that reform goals and strategies are articulated clearly to the public.
- Consult with affected parties, whether domestic or foreign, while developing or reviewing regulations, ensuring that the consultation itself is transparent.
- Create and update on a continuing basis public registries of regulations and business formalities, or use other means of ensuring that domestic and foreign businesses can easily identify all requirements applicable to them.
- Ensure that procedures for applying regulations are transparent, non-discriminatory, contain an appeals process, and do not unduly delay business decisions.

¹³ Policy Recommendation of the Council OECD: *Council Recommendation*
(http://www.oecd.org/LongAbstract/0,3425,en_2649_34141_1826379_1_1_1_1,00.html)