



# **Retention Lease Arrangements**

**Response to the Department of Resources, Energy  
and Tourism Discussion Paper**

**24 August 2009**

## KEY POINTS

- Western Australia continues to experience a serious domestic gas shortage. It is vital that gas resources currently held under retention leases are developed where they could supply the domestic market.
- Offshore gas developments in Australia are taking significantly longer to progress from discovery to first gas compared to other countries. This is impacting project development costs and domestic gas supply.
- Major producers appear to be using Australia's retention lease arrangements as an international safe haven to warehouse resources, when those resources could be commercially developed to supply the domestic market.
- Experience in other countries demonstrates that a stringent approach to retention lease management would promote exploration and development of Australia's gas resources.
- Federal Government reviews aimed at strengthening retention lease arrangements have been underway since 2006.
- The 2007 Joint Working Group on Natural Gas Supply, established in response to domestic gas supply concerns, recommended greater stringency, transparency and third party participation.
- While the 2009 Discussion Paper's Draft Recommendations are a step in the right direction, they do not go far enough in addressing the overriding objective of domestic gas supply.
- Retention leases should, in the first instance, be assessed to determine whether fields can supply the domestic market on a commercial basis.
- This expectation should be expressly reinforced in the relevant administrative guidelines or legislation.
- Information should be made available that would allow meaningful engagement by third parties. Opportunity for participation should be provided throughout the process.
- Clear timeframes should be established, including for Ministerial decisions. This will ensure that decisions over lease applications, reviews and renewals are made in a timely manner.
- The Government's Joint Technical Report should be subject to independent peer review to test assumptions and conclusions.

- The Alliance strongly opposes the Discussion Paper's Draft Conclusion that LNG developments be given precedence over domestic supply, where resources are "essential to meeting contractual commitments and the overall viability" of LNG projects.
- Given the original intent of the Joint Working Group process, any watering down of retention lease arrangements that would discriminate against domestic supply should be strongly opposed.
- The issue underlines the need of a national domestic gas reservation policy. Such a policy would complement retention lease arrangements and Western Australia's 15 per cent reservation policy.
- It would help balance the overwhelming focus of major producers on LNG development, and ensure sufficient reserves of gas are set aside to meet the current and future needs of the local economy.

## 1. The DomGas Alliance

The DomGas Alliance is Western Australia's peak energy user group and represents natural gas users, infrastructure investors and prospective domestic gas producers. The Alliance aims to promote security and affordability of gas supply for industry, small business and households.

The Alliance was formed in 2006 in response to a serious shortage of gas supply for new developments in WA. Alliance members represent around 80 percent of Western Australia's domestic gas consumption and gas transmission capacity, including smaller industrial and household users of gas. The Alliance also includes companies working to develop domestic gas fields.

Members include: Alcoa of Australia, Alinta, Burrup Fertilisers, DBP, ERM Power / NewGen Power, Fortescue Metals Group, Horizon Power, Newmont Australia, Synergy, Verve Energy and Murphy Oil.



## **2. Overview**

The Alliance welcomes the opportunity to comment on the Federal Government's Discussion Paper, and notes that government processes to review retention lease arrangements have been ongoing since 2006.

Many of the issues canvassed in the Discussion Paper have been examined as part of the 2007 Joint Working Group on Natural Gas Supply process, which concluded over two years ago. That process was instituted to address serious domestic gas supply shortages and promote energy security, particularly in Western Australia.

Given the original intent of the Joint Working Group process, and Western Australia's continuing domestic gas shortage, it is vital that domestic gas supply remain the driving force for changes to current retention lease arrangements.

The Alliance shares the Discussion Paper's objectives on the need to improve stringency, transparency and third party participation in the retention lease process.

While the Paper's Draft Recommendations are a step in the right direction, they do not go far enough in addressing these, and in meeting the overriding objective of promoting domestic gas supply.

## **3. The importance of domestic gas supply**

### **3.1 WA's dependence on gas supply**

Domestic gas security is an issue of vital importance for Western Australia. Access to secure and affordable energy, particularly natural gas, underpins the State's mining and resource processing industries, fuels power generation, and supplies small businesses and households.

Western Australia is the most energy and gas-dependent economy in Australia. Natural gas supplies half of the State's primary energy requirements and fuels 60 per cent of the State's electricity generation. In contrast, natural gas supplies 19 per cent of the primary energy needs of Australia as a whole.

Given the dependence on gas-fired electricity, the availability and affordability of natural gas also has a major direct impact on households and small businesses through electricity prices, as well as gas prices.

The State's demand for gas will continue to grow. Western Australia will require around 1100 TJ/day of gas by 2014-15 to meet new and replacement demand. This demand is equivalent to the total size of the existing market for gas.

Importantly, around 274 TJ/day of replacement gas will be needed to replace existing gas contracts as they expire. These include large contracts for gas used to underpin existing electricity generation, industrial processing and manufacturing.

### **3.2 Natural gas' vital role in meeting the greenhouse challenge**

Natural gas is the only conventional energy source that can underpin Australia's transition to a low carbon economy during the next 20 years.

Natural gas produces less than half the greenhouse emissions compared to coal and uses proven, readily available technology. Combined cycle gas-fired plants and gas-fired cogeneration plants constitute by far the most greenhouse efficient forms of non-renewable power generation.

Natural gas supply is also critical to underpin future expansion of renewable energy to meet the Federal Government's Renewable Energy Target. Only natural gas plants can provide the peaking power capacity necessary to support renewable power such as wind and solar, and which makes renewable energy a feasible source of energy for the local market.

From a global greenhouse perspective, using natural gas to fuel local industry, power generation, small businesses and households represents the most greenhouse and energy efficient use of the Australia's natural gas resources.

Unlike LNG exports, domestic gas does not need to be liquefied, shipped long distances in tankers and then regasified before it can be used as a fuel – an energy-intensive process.

Domestic gas supply is over 92 per cent energy efficient, with less than 8 per cent of energy lost in the supply chain. In contrast, LNG is only 74 per cent energy efficient, with 26 per cent of the energy consumed by the LNG supply chain.

## **4. Western Australia's continuing gas shortage**

Western Australia is faces serious gas security challenges. Notwithstanding the completion of the Joint Working Group's process in 2007, Western Australia continues to experience a serious domestic gas shortage. Current and prospective gas users are unable to secure long term gas supplies in substantial quantity.

Recent wholesale prices have been up to four to five times the price of new gas in Victoria. WA gas prices are now among the highest of any gas producing and exporting economy in the world.

The continuing gas shortage is having a significant impact on investment, development and the environment. New projects are struggling to secure world competitive gas prices, putting at risk billions of dollars in potential investment.

At the same time, major gas producers remain overwhelmingly focused on LNG exports. This has seen major producers warehousing gas reserves under retention leases for potential LNG exports – when those resources might otherwise be commercially developed to supply the domestic market.

Despite being Australia's largest gas project development in generations, just 5 per cent of the gas resources from the 60-year life Gorgon Project have been committed to meeting Australia's long term energy needs. 95 per cent of Gorgon gas will be exported to secure the energy needs of countries like China.

The Gorgon producers have also significantly delayed domestic gas supply from the Project until completion of the third LNG train. This is despite domestic gas investment accounting for less than 5 per cent of the overall project cost.

At a time when the focus should be on cutting Australia's carbon footprint, Western Australia is building new coal-fired power stations because of the shortage of gas. The recent State Government's electricity tender did not attract a base-load gas option, resulting in the State's next base-load power station being coal-fired as opposed to gas-fired.

At current prices in Western Australia, gas is no longer competitive with coal for baseload power generation and most resource processing.

This is unlikely to change under an emissions trading scheme.

At a wholesale gas price of \$7 per gigajoule (before transport costs), natural gas would only be competitive with coal for new baseload power plant construction at a \$90 per tonne carbon cost. Recent wholesale domestic gas prices have been up to \$14-16 per gigajoule before transport costs.

Western Australia is facing a future where coal is the only viable energy source for baseload power generation. The current domestic gas shortage could be the single greatest factor contributing to greenhouse emission growth in the State over the next 20 years.

## **5. Stringent approach to retention leases needed**

Given the overwhelming focus of major gas producers on LNG export, and the fact that the bulk of Western Australia's gas reserves are currently held under retention leases, it is vital that resources that can supply the domestic market are developed accordingly.

Under the Act, producers should not use retention leases to withhold supply from the domestic market, or to park resources for increasingly ambitious LNG projects when those resources might be developed now.

The Act is explicit that a retention lease must be converted to a production licence when a reserve is commercial. The Act does not provide an exception for resources – that might otherwise supply the domestic market – to be set aside for the purpose that they might at some time in the future contribute to an LNG development.

The Alliance supports a stringent application of the Act to ensure resources are not being warehoused by major producers.

Furthermore, reserves held under retention leases should in the first instance be assessed to determine whether they are capable of supplying the domestic market on a commercial basis. This expectation of domestic supply should be reinforced by the administrative guidelines or legislation.

The Alliance is alarmed at the Discussion Paper's suggestion that resources - which might otherwise supply the domestic market – may be warehoused for future LNG development so long as they are considered “essential to meeting contractual commitments and the overall viability of the greater project” (Draft Recommendation 5.8).

Given the original intent of the Joint Working Group process, any watering down of the existing arrangements to give precedence to LNG development over vital domestic supply should be strongly opposed.

It would be concerning if a Commonwealth initiative – initially instituted to promote domestic gas security – be again diverted towards maximising LNG exports at the expense of local industry and households.

## **6. Greater transparency**

There is a need to improve transparency and third party participation (prospective gas producers, infrastructure investors or gas users) in the review process. There is currently little information that is made public on retention lease applications, reviews or renewals. There is no formal procedure for third parties to participate in the process, or established timeframes for reviews of retention leases to be completed.

This lack of transparency creates an asymmetry of information that exclusively benefits existing lease holders at the expense of prospective gas producers, or downstream gas customers. Stakeholders continue to express frustration at the current arrangements and their difficulties in being able to access information and engage in the process.

This contrasts with existing State and Commonwealth environmental approval processes for development projects. These processes provide for transparency and significant opportunity for stakeholder input, with well defined timeframes.

Greater transparency and third participation will promote domestic gas supply by:

- improving the underlying basis of retention lease decisions;
- encouraging third party participation;
- subjecting applicant and lease-holder claims and assumptions to greater scrutiny and contestability;
- strengthening the application of the commerciality test; and
- promoting new field development.

The Draft Recommendations however propose very limited improvements to transparency and third party participation. Information that might be made available on individual leases or lease processes would be heavily restricted on “confidentiality” concerns.

This would severely constrain the ability of third parties to meaningfully participate in the process to challenge the claims and assumptions of lease holders, or to test assumptions by the Delegated Authority on commerciality.

## **7. Opportunity for third party participation**

The Paper appears to limit third party participation to a single comment period. This period (2 weeks) is also inadequate given the complexity and technical nature of retention lease arrangements.

This lack of opportunity for engagement contrasts with existing State and Commonwealth environmental approvals processes for project developments. These provide opportunity for third party engagement at different stages in the process, and do not limit input to a single comment period.

For third party participation in retention lease arrangements to be meaningful, there should also be a review period allowing third parties to submit information in response to:

- the assessment parameters used by the Designated Authority;
- the assumptions and development concepts being advanced by the proponent; and
- to reinforce or challenge the Designated Authority’s draft decision; and

- the establishment of conditions for the grant or renewal of retention leases.

## **8. Process timeframes**

Clear timeframes should be established and abided to for the retention lease process, including in relation to Ministerial decisions. This will ensure that retention lease applications, reviews and renewals are completed and decisions made in a timely manner.

The current process appears to lack firm timeframes. Reviews of individual leases appear to have been underway for years – with no outcome for prospective producers or domestic gas consumers.

These ongoing delays in reviewing or terminating retention leases leads to increased project development costs for prospective developers, the loss of potential supply to domestic consumers, and impacts the commercial viability of resources.

## **9. Managing commercial sensitivity**

While the Alliance recognises that some sensitivity should be accorded to commercial information, this should be managed in a manner that does not undermine transparency, process rigour and third party participation.

Commercial sensitivity should moreover not be used as a disguised means of restricting information that might otherwise allow third parties to challenge claims and assumptions of lease holders or to permit scrutiny of the basis of decisions made by the Designated Authority.

For example, it is not adequate that only “summary information” sufficient for third parties to “establish the relevance of the lease application” by made publicly available – as proposed by the Discussion Paper (Draft Conclusion 4.2).

The information should instead be sufficient to allow third parties to make an informed decision on challenging the claims and assumptions made by applicants and lease holders, and to challenge assumptions / draft conclusions made by the Designated Authority.

A number of measures could be implemented to promote transparency and third party participation. These are discussed in the Alliance’s response to Draft Recommendation 4.2.

The closed nature of the Retention Lease process contrasts sharply with the process employed for environmental approvals. Existing State and Commonwealth environmental approvals processes for project developments for example require project proponents to publicly disclose a great deal of detailed information, much of which could be described as “commercially-sensitive”. This includes information on:

- the proposed development concept and production levels;
- required infrastructure modifications or proposed new infrastructure;
- equipment components and process modifications;
- requirements for services and utilities, including water and energy;
- construction and operational workforce;
- expected emissions and other environmental impacts; and
- proposed environmental management plans.

## **10. Independent review**

The robustness of retention lease decisions should be improved by providing for independent peer review or third party assessment of the Government's Joint Technical Report. This should test the assumptions and conclusions made in the Report, to ensure they are valid and appropriate in the circumstances.

Third parties should be given opportunity to provide input to the independent review. The review report should be published to promote confidence and transparency in the process.

## **11. Perceived investor risk**

The Discussion Paper attaches considerable deference to perceived investor risk and the potential impacts that might flow from any changes to retention lease arrangements. This sensitivity appears, however, at odds with actual experience in Australia or international experience.

While investor or sovereign risk is a relevant consideration, major producers have in fact sought to exploit this in a manner that has been detrimental to Australia's economic interest.

As the Minister of Resources, Energy and Tourism stated in releasing the Discussion Paper: "Australia's political stability can see our resources put to the back of the queue in terms of development planning, as companies choose to 'get in and get out' of nations with greater sovereign risk, knowing their Australian titles can be warehoused and kept for a rainy day".

It is relevant that 92 per cent of the world's natural gas resources are controlled by national governments or national oil companies. Only 8 per cent of world resources are accessible on an open basis by international oil companies.

Australia with 2 per cent of the world's reserves therefore represents a quarter of the total global opportunity available to international oil companies on an open basis. Changes to the retention lease process will therefore have a

marginal if any impact on Australia's continuing attractiveness to international oil companies.

The reality is that offshore gas developments in Australia are taking significantly longer to progress from discovery to first gas compared to in other countries. This leads to increased project development costs and the loss of supply to domestic consumers.

Furthermore, prudent operators undertake "Scenario Planning" prior to any permit application and exploration drilling. Scenario Planning includes detailed plans to move a project forward to first production, including identification of all major issues such as government, environmental and other regulatory approvals, which need to be addressed to achieve first production.

Given this industry approach, the extraordinarily long time taken by major producers to develop gas resources in Western Australia is inconsistent with overseas experience.

It is apparent that major producers are using Australia's accommodating regulatory environment as an international safe haven. They have been doing so to warehouse resources for possible future export development, when those resources could be commercially developed to supply the domestic market.

## **12. Experience in other countries**

While the Discussion Paper raises concerns over potential sovereign or investor risk, it provides little comparison between Australia's and other countries' regulatory regimes.

Such a comparison is necessary to test sovereign risk concerns relating to changes to Australia's arrangements, and to assess the effectiveness of arrangements in other countries.

Experience in other countries demonstrate that far from discouraging investment, a more stringent approach to retention lease management would in fact promote development of Australia's gas resources. It would significantly improve exploration and production cycle time, and reduce development costs.

That Australia's existing arrangements are out of step with those in other gas producing countries has created a perception of Australia as a "safe harbour". This has encouraged international oil and gas companies to warehouse resources in Australia as part of a global resource management strategy.

### **12.1 United Kingdom**

Until recently, the United Kingdom did not have a process to force activity when oil and gas licences were granted. Licences granted between 1964 and 1972 were "multi-block" – if the initial term obligation was fulfilled with a

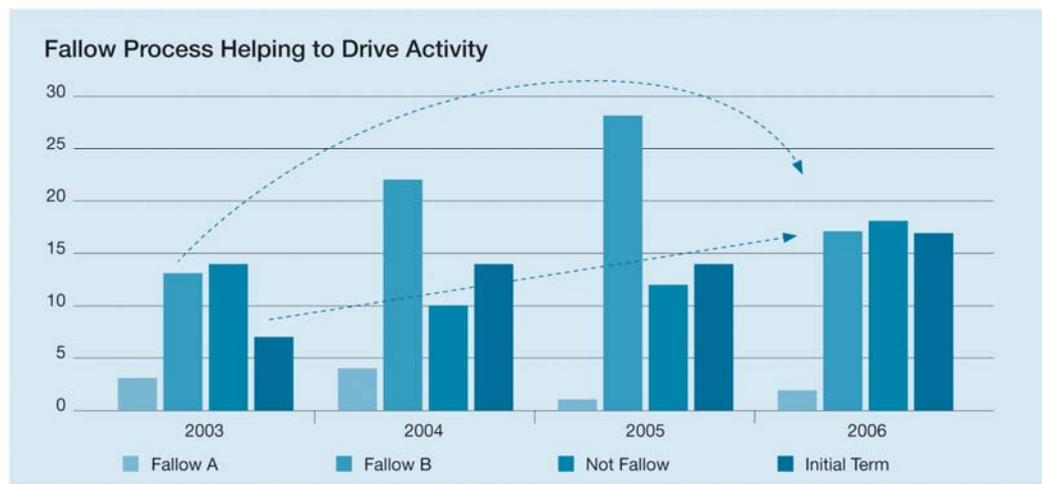
Development somewhere on the licence, companies could retain acreage into the second term for up to 46 years without any further activity.

In response, the UK Government implemented an initiative to facilitate development of fields that were Fallow Discoveries or on Fallow Blocks. Under the current system, both blocks and discoveries are considered Fallow after three years and are classed “Fallow B”.

These “Fallow B” Discoveries and Blocks are released on the UK government website if the current licensees were unable to progress activity due to misalignment within the partnership, a failure to meet economic criteria, or other commercial barriers. Fallow B Discoveries that have been listed on the website for two years or Fallow B Blocks that have been listed on the website for one year will be relinquished if there are no agreed plans for significant activity.

Far from discouraging investment, the UK’s efforts to tighten the country’s Fallow Field process have in fact significantly increased exploration and production activity by oil and gas companies.

Figure: UK Department of Trade and Industry presentation



**UK fields which are now under development or in production that were Fallow Discoveries or on Fallow Blocks**

Duart	Maria	Gadwell	Pict	Chiswick	Grove
Wenlock	Thurne	Arthur	Horne	Davy East	Seymour
Saturn Area	Wren	Brechin	Cutter	Farragon	Munro
Broom	Nuggets N4	Goldeneye	Braemar	Sycamore	Caledonia
Madoes	Mirren	Scoter	Carrack	Playfair	

## **12.2 United States**

The State of Texas awards oil and gas permits for a three year period, based on a cash bonus bid system. The state's equity or government take increases with each year of the permit, until an exploration discovery occurs. As such, operators are incentivised to drill as quickly as possible, encouraging companies to improve cycle time and operational efficiency.

The system also discourages "promoters" – companies that acquire exploration licences which they then seek to "promote out" to other companies to drill. These companies, which have no energy drilling or producing capabilities, slow down the exploration process and tie up acreage for protracted periods of time.

## **12.3 Other countries**

Major producers (such as ExxonMobil in Indonesia and Shell in Nigeria) have been close to either losing operatorship or even gas fields due to the slow pace of field development.

A less than stringent approach by Australia to petroleum resource leases creates an international safe haven for major producers. This provides an incentive to warehouse resources which might otherwise be commercially developed.

## **13. The need for a national gas reservation policy**

The Discussion Paper's suggestion that LNG development could be given precedence over domestic supply in retention lease management underlines the need for a national domestic gas reservation policy.

Such a policy would complement retention lease arrangements and Western Australia's 15 per cent reservation policy. It would help balance the focus of major producers on LNG development, and ensure sufficient reserves of gas are set aside to meet the current and future needs of the local economy.

While the Alliance supports the development of major LNG projects, it is evident that major producers are overwhelmingly focused on LNG exports at the expense of supplying the domestic market.

A recent report by the Allen Consulting Group underlined the importance of a domestic reservation policy. The independent report, which was commissioned by the ACCC, considered:

"The WA market may see the launch of several large gas projects in the near future. At least some of these projects would not otherwise have a domestic market phase but for the WA Gas Reservation policy."<sup>1</sup>

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<sup>1</sup> Allen Consulting Group, *Gorgon Gas Project Joint Venture Application for Authorisation of Joint Marketing: Final Report*, Report to the Australian Competition and Consumer Commission, July 2009, p.28.

## ATTACHMENT: RESPONSES TO DRAFT CONCLUSIONS

- 2.1** *Retention leases play a necessary role in the efficient development of Australia's offshore resources, and therefore should be retained.*

Supported

- 2.2** *Some form of assessment of commerciality is essential to the lease award, but the definition and application is essentially arbitrary. This suggests the need for further review of these parameters, including an analysis of alternative systems used in state jurisdictions and elsewhere around the world.*

Supported

- 2.3** *Measures that more clearly implement the Government's objective to develop resources as early as commercially possible should be considered.*

Supported

- 2.4** *Any changes to the risk/reward balance should be consistent with the direction of other policies designed to encourage investment.*

They should above all be consistent with the objective of promoting domestic gas supply.

- 3.1** *Consider current approvals take too long and recommend investigating ways of streamlining approvals processes.*

Supported

- 3.2** *Recommend that the guidelines be updated to reflect current practice and reviewed to determine whether they are properly implementing the Commonwealth's policy objectives and providing sufficient certainty to industry about the application and assessment process.*

They should above all be assessed against whether they will promote domestic gas supply.

- 3.3** *Recommend the criteria determining which retention leases are referred to ministers be updated, including adding an explicit reference to referring leases of strategic significance.*

Supported

**3.4 *Note the recommendation of the Productivity Commission in relation to the establishment of a single offshore regulator which will be considered as part of the Commonwealth response to that report.***

Strongly opposed

The Alliance considers that the existing joint Commonwealth – State regulatory arrangement to be appropriate and supports the continuing strong role of the WA Department of Mines and Petroleum and the WA Minister for Mines and Petroleum.

Furthermore, the Alliance notes that reviews into strengthening retention lease arrangements have been underway since 2006. Despite the critical importance and urgency of domestic gas supply, no outcomes have yet been implemented by the Commonwealth to promote domestic gas supply.

The Alliance would not support initiatives that would further serve to delay the urgent reform process. The Department should instead focus on delivering greater stringency, transparency and third party participation. Responses to achieve this have already been identified, including as part of the Joint Working Group report process and the Alliance's 2008 submission to the Department on retention lease management.

**3.5 *Recognise the important role that reasonable title conditions can play in ensuring retention lease holders actively address barriers to commercialisation of a discovery;***

Supported

**3.6 *Recommend that assessment conditions should include a reasonable program of work (field and commercial), similar to those which apply to exploration permits. The program would be derived in the first instance from an assessment of the merits of the program proposed by the applicant;***

Supported

**3.7 *Recommend title conditions should be clearly specified in the title document in terms of work and the year or years in which it will be carried out. The description should be sufficient for the DA to be able to determine if this work is done without reference to the application document. There should be uniform practices between jurisdictions;***

Supported

- 3.8 *Recommend the reporting requirements for retention leases be clarified, and be sufficient to enable monitoring of work programs. For example, study elements should be clearly specified and reports on commercial discussions should provide sufficient evidence for the JA to determine that these have been carried out in good faith and in a timely manner;***

Supported

- 3.9 *Recommend these reports be provided to both the DA and the Commonwealth and an assessment made as to whether the leaseholder is meeting its title conditions;***

Supported. These reports should also be made publicly available.

- 3.10 *Recognise cancellation as a legitimate option if lease conditions have not been met; and,***

Supported.

- 3.11 *Support the consideration of methods by which evidence of progress in work programs can be tested or validated effectively.***

Supported

- 4.1 *Support the need to protect commercially sensitive information within a retention lease application.***

As discussed above, commercial sensitivity should be managed in a manner that does not undermine transparency, process rigour and third party participation.

Commercial sensitivity should moreover not be used as a disguised means of restricting information that might otherwise allow third parties to challenge claims and assumptions of lease holders or to permit scrutiny of the basis of decisions made by the Designated Authority.

The closed nature of the Retention Lease process contrasts sharply with the process employed for environmental approvals. Existing State and Commonwealth environmental approvals processes for project developments for example require project proponents to publicly disclose a great deal of detailed information, much of which could be described as “commercially-sensitive”.

Measures that would improve transparency and third party participation are outlined below.

**4.2 See benefit in greater transparency of retention leases, and proposes summary information drafted by the applicant be published (typically on the internet) about upcoming applications, titleholders, terms, title conditions and barriers to commercial viability. The information should be sufficient for third parties to establish the relevance of the lease application, akin to an executive summary, without containing commercially sensitive information.**

It is not adequate that only “summary information” sufficient for third parties to “establish the relevance of the lease application” by made publicly available.

The information should instead be sufficient to allow third parties to make an informed decision on whether to challenge the claims and assumptions made by applicants and lease holders, and to challenge assumptions / conclusions made by the Designated Authority.

Furthermore, transparency should also be extended to decisions by the Designated Authority in granting or renewing leases.

Measures to improve transparency, process rigour and third party participation include:

- A public, on-line registry of State and Commonwealth retention leases should be established.
- The registry should provide clear indication on the current status of individual Lease applications or review process, and indentify leases coming up for review.
- The Designated Authority should make a public announcement when it begins the process of reviewing an individual retention lease. Interested parties should be invited to make submissions.
- The factors and assumptions used by the Designated Authority to test “commerciality” should be publicly disclosed.
- An assumptions or data book identifying key factors such as prices, local demand, rate of return, expectations on CAPEX / OPEX, etc, should be published.
- Expert reports commissioned by the Designated Authority into matters such as market conditions, construction costs, etc, should be published.
- The Government’s Joint Technical Report should be published.
- The reasons and substance of the Designated Authority’s decision should be published.

- There should be an independent peer review or third party assessment to review and validate the Joint Technical Report, and to test the assumptions and conclusions made.
- The process should be subject to established timeframes to ensure reviews are completed and decisions on the granting or renewal of retention leases are made in a timely manner.

**5.1 *Recognise that, despite the tightening in international and domestic gas markets, there are many aspects of gas projects which make them more difficult to commercialise than liquids projects.***

**5.2 *It is essential that all reasonable development options be progressed and, given the strategic importance of domestic gas to Australia, this should include an explicit treatment of the potential of the project to supply to the domestic gas market.***

In the first instance, reserves held or proposed to be held under retention leases should be assessed to determine whether they are capable of supplying the domestic market on a commercial basis.

The administrative guidelines or legislation should also be amended to reinforce this expectation.

**5.3 *Recognise that the market will determine where gas will ultimately be sold. It does not see any strong evidence of market failure in this regard.***

While the Alliance supports efficient and competitive markets, governments should not be afraid to intervene in the market place where there are overriding public benefits in doing so. These include promoting energy security and ensuring secure and affordable gas supply for Australian industry and households.

It is disappointing that the Discussion Paper appears to ignore clear evidence that the market has failed to ensure secure and affordable gas supply in Western Australia:

- Western Australia continues to experience a serious domestic gas shortage despite holding the bulk of Australia's natural gas resources.
- Current and prospective gas users are unable to secure long term gas supplies in substantial quantity.
- Despite the State's "abundance" of gas, recent wholesale prices have been up to four to five times the price of new gas in Victoria.

- WA gas prices are now among the highest of any gas producing and exporting economy in the world.
- Western Australia continues to have one of the least competitive gas markets in the country. This is the direct result of government intervention establishing and endorsing anti-competitive cartel selling arrangements.
- Just two producer groups controlling close to 100 per cent of the market, with the North West Shelf Joint Venture producers controlling 70 per cent of the market as a result of cartel selling arrangements.
- New projects are struggling to secure world competitive gas prices, putting at risk billions of dollars in potential investment.
- At a time when the focus should be on cutting Australia's carbon footprint, Western Australia is building new coal-fired power stations because of the shortage of gas.
- At current prices, gas-fired power generation and major resource processing in the South West will no longer be economic.
- Major gas producers remain overwhelmingly focused on LNG exports at the expense of domestic gas supply.
- This has seen major producers warehousing gas reserves under Retention Leases for potential LNG exports – when those resources could be commercially developed to supply the domestic market.
- Despite being Australia's largest gas project development in generations, just 5 per cent of the gas resources from the 60-year life Gorgon Project have been committed to meeting Australia's long term energy needs. The bulk of Gorgon gas will be exported to secure the energy needs of countries like China.
- The Gorgon producers have significantly delayed domestic gas supply from the Project until completion of the third LNG train. This is despite domestic gas investment accounting for less than 5 per cent of the overall project cost.

The suggestion in the Discussion Paper that LNG development could be accorded precedence over domestic gas supply in retention lease management would further exacerbate Western Australia's serious gas shortage.

The issue underlines the importance of a stringent approach to retention leases to promote domestic gas supply.

It also underlines the need for a national domestic gas reservation policy to complement retention lease arrangements. Such a policy will ensure sufficient reserves of gas is set aside to meet the current and future needs of the local economy.

- 5.4 Consider negotiations with potential customers must be conducted in a timely manner and in good faith. The JA may request evidence in writing of meetings, correspondence and discussions to support any claim that it would be impossible to develop a sale agreement.**

Supported

Potential customers should also be contacted by the JA to test claims by lease holders that they had engaged in negotiations in good faith.

- 5.5 Give guidance on the commerciality test to minimise investor uncertainty and clearly articulate the Australian Government's objectives with respect to development outcomes.**

Supported

The commerciality test should also specify that reserves held or proposed to be held under retention leases should, in the first instance, be assessed to determine whether could supply the domestic market on a commercial basis.

- 5.6 Will facilitate the development of consistent and rigorous modes of assessment between jurisdictions.**

Supported

- 5.7 Explore mechanisms to allow the submission of information on commerciality by individual joint venture participants (or leaseholders).**

Supported

- 5.8 Recognise that long term certainty of title is essential to major investment like LNG projects, and will not act to compromise this title where reserves are essential to meeting contractual commitments and the overall viability of the greater project. In making a decision on commerciality, the JA should attempt to provide certainty to investors in major projects that they have adequate reserves available to meet contractual commitments, without granting an extended right to hold reserves for all potential expansions.**

Strongly opposed

Given the original intent of the Joint Working Group process, the Alliance strongly opposes any watering down of the existing arrangements to give precedence to LNG development over vital domestic supply.

It would be concerning if yet another Commonwealth initiative – initially instituted to promote domestic gas security – be again diverted towards maximising LNG exports at the expense of local consumers.

This underlines the need for a national domestic gas reservation policy - to complement retention lease arrangements and Western Australia's 15 per cent reservation policy.

Such a policy would help balance the overwhelming focus of major producers on LNG development. It will ensure sufficient reserves of gas are set aside to meet the current and future needs of the local economy.

- 5.9 Consider that the community has a reasonable expectation that reserves will not be indefinitely warehoused on the basis of potential future expansions, and will subject such claims to close scrutiny. Should a lease have a viable development path already, and not be essential to a major project, there is a strong expectation that it should be developed.**

See response to 5.8.

Where a resource can commercially be developed to supply the domestic market, it should be required to do so.

Any change to the current lease arrangements to give LNG development precedence over domestic supply will further exacerbate Western Australia's serious gas shortage.

It would moreover undermine the original intent of the Joint Working Group and retention lease review process – which was to promote domestic gas supply.

- 5.10 Consider that where a retention lease application might be rejected on the basis of commerciality, it takes regard of how competing projects might affect the market outlook.**
- 5.11 Consider the Act should be amended to provide the JA the ability to amalgamate retention leases under common ownership where this has clear benefits for administration and planning, and will develop criteria for the JA to determine where amalgamation would be appropriate, with particular focus on the implications for timely resource development.**

**5.12 *Recognise that the use of mid-lease reviews should be minimised to avoid uncertainty to investors where legitimate efforts are being made to work towards commercialisation.***

Strongly opposed

Mid-year reviews perform an important function in promoting stringency and transparency. They also provide opportunity for third parties to challenge claims and assumptions by lease holders, or the assumptions and conclusions of government.

They should not be “minimised” simply on the basis that lease holders or the Designated Authority believes that efforts are being made to work towards commercialisation.

**5.13 *Consider that triggers for mid-lease reviews should be specified at the time of assessment of the retention lease application, and agreed with applicants;***

Opposed

The Designated Authority should retain the authority and flexibility to trigger mid-lease reviews, for example in response to new developments in the gas market, or to proposals by third parties for commercialisation of resources.

This flexibility should be retained throughout the life of the lease.

**5.14 *Consider leaseholders should be required to volunteer a revised assessment of commerciality should the circumstances surrounding the original application materially change;***

Supported

There should also be a public process whereby third parties can participate to test assessments of commerciality or to challenge claims and assumptions.

**5.15 *Recommend circumstances for mid-lease commerciality reviews should be clarified to give certainty for investors;***

Opposed

The Designated Authority should retain full authority and flexibility to trigger mid-lease reviews throughout the term of the lease, including in response to new developments and circumstances.

This authority and flexibility should not be circumscribed by any list of scenarios or circumstances that might have been foreseen at the time the lease was granted.

- 5.16 Recommend reviews should revisit the appropriateness of the work program conditions for the remainder of the term, within the constraints of the Act noted above, but considers major changes would not be expected unless there were threshold changes in development options; and,**

Opposed

Major changes may be justified – and should be required – in response to new developments or changes in the market, for example in response to a serious domestic gas shortage or increase in domestic gas prices.

The authority and flexibility of the Designated Authority in managing leases should not be limited to only circumstances where there have been changes in development options.

- 5.17 Consider the so-called "loophole" referred to in the MMA report is not significant and requires no immediate action.**

- 5.18 Facilitate third party comments on retention lease applications by increasing transparency (see recommendation 4.2), in that such comments may provide additional information to assist the JA in assessing commerciality. Third parties would be given a fixed period in which to provide comment (for example, 2 weeks).**

Supported in principle

It is not adequate that only “summary information” sufficient for third parties to “establish the relevance of the lease application” by made publicly available.

The information should instead be sufficient to allow third parties to make an informed decision on whether to challenge the claims and assumptions made by applicants and lease holders, and to challenge assumptions / conclusions made by the Designated Authority.

Furthermore, transparency should also be extended to decisions by the Designated Authority in granting or renewing leases.

The two week time period for third party comment is manifestly inadequate given the complex and technical subject matter of leases. It would not provide a meaningful opportunity for third party participation.

The very limited time proposed for third party participation appears significantly at odds with the current lease process where reviews of specific leases appear to have been underway for years.

The process should be subject to established timeframes to ensure reviews are completed and decisions on the granting or renewal of retention leases are made in a timely manner. This includes Ministerial decisions on the granting or renewal of retention leases.

**5.19 Consider relevant claims may be tested by the JA, but this does not give the claimant any official standing in the assessment process, nor any rights to an area or petroleum products.**

**5.20 Consider third party claimants to not have the right to access confidential data related to the application. Information such as that outlined in recommendation 4.2 will be made available to enable third parties to make relevant claims.**

As discussed above, it is not adequate that only “summary information” sufficient for third parties to “establish the relevance of the lease application” by made publicly available.

The information should instead be sufficient to allow third parties to make an informed decision on whether to challenge the claims and assumptions made by applicants and lease holders, and to challenge assumptions / conclusions made by the Designated Authority.

The Discussion Paper appears to adopt an overly restrictive meaning of “confidential information”. This approach could only serve to entrench the closed nature of the retention lease process and limit third party participation.

This approach stands in sharp contrast with existing State and Commonwealth environmental approval processes for project developments. These for example require project proponents to publicly disclose detailed information, much of which could be described as “commercially sensitive”.

**5.21 Recognise that while a claim may influence the JA's assessment of commerciality, it does not take away the titleholder's right to develop a resource as it sees fit, regardless of which development option the JA considered was commercial as long as the alternative option delivers the same or an earlier start-up date.**

**5.22 Recommend the guidelines be revised to include a clearly defined process for third party submissions and claims.**

Supported

It should also establish clear timeframes to ensure reviews are completed and decisions on the granting or renewal of retention leases are made in a timely manner. This includes Ministerial decisions on the granting or renewal of retention leases.

There should also be a review period allowing third parties to submit information in relation to the assessment parameters used by the Designated Authority, the assumptions and development concepts being advanced by the proponent, or to reinforce or challenge the Designated Authority's draft decision.

Opportunity should be provided to third parties to have input into the establishment of conditions for the grant or renewal of retention leases.

**6.1 *Reallocation of "vacated" retention leases should be on a competitive basis, without the government directing allocation or giving the area to a particular party; and,***

Reallocation should however be directed at the objective of promoting the earliest development of resources, particularly for domestic supply.

Where a case has been demonstrated that a resource is commercial, it should be converted to a production licence and not simply "rolled over" as a new retention lease.

**6.2 *Consider that in the case where the JA views that the geology is well understood and it considers the area contains a potentially commercial discovery, the area should be allocated by cash or s115 bidding, rather than through the acreage release system.***

**7.1 *Consider production licences should not become de facto retention leases and should continue to require production within a limited time frame, usually five years.***

Supported. See also response to 6.1.

**7.2 *Consider that the Act should be amended to allow the JA to decide on appropriate time frames (between 4 and 7 years) before production in the case of major projects with long lead times. At the end of field life, it would remain that licences are terminated 5 years after production ceases.***

Strongly opposed

The Alliance would not support any further extension of development time frames. As demonstrated by the Pluto project, producers can develop major projects in a timely manner – where there is commercial will to do so.

The fact remains that offshore gas developments in Australia are taking significantly longer to progress from discovery to first gas compared to other countries. This leads to increased project development costs and the loss of supply to domestic consumers.

Extending further deference to lease holders through longer time frames could only serve to reinforce this internationally anomalous situation.