



OPRM Review
Department of Industry, Innovation & Science
GPO Box 9839
Canberra ACT 2601

Via: OPRMreview@industry.gov.au

Dear Sir/Madam

The DomGas Alliance represents major industrial users of gas in Western Australia: companies that help drive the state's economy, generate employment for thousands of Western Australians, and support the prosperity and vibrancy of local and regional communities.

Western Australia is highly dependent on natural gas as an energy source with more than 50 per cent of our State's energy needs being met by natural gas, primarily sourced from offshore fields. Our future economic growth will rely heavily on the ability of local industry to access a small but fair share of our State's abundant natural gas resources.

With this in mind, the DomGas Alliance welcomes the opportunity to comment on the Interim Report of the Offshore Petroleum Resource Management Review.

The Alliance believes that the implementation of many of the report's findings will lead to a detrimental outcome for domestic industry in Western Australia and, as such, are clearly not in the national interest.

This belief has been further reinforced by the findings of an independent review of Offshore Retention Licence Policy by the experienced and respected consultants, Innovative Energy Consulting ("IEC"). This independent analysis benchmarked Australia's offshore licence system against international regimes and also examined if the system has actually delivered on its documented intent.

IEC's analysis found that for Australia's system, *"in comparison to the Gulf of Mexico and the North Sea the level of competition is very low, the cycle time from first discovery to production is extremely long, the term of licences is extremely long, the discovered gas reserves to production ratio is very high and access to gas related infrastructure is very poor."*¹

¹ *Offshore Petroleum Retention Licencing Policy Benchmarking Report*, Innovative Energy Consulting, February 2016

Consistent with the Federal government's approach to energy policy in general, the fundamental weakness of the Review's interim report is that it fails to ask and determine the question of what Australia needs from the commercial development of its resources.

Rather it focuses on what additional concessions producers claim they need in order to be able to develop those resources.

As such, it focuses on the interests of producers rather than the national interest.

In blunt terms, this approach is a failure by government in its responsibility to secure the best outcome for the community, who remain the owners of our natural gas resources.

The interim report clearly reflects the views being put forward by the industry participants on the working group. The make up of the non-government players on the working group was solely drawn from oil and gas producers. Not surprisingly, the interim report only considers issues from a producer's viewpoint; the impact or consequences for domestic industry that relies on domestic gas supplies are not contemplated or analysed. This must situation must be redressed in the final report.

The interim report, in significant areas, is characterised by sweeping assumptions and a lack of detail, modelling and justification. It then moves to a range of responses to these assumptions with little or no evidence that the proposed changes would deliver any real benefit to the community or the industry itself.

For example, there is no evidence that the changes proposed to the retention lease system will generate a single extra dollar in new investment in exploration or production beyond what is already committed. On the other hand, concerns that the changes may lead to further examples of warehousing of natural gas resources are summarily dismissed without consideration.

The interim report baldly states that:

"Implementation of the Actions will stimulate continued and new investment, and improve timeliness and efficiency across the entire exploration, development and production lifecycle."²

There is no real analysis, evidence nor justification contained in the report to back up this claim. It is difficult to think of another example of government agreeing to industry sector lobbying to make sweeping changes to an existing regulatory framework and government not asking for an economic justification or analysis of the purported beneficial outcomes.

Without such analysis, serious question marks remain over the credibility of the interim report and its recommendations. And, as noted, any detrimental impact on domestic supply has not been considered.

The DomGas Alliance believes a separate, independent review needs to be undertaken to provide a holistic appraisal of our current titles system, benchmarked against best international practice.

² Offshore Petroleum Resource Management Review (OPRM Review), Interim Report, Dept of Industry, Innovation and Science, November 2015, Page 1.

We believe that the Senate Standing Committee on Economics would have the expertise to undertake such a review and would be an obvious first choice for this role.

The DomGas Alliance provides the following additional comments in relation to the Interim Report and looks forward to the opportunity of discussing these issues with the Review team at an appropriate time.

Yours sincerely

MATT BROWN

Executive Director

March 3, 2016

Summary of Recommendations

1. That a reference be made to the Senate Standing Committee on Economics to conduct an inquiry into all aspects of Australia's system for managing offshore petroleum resources, including:
 - Benchmarking against international practice;
 - Review of taxation arrangements, incentives and concessions, including comparison with those on offer in other jurisdictions;
 - Policies to encourage domestic supply focused projects;
 - Policy and legislative changes required to introduce greater competition into the sector by providing third party access to infrastructure, and;
 - Consideration of a national "stranded gas policy".
2. That objective and outcome-based key performance indicators be developed to assess the performance of Australia's title system on its performance in achieving the stated aim of delivering timely development of gas resources, followed by accurate measurement and reporting with results compared to best in class.
3. That the final report of the Review considers and reports on the impact on domestic supply, and therefore domestic industry, of any proposed changes.
4. That moves to introduce further leniency into the current retention lease system be rejected as the evidence indicates they are detrimental to Australia's national interest.
5. That the maximum five-year retention lease period be maintained.
6. That greater transparency be introduced into the current retention lease system, particularly around the issue of producer claims regarding commercial viability.
7. That the current rolling 15 year window for commerciality be ended with a finite period set for moving from exploration to production. This should include provisions for the market to contest the title at the expiry of the period.

8. That, if adopted, the longer retention lease periods proposed in the report should not be retrospective in the sense that producers who have had multiple retention lease renewals should not have access to extended renewal periods in the future.
9. That the final report include a brief analysis and breakdown of the Commonwealth's record in monitoring renewal leases including the number of retention lease applications/renewal applications dealt with by the Commonwealth, the number of such applications which have been rejected, the number of rejections which have led to titles lapsing as opposed to those where developers have moved to apply for a production licence, and the number of cases/times the Commonwealth has intervened during a retention lease period to force a reassessment of commerciality.
10. That the Western Australian government rejects any suggestion that it remove itself from any decision-making processes under the current title management system.

Introduction

The interim report is broadly structured around four phases of the petroleum lifecycle:

- Phase I: Exploring for petroleum resources
- Phase II: Developing the resources
- Phase III: Managing resource production
- Phase IV: Decommissioning.

The DomGas Alliance has no direct expertise in Phase IV and therefore makes no comment on this section of the interim report.

It is not unreasonable for the interim report to deal discretely with Phases I, II and III due to the different nature of activities undertaken in each phase.

If, however, the stated aim of the Review is to ensure Australia maintains its attractiveness as an investment destination, the performance of the integrated system as a whole (Phases I, II and III) need to be assessed and understood as a complete unit.

For example, changes that may lead to greater investment in exploration may not achieve the overall policy's stated aim of "optimising resource recovery through timely commercial development"³ if other changes to retention lease policy allow for the increased warehousing of identified fields. The successful exploration of the Scarborough, Calliance, Brecknock and Torosa fields has not led to their commercial development more than three decades after discovery.

And while changes on issues such as generous taxation concessions and other incentives were considered to be outside of the scope of the Review, the impact of these issues still need to be considered in placing the performance and attractiveness of the overall Australian system in an international context.

³ OPRM Review, Page 1.

What is lacking from the interim report is any analysis of how Australia's overall system compares to that of other competitor and potential competitor nations.

This is surprising given the interim report's stated goal of minimising the risk to "Australia's ability to capture the next wave of investment in an increasingly open and competitive global marketplace, where capital and effort shift rapidly."⁴

Surely such a risk could only result from other competitor nations offering a more complete or favourable package? Global businesses, the likes capable of exploiting Australian gas resources, know what risks and opportunities are inherent in each prospective gas rich country and they make their business decisions fully aware of the terms in which that can exploit such. The Australian government should equally make itself aware of all factors driving global business decisions so it too can make good business decisions to structure legislation competitively to attract international business.

The interim report calls for Australia's policy framework to be "leading practice" but provides no detail as to exactly what leading practice is in a global context, in a global market.

Such an analysis may have provided a justification for the changes being advocated in the report.

This lack of justification is made even more perplexing by the Review's finding that our current system is "attractive, flexible and stable" and has fostered "a world class industry that has attracted over \$200 billion in investment in the last five years alone."⁵

Independent analysis by Innovative Energy Consulting ("IEC"), commissioned by the DomGas Alliance, has confirmed that when benchmarked against other comparable nations, Australia's titles regime is "extremely flexible and lenient" and in some cases "appears to be unnecessarily lenient."⁶

As discussed below, the IEC analysis suggests that rather than ensure timely commercial development, this leniency and flexibility has had the opposite effect. This flexibility may in fact be contributing to delayed development as producers shift investment to discoveries in other nations with a more stringent approach to title management.

Finally it is important to state that the big challenges facing gas producers in Australia do not relate to the title management system. Poor management decisions, major cost over-runs on projects, industrial relations issues, and excessive wage claims have all had a far greater impact on Australia's reputation as an investment destination than such minor issues as the minimal costs of being required to submit an application for a renewal of a retention lease once every five years.

There is no doubt that the current low oil price is creating an even more challenging environment for gas producers and is likely to delay investment decisions for any major new export project.

⁴ OPRM Review, Page 1

⁵ OPRM Review, Page 1

⁶ Innovative Energy Consulting, Page 6

Good public policy, however, should not be dictated by such fluctuations. It would be a significant error of judgment to make decisions affecting the long-term framework for managing Australia's gas resources on the basis of short-term fluctuations in price.

What are we trying to achieve?

Putting aside the issue of the lack of debate at a national level of what the purpose of our energy policy should be, the stated aim of the titles regime is to “encourage timely and efficient and sustainable exploration and development of oil and gas resources in Commonwealth waters.”⁷

Many of the interim report's actions appear to be aimed more at making it easier for producers to navigate their way through the titles regime, some would say ‘work the system’, rather than ensuring a movement to more timely development of oil and gas resources.

The interim report provides no evidence of having compared our system to that which operates in other parts of the world. Independent analysis commissioned by the DomGas Alliance sought to benchmark international practice. The IEC analysis found that “...Australia's current licencing system and, in particular, the retention licence vehicle is extremely flexible and lenient” and “effectively rewards gas explorers for doing less.”⁸

The analysis also found that this greater flexibility and leniency had worked for the advantage of producers and had not served Australia's national interest:

“The objective in designing the licence award process is to find the best candidate, maximise potential revenues resulting from the award of petroleum licences, and avoid any distortion of incentives to perform (i.e. explore for and produce hydrocarbons). While both the Carnarvon Basin offshore Western Australia and the Gippsland Basin offshore Victoria have been ‘successfully’ explored for several decades and have produced by far the majority of Australia's petroleum (oil and gas), in comparison to the Gulf of Mexico and the North Sea the level of competition is very low, the cycle time from first discovery to production is extremely long, the term of licences is extremely long, the discovered gas reserves to production ratio is very high and access to gas related infrastructure is very poor.”⁹

The evidence indicates that far from ensuring more timely development of resources, Australia's flexible and lenient regime had had the opposite effect, coupled with other unintended negative consequences. The IEC analysis noted:

“The unintended consequence has been that gas development and production has often been delayed for some time as petroleum companies aggregate sufficient offshore resources in a large area in order to justify a large vertically integrated LNG export mega project. Such large gas development and gas export projects create dominant positions or excessive market power in offshore regions.”¹⁰

⁷ OPRM Review, Page 49

⁸ Innovative Energy Consulting, Page 6

⁹ Innovative Energy Consulting, Page 5

¹⁰ Innovative Energy Consulting, Page 5

As a result of this:

“...the first mover gas development project retains control of the basin and discourages other gas developments. This inefficient and non-competitive model has resulted in the destruction of in-situ gas resource value through development delays and also in value destruction across the domestic gas market due to inflated gas prices and onerous gas sale agreements.”¹¹

Given this reality, it is difficult to understand the willingness of the Review to further loosen the system in favour of producers.

Response to Proposed Actions

Action 2.1

NOPTA will work with the Joint Authorities and other relevant agencies to establish an annual public reporting framework which provides a high-level comprehensive picture of Australia’s offshore petroleum resource base and associated development/production infrastructure. This should be undertaken as a regional or basin state-of-play assessment, highlighting any resource management issues and how they might be addressed. NOPTA should also work with industry to identify the data and information sets required to support development of this report, noting the Australian Government’s commitment not to increase the level of unnecessary reporting on industry.

DomGas Alliance response

It is not immediately apparent what this process will achieve. In other parts of the interim report, concern is expressed at the costs imposed on producers through administrative requirements. A more practical option would be for a series of key performance indicators to be identified to measure the success or otherwise of the titles system in achieving its stated aim. This could include the level of competition, the cycle time from first discovery to production, the term of licences held, discovered gas reserves to production ratio, and access to gas related infrastructure.

Action 2.2

NOPTA and other relevant agencies are to engage early with industry in relevant processes to ensure any resource management issues are identified and constructively addressed, i.e. a “no surprises” approach to title and resource management.

DomGas Alliance response

Any move by government to work more closely with industry is welcomed. There is, however, a need for greater transparency. As the IEC analysis found, “In Australia, the rules that petroleum companies have to abide by are not very clear and transparent and the enforcement of the few rules that exist is very discretionary with a track record of leniency in favour of the petroleum companies.”¹² There is also a need for NOPTA and other agencies to engage the views of domestic gas users.

¹¹ Innovative Energy Consulting, Page 6

¹² Innovative Energy Consulting, Page 6

Action 2.3

NOPTA, working with relevant government agencies and industry, will assess its technical needs against identified resource management requirements and develop a medium-term plan to address any deficiencies or areas for new capacity.

DomGas Alliance response

There is a clear need for the government to ensure it has the capacity to rigorously test producer claims of commerciality. Greater transparency and clarity around the commerciality test would greatly assist in this respect. Greater weight needs to be given to the legislation enacted by the Parliament which, when considering commerciality, does not differentiate between the potential for a field to supply the domestic or export market.

Action 2.4

The Review recommends that the Offshore Petroleum Joint Authorities consider making public the Operating Protocol for Offshore Petroleum Joint Authorities and supporting institutions. At minimum, the Joint Authorities should make public the indicative timeframes for title decisions as identified in the Protocol. The industry portal element of NEATS should be promoted by NOPTA to support full and effective use of this function by titleholders.

DomGas Alliance response

Industry has the right to expect clear timelines for decision-making processes. Having noted that principle, it is difficult to see how this action will improve transparency around these processes.

Action 2.5

The Joint Authorities should consider reviewing administrative decision points across the offshore petroleum regime. It might consider delegating and/or devolving some decisions to the Title Administrator, and even the responsible Commonwealth Minister where no intersection with State and Territory regimes is contemplated.

DomGas Alliance response

The Western Australian government should reject any suggestion it withdraw from any of the decision-making processes it is currently involved in. Western Australia is heavily dependent on natural gas as an energy source. Canberra's persistent focus on gas exports ahead of domestic supply has led to a loss of confidence in its decision-making processes among domestic users. Any withdrawal by the Western Australian government would simply cede further discretion to the myopic approach by the Commonwealth to these issues and further erode confidence of West Coast domestic gas users in the system.

Action 3.6 to 3.11

Relating to exploration titles.

DomGas Alliance response

The DomGas Alliance supports moves by government to stimulate activity in exploration for offshore oil and gas.

The Alliance is disappointed that the interim report did not canvas the idea of using changes in the exploration sector to encourage domestic supply focussed projects. For example, the concept of acreage reservation for prospective domestic gas production was first floated by the then Shadow Minister for Resources, the Hon Ian Macfarlane, back in 2013¹³. It appears little, if any, serious work has been done in this policy area.

The Alliance also notes that the proposed actions relating to exploration all appear to be focussed on producing future vertically integrated LNG mega projects. As noted in the independent analysis, such projects have negative impacts in terms of delaying production of resources and in potentially locking out other producers.

It should also be noted that changes to stimulate exploration will not guarantee resources are brought to production in a timely manner without a tightening, as opposed to the proposed loosening, of the retention lease system.

It is important that any consideration of the exploration aspects of the interim report examine the tax arrangements, concessions and incentives on offer to producers. How these compare with international practice would also seem an obvious consideration in understanding the attractiveness of investing in exploration in Australia ahead of other competitor regions. The Senate Standing Committee on Economics would be well placed to consider these issues and perform such an analysis.

Action 4.13

The Department of Industry, Innovation and Science will work with stakeholders to establish an administrative framework. This framework will enable exploration permit holders adjacent to an operating production licence to excise the blocks, which have been deemed to contain modest-sized pools, from the exploration permit into the adjacent production licence.

DomGas Alliance response

As noted in the interim report, this measure will have limited application across the industry but it appears a logical response to such a situation when it arises.

Action 4.14

The Department of Industry, Innovation and Science will work with industry and other stakeholders to build a transparent decision- making framework. Criteria will be developed for the Joint Authorities to issue and renew retention leases for a minimum of three years to a maximum of 15 years, with the current five-year term to remain as a default position.

DomGas Alliance response

The DomGas Alliance strongly opposes any moves to further dilute what is a weak and lenient structure for handling retention lease and retention lease renewal applications.

As previously noted, there is already a track record under the current system of leniency in favour of producers.

¹³ "Domestic gas reservation and high project costs top energy discussion", 4 July, 2013

In large part, this section of the report reads almost as barracking for changes to introduce even greater leniency to the system. This will come at the expense of the national interest.

As noted previously, the report provides no justification for seeking to do so and studiously ignores international practice in this area.

For example, the interim report notes that “the majority (57%) of the active retention leases in Australia have been renewed three or less times.”¹⁴ This is a meaningless statement that appears to be designed to put the best spin on the performance of the current system while preventing any real analysis of the actual results. A more honest and useful assessment would have been to show the number of retention lease and renewal applications lodged along with data on how many had been approved rejected.

A breakdown of how many titles had been granted one, two or three (or more) retention leases and renewals is also essential to providing a clearer picture.

From the statement, it appears that 50% or more of titles held under active retention leases have been renewed three or more times. Given the interim report’s view that “the 15-year period remains realistic and appropriate for testing overall commercial potential”¹⁵, this figure becomes alarming and points to a fundamental failure in a system which purportedly aims to deliver timely development of resources.

The interim report’s attempt to put the best gloss on this situation will not engender confidence within domestic gas users.

Arguably the greatest weakness of the current system is the rolling 15-year window of commerciality. There is little doubt that this loophole has been consistently gamed by producers to warehouse fields for future use. As the IEC analysis noted, this also allows producers the comfort of shifting capital to other jurisdictions with stricter regulations, safe in the knowledge that the Commonwealth will continue to renew its Australian titles every five years.

If the interim report is firm in its belief that “the 15-year period remains realistic and appropriate for testing overall commercial potential”, it is surprising that there is no suggestion within the findings that a finite time limit be set on the holding of titles.

If, for example, a producer sought a retention lease in 2000 on the basis that the field was not commercial at the time but was expected to be so within 15 years, and the Commonwealth confirmed and accepted that view, it is not unreasonable to ask why that same producer should be afforded the luxury of showing up in 2015 and again be granted a renewal on the basis that the field may be commercial by 2030.

¹⁴ OPRM Review, Page 28

¹⁵ Ibid, Page 29

As the independent analysis noted:

“The application of a commercial viability test to determine whether or not a gas discovery is deemed to become commercial within a 15 year horizon is a rather interesting concept, especially given the fact that gas reserves by the very definition must be both technically and commercially recoverable at the time of their re-classification from a gas resource to a gas reserve. Petroleum companies will book gas reserves for purposes of building their ‘assets’ and yet claim that they are uncommercial for the purposes of obtaining a retention licence.”¹⁶

The push by the interim report for a move to a maximum 15-year retention lease raises several issues that should be addressed in the final report, and/or considered by a Senate inquiry.

The interim report states that changes will not be applied retrospectively.¹⁷ If the final result is that the Commonwealth ignores the evidence showing the detrimental impacts of moving to a 15-year retention lease we assume that this will not be applied retrospectively. That is, those producers who already have had the benefit of multiple retention leases should not be allowed to further game the system by applying for a 15-year renewal. It would be an obscene outcome if, for example, the Scarborough or Browse fields which have been held in excess of 30 years were to be allowed to seek a renewal for a further 15 years.

While again restating our opposition to the move to longer retention leases, if the interim report is firm in its view that 15 years is an appropriate period for testing commercial potential, then any producer granted a 15 year retention lease should have included in that lease a clear statement of intent from the Commonwealth that production should begin at the earliest possible date and that in the event that this does not happen within the term of the retention lease, the fields would automatically revert back to the Commonwealth, which could then offer them to the market.

One of the only justifications included in the interim report for the move to longer retention leases is that of cost. The report states:

“Feedback from industry suggests that in some cases, applications can entail significant costs. Requiring multiple applications where commercial circumstances are unlikely to significantly change until well into the 15-year period erodes value for little apparent gain. It can also lead to (false) perceptions that resources are being ‘warehoused’.”¹⁸

The first part of this statement implies the current system imposes undue or unfair costs on producers. There is no attempt in the interim report to weigh this alleged inconvenience against the national interest of providing the community with an assurance that work programs and other conditions have been met and that the most timely path to production is being actively pursued. Discussions with the Department of Industry, Innovation and Science revealed that no evidence around actual costs was considered by the working group. It is difficult therefore to understand how this could be such a significant consideration and driver behind the proposed changes.

¹⁶ Innovative Energy Consulting, Page 16

¹⁷ OPRM Review, Page 49

¹⁸ OPRM Review, page 29

While we don't know what "significant costs" actually means, it is fair to place such costs in the context of multinational major oil and gas producers seeking access to multi-billion dollar gas resources which will provide significant profits over many decades. Most, if not all, of the material required for consideration as part of the current retention lease renewal process would already be compiled as part of the work program and title conditions. To suggest that the path to commercial development of multi-billion-dollar resources is not regularly analysed and discussed at executive and board meetings of major producers beggars belief. Given the material is already there, the cost to package them together once every five years would seem minimal.

The reference to "(false) perceptions that resources are being 'warehoused'..." should not go unchallenged. This appears to be producer rhetoric that has no place in an impartial document. In May 2015 the then Resources Minister, the Hon Ian Macfarlane, told an APPEA conference that there was "no evidence" of warehousing of gas. The same day a senior BHP Billiton executive told the same conference that BHP Billiton would warehouse the one trillion cubic feet of gas contained in the Tallaganda field despite it being "relatively easy" to process the gas through the existing Macedon domestic gas project.¹⁹ It should also be noted that the view that resources that could be brought to market in a more timely manner are in fact being warehoused by producers is shared and has been confirmed by domestic users, industry associations, oil companies and parliamentary inquiries. It is extraordinary that the interim report should reach an alternative view of this reality.

Even on common sense grounds, the move to 15-year retention leases fails. It is impossible to argue that the purpose of our system is to ensure the most timely development of our resources but then say it doesn't matter if we let the assessment of progress toward that important goal slip from every five years to every 15 years. It simply sends a message that there is no urgency in the system.

Action 4.15

The Department of Industry, Innovation and Science will work with industry and other stakeholders to develop transparent decision-making frameworks and criteria that provide for:

- 1. A "project development" concept to be established which enables the Joint Authorities to treat identified retention and production leases as a single project – thereby streamlining administration and encouraging a more holistic approach to resource development and management.*
- 2. The framework only being available to titleholders who have demonstrated to the Joint Authorities that commercialisation of the identified retention leases through a single development concept is the most optimal, and delivers the earliest commercial development of the resources.*

DomGas Alliance response

The superficial attractiveness of this proposal is exposed by the potential negative consequences that would flow from it.

¹⁹ "Policy puts lid on Tallaganda", The West Australian, 19 May 2015

This action may deliver a benefit to producers but it will come at the cost of entrenching the culture of vertically integrated LNG mega projects as the only way of doing business in Australia and, consequently, in effectively locking out potential competitors.

As previously noted, the first mover retains effective control over the basin and discourages other gas development. This has a flow-on detrimental impact on supply to the domestic market.

Far from delivering “the earliest commercial development of the resources”, this move would further entrench the power of producers to manipulate the system and warehouse gas resources rather than bringing them to market in a timely manner.

In advocating this change the interim report states that:

“Not only would this enhance alignment with commercial realities, but it would better allow consideration of development pathways for the resource within a project or commercial hub concept. This could support more effective use of infrastructure, as well as provide a transparent strategy for national resource development.”²⁰

As noted, it is more likely that such a move would lock other producers out of a basin rather than encourage greater competition.

But the rationale provided by the interim report at least alludes to the issue of access to infrastructure through a “commercial hub project”. It almost goes without saying that moves by government to further incentivise LNG mega projects and allow multiple fields to be considered under a “one project” concept will in no way break down the traditional and entrenched opposition to the sharing of infrastructure. In fact it is clear the opposite would be the case.

While it is surprisingly absent from the actions recommended, the interim report does make several references to the importance of access to infrastructure in terms of ensuring small-to-mid sized fields are not stranded and in extending the life of existing infrastructure.

The interim report states:

“While the issue of optimising infrastructure appropriately remains an economic consideration between commercial parties, consistent with the Government’s stewardship mandate, government should ensure that its policy and operational frameworks encourages industry to consider all viable options for optimal design and operation. This includes use of shared infrastructure in determining the appropriate development pathway. In a positive sign, anecdotal evidence suggests that the high cost of development is incentivising the market towards greater levels of cooperative development around mature infrastructure hubs such as the North West Shelf.”²¹

Contrary to the optimistic assertion that “cooperative development” is emerging in the sector, the recent evidence clearly runs to the contrary.

²⁰ OPRM Review, Page 32

²¹ OPRM Review, Page 8

Woodside – the operator of the North West Shelf gas plant in Karratha – chose to build a stand-alone gas plant in the same location to process gas from the Pluto and Xena fields. The Pluto project suffered a budget blowout of around 25 per cent on original estimates. In Queensland, three LNG export facilities have been built side-by-side on Curtis Island with no shared infrastructure, a situation that “pushed up labour and building costs, with all three projects running beyond their original budgets.” This, in turn, meant that “the higher-than-expected costs to bring the projects into production have exacerbated worries about the impact the rout in crude oil prices will have on the profitability of the projects, given the prices for their LNG sales contracts are directly tied to oil prices.”²² As noted previously, poor management decisions have had a far greater impact on project cost and performance in Australia, and therefore our attractiveness as an investment destination, than the titles system that, according to the interim report, has been a positive rather than negative factor.

The Commonwealth cannot avoid its share of the responsibility for this situation that has developed under its policy stewardship.

The interim report quite correctly points to the need to balance the right of companies to make commercial decisions with the responsibility of the Commonwealth to ensure the optimal benefit to the owners of the resource, the Australian people.

The evidence of recent years clearly indicates this balance has not been met. If the Commonwealth is not prepared to take a stronger policy leadership role and continues its “hands off” approach to resource management, this situation will continue to the detriment of the national interest.

The interim report makes reference to the need to bring on small-to-mid fields to extend the life of existing infrastructure. However all of the actions recommended appear to be designed to assist existing owners of infrastructure to access such fields for processing through their own infrastructure. While this is not unreasonable, it ignores the far bigger issue of gas being stranded because of a lack of third party access to infrastructure.

The IEC analysis correctly points to the US situation where:

“Most of the offshore gas pipelines serving the Gulf of Mexico are owned and operated by independent midstream companies who also own some of the offshore production platforms. The GOM has been arguably the most successful offshore petroleum region in the world based on level of competition, cycle time from discovery to first production and access to low cost infrastructure for gas producers.”²³

The access to competitively priced infrastructure is essential to ensure identified offshore gas resources in Australia do not remain stranded.

Relying on “anecdotal evidence” that the situation may be improving is not a good basis for public policy decisions affecting a valuable resource owned by the Australian community and is no substitute for strong, visionary policy in this area.

²² “Bechtel says three more Curtis Island LNG trains to complete this year”, Sydney Morning Herald, 9 June 2015

²³ Innovative Energy Consulting, Page 22

As a minimum, the final report must recommend a review of competition policy to ensure existing infrastructure hubs such as the North West Shelf Venture – a project that was substantially underwritten by taxpayers – are open to third party producers on competitive, commercial terms. This should include consideration of existing powers the government may have through the Field Development Plan approval process to ensure third parties can secure access to existing infrastructure absent a commercial outcome.

Action 4.16

The Joint Authorities will utilise the power and tools available under the OPGGS Act and associated regulations to provide an appropriate level of scrutiny that is commensurate with individual retention leases. This may include, but is not limited to, title conditions and clear reporting requirements, including around commerciality. Long-dated leases will be subject to regular reporting, to ensure appropriate efforts to commercialise resources are being maintained.

DomGas Alliance response

The interim report attempts to paper over the flawed logic of moving to longer retention lease periods by promising “regular reporting” on long term leases and “an appropriate level of scrutiny that is commensurate with individual retention leases.”²⁴

Domestic gas users regrettably can have little confidence in the interim report’s claims that “the Joint Authorities will ensure that any flexibility provided in the retention lease framework is balanced by transparent and rigorous compliance and monitoring, particularly for long-dated leases.”²⁵

There is little, if any, evidence to date of the Commonwealth taking a rigorous approach to retention lease management under the current system.

The interim report notes that the Commonwealth already has “ability to seek a review at different points in time within a retention lease term.”²⁶

The interim report also notes the current system allows the Commonwealth to apply “rigorous assessment of commercial viability” and to monitor and assess work programs and title conditions.

The DomGas Alliance requested a breakdown of the number of times the Commonwealth has used its existing powers as it was assumed this information would have been provided to the working group to help inform its consideration of this issue. The Department of Industry, Innovation and Science has confirmed this information was not provided to the working group.

²⁴ OPRM Review, Page 31

²⁵ OPRM Review, Page 33

²⁶ OPRM Review, Page 33

The final report must include a brief analysis and breakdown of the Commonwealth's record in monitoring and policing renewal leases including:

- The number of retention lease applications/renewal applications dealt with by the Commonwealth,
- The number of such applications which have been rejected,
- The number of rejections which have led to titles lapsing as opposed to those where developers have moved to apply for a production licence, and
- The number of cases/times the Commonwealth has intervened during a retention lease period to force a reassessment of commerciality.

It is extraordinary that this data did not form part of the interim report.

Given the assessment process for commercial viability is particularly opaque it is difficult for anyone outside of the immediate process to have any confidence in it. The Deloitte Access Economics report, "Western Australia Gas Sector Analysis" – which is referenced by the interim report – specifically looked at fields held under current retention leases. The report modelled the commercial viability of two reserves held under retention lease; modelling which proved they would be commercially viable for domestic supply and could deliver gas at prices which would be competitive and attractive to domestic users. As the report concluded:

"In the absence of reasons why retention leases are renewed and the lack of a transparent process, we are unable to confirm that the tests for renewing retention leases are being applied robustly by the Joint Authority. Therefore it may be possible that existing reserves which could be developed commercially for the domestic market are being withheld by incumbents for future use."²⁷

As for work programs, numerous retention lease extensions have been granted with conditions requiring the holders to undertake marketing studies and to consider domestic supply options. DomGas Alliance members regularly report that they are not aware of any attempts, genuine or otherwise, by producers to seek domestic market interest for gas from these titles.

An even more lenient system may be what producers want. There is no doubt, however, that it is not what Australia needs.

Action 4.18

The Department of Industry, Innovation and Science will work with industry and other stakeholders to develop and publish:

- *A publicly accessible fact sheet that articulates the purpose, objectives and operation of the retention lease framework, as a matter of priority.*
- *Guidance material associated with retention leases to provide:*
 - *clarity around the statutory commerciality test;*
 - *guidance on joint development and/or use of shared upstream infrastructure in determining the commerciality of retention leases; and*
 - *clarity and guidance on what is an acceptable third party submission to the Joint Authorities, in respect of its consideration of retention leases.*

²⁷ "Western Australia Gas Sector Analysis", Deloitte Access Economics, May 2014, Page 11.

To promote transparency, the Joint Authority will also provide a public summary for the basis of its decisions, respecting commercially sensitive information.

There would be a considerable question mark over the appetite of the general public for more information about the operations of the retention lease framework. The Department must guard against the possibility that the document simply becomes a government-funded public relations vehicle for producers.

A more meaningful action would be the development of key indicators for the performance of the system (as previously discussed.)

#ends#