Hon Bill Johnston MLA
Minister for Mines and Petroleum; Commerce and Industrial Relations;
Electoral Affairs; Asian Engagement

Our Ref: 71-02111

The Chair
Uniform Legislation and Statutes Review Committee
Legislative Council
Parliament House
PERTH WA 6000

Dear Sir/Madam

PETROLEUM LEGISLATION AMENDMENT BILL 2017

Following the Second Reading of the Petroleum Legislation Amendment Bill 2017 (the 'Bill') in the Legislative Council on 14 June 2017 and referral to the Uniform Legislation and Statutes Review Committee (the 'Committee'), the following information is provided to the Committee for its inquiry into the Bill:

Copy of the relevant intergovernmental agreement/memorandum of understanding, if one is available;

The Petroleum Legislation Amendment Bill 2017 contains common mining code amendments to the State's two principal petroleum Acts – the *Petroleum (Submerged Lands) Act 1982* (PSLA 82) and the *Petroleum and Geothermal Energy Resources Act 1967* (PGERA 67). Whilst this is a requirement of the 1979 Offshore Constitutional Settlement for the PSLA 82, WA has also extended that common mining code to the PGERA 67 for its onshore petroleum legislation.

The Offshore Constitutional Settlement is an agreement between the Commonwealth and the States to endeavour to maintain, as far as practicable, a common (petroleum) mining code for the territorial sea.

Under international law, Australia has sovereignty over a band of waters called the 'territorial sea', which at present extends up to 12 nautical miles from the territorial sea baseline. The territorial sea for petroleum purposes remains at its original three nautical mile width.

In 1975, the High Court determined in the *Seas and Submerged Lands Case* that the Commonwealth has sovereignty over the territorial sea, including the seabed beneath the three nautical miles of waters and the sea landward of the territorial sea baseline, within the adjacent area but not within the limits of the State. This area is referred to as "coastal waters".

Following this decision, the Commonwealth and the States undertook negotiations resulting in the 1979 Offshore Constitutional Settlement, which deals with Commonwealth and State jurisdiction in the territorial sea.

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The Settlement also includes arrangements on managing oil, gas and other seabed minerals, the Great Barrier Reef Marine Park, other marine parks, historic shipwrecks, shipping, marine pollution and fishing. In general, the States have responsibility for areas up to three nautical miles from the territorial sea baseline, namely the coastal waters.

The Settlement is not set out in one single document but is found in the PSLA legislation, including amendments to existing legislation, which implemented it. A Commonwealth information booklet, '*A Milestone in Co-operative Federalism*' contains a summary of the arrangements and is available at: http://www.industry.gov.au/resource/Documents/upstream-petroleum/Offshore_Constitutional_Settlement.pdf

With regard to petroleum exploration and production, the Commonwealth, the States and the Northern Territory have agreed that:

- *"Commonwealth offshore petroleum legislation should be limited to the area that is outside the coastal waters of the States and the Northern Territory; and*
- *For this purpose, the outer limits of State and Northern Territory coastal waters should start three nautical miles from the baseline of the territorial sea; and*
- *The States and the Northern Territory should share, in the manner provided by this Act, in the administration of the Commonwealth offshore petroleum legislation; and*
- *States and Northern Territory offshore petroleum legislation should apply to State and Northern Territory coastal waters; and*
- *The Commonwealth, the States and the Northern Territory should try to maintain, as far as practicable, common principles, rules and practices in regulating and controlling the exploration for, and exploitation of, offshore petroleum beyond the baseline of Australia's territorial sea".*

It is this last dot point that underpins the changes to the WA PSLA 82 in this Bill and, as noted above, provides the model for the amendments to the PGERA 67.

The 2014 maritime boundary changes in the Scott Reef area covering the Torosa gas field highlight the need for 'common principles, rules and practices' as far as practicable across the State and Commonwealth petroleum jurisdictions.

In 2014 the State's initial legislative response to ensure there was no gap in tenure, was the drafting and passage of the *Petroleum Titles (Browse Basin) Act 2014* (the 'Browse Bill') as a stand-alone Bill that dealt only with the changes to the maritime boundaries in the Scott Reef and Seringapatam Reef areas. Titles in the Scott Reef area are held by the Woodside Browse JV, whilst the ConocoPhillips JV has permits in the Seringapatam Reef area.

If (a) is not available, a copy of the communique from the Ministerial Council meeting at which it was agreed to introduce the legislation;

The 1979 Offshore Constitutional Settlement preceded the Ministerial Council on Mineral and Petroleum Resources which was established in June 2001. The amendments in the Bill have their origins in the State's commitment to the 1979 Offshore Constitutional Settlement and the State's long-standing policy to follow the offshore legislation model in its onshore legislation.

Statement as to any timetable for the implementation of the legislation;

As a result of the 2014 boundary changes in the Scott Reef area, Western Australia's apportionment share of the Torosa gas field increased from approximately 10 per cent to a fixed 65 per cent and will generate potentially around $1.34 billion in royalties to the State when the field commences production.

In December 2014, negotiations commenced between the State (led by the Department of Mines and Petroleum), the Commonwealth (led by the Department of Industry, Innovation and Science) and the Browse JV (led by Woodside) to agree on the apportionment of the Torosa gas field. Negotiations concluded in June 2015 and the Torosa Apportionment Agreement was signed by Commonwealth and State Ministers on 22 July 2015.

It was a commitment in the Apportionment Agreement, that the State, as one of the three parties to the Agreement, would make the apportionment amendments within two years of signing.

In order to achieve this deadline, the Bill needs to pass before the end of the 2017 Autumn parliamentary session.

At this stage, whilst it is acknowledged that the Bill will not pass by 30 June 2017, early consideration of the Bill will signal the State's serious intent to pass the legislation.

The Torosa Apportionment Agreement will not fall over if the Bill is not passed by 30 June 2017. The Woodside Browse JV has nothing to gain by opting out of the Agreement which mitigates its taxation and royalty risk. The JV has recently announced it is now considering constructing a pipeline from the Browse to its Karratha LNG plant as an option to develop the Browse gas fields.

The Commonwealth and the Woodside Browse Joint Venture have been formally advised of the State Government's intent to progress the *Petroleum Legislation Amendment Bill* as a matter of urgency by introducing it into Parliament at the earliest opportunity.

Both parties will be kept informed of the Bill's progress following introduction of the Bill.

The amendments in the Bill are also required to provide for the next maritime boundary change which Geoscience Australia advises will occur in 2018.

Copy of the Explanatory Memorandum

Tabled in the Legislative Council on 14 June 2017.

Public statement of the Government's policy on the Bill

The amendments are consistent with Government's encouragement and support for the upstream petroleum industry.

Advantages and disadvantages to the State as a participant in the relevant scheme or agreement;

Advantages:

The amendments in the Bill provide advantages for both the Department of Mines and Petroleum and industry through the consistency of approach and application across the Commonwealth and State jurisdictions and in offshore and onshore areas.

Disadvantages:

As with any legislative changes, there will be costs incurred for both regulators and industry in relation to administrative procedures, documents and systems but the advantages detailed above are considered to outweigh any additional costs.

Relevant constitutional issues;

In June 1979, the Commonwealth and the States agreed to a series of constitutional issues known collectively as the *Offshore Constitutional Settlement* (OCS) and in 1980 the Commonwealth *Petroleum (Submerged Lands) Act 1967* was amended to give effect to relevant aspects of the OCS. The purpose of the OCS was to generally maintain the State's role in the management of offshore areas, particularly on "....topics which history, common sense and the sheer practicalities of the matter mark out for State administration rather than Commonwealth administration, in the absence of overriding national or international considerations".

In summary, post OCS offshore petroleum arrangements have the following significant features:

- The States/Northern Territory have title to all waters landward of the three nautical mile limit and have the same power to legislate over these coastal waters as they do over their land territory;
- Laws on both sides of the three mile jurisdictional boundary are identical in structure, thereby continuing to provide a high degree of uniformity and consistency in administration of the offshore petroleum regime;
- Within coastal waters executive powers are vested in the State or Territory Minister; and
- Beyond the coastal waters, cooperative governance of the Commonwealth's legislation vests executive powers jointly in Commonwealth and State/Territory Ministers (the "Joint Authority" (JA) in respect of each adjacent area) on all major decisions affecting petroleum exploration and development, with the Commonwealth Minister's view to prevail in the event of disagreement.

Explanation as to whether and by what mechanism the State can opt out of the relevant scheme or agreement

There is no provision for the State to "opt out", under the terms of the Offshore Constitutional Settlement. As outlined in the preamble at pages 1 to 3 of the WA *Petroleum (Submerged Lands) Act 1982*, the State is required to "*maintain, as far as practicable, common principles, rules and practices in the regulation and control of the exploration for and the exploitation of the petroleum resources of all the submerged lands referred to above that are on the seaward side of the inner limits of the territorial sea of Australia*".

Mechanisms by which the Bill, once enacted, can be amended

The legislation, which is the subject of this amendment bill, can be amended. However, under the terms of the Offshore Constitutional Settlement, changes to the *Petroleum (Submerged Lands) Act 1982* should follow the Commonwealth's offshore legislation so as to maintain common provisions. Similarly, amendments to the State's other principal Act, the PGERA 67 would be made to mirror Commonwealth's offshore legislation in accordance with WA's long-standing practice of adhering to a common petroleum mining code.

Legislation developed by reference to model Bills;

The Bill is modelled on the following Commonwealth Bills:

- *Offshore Petroleum and Greenhouse Gas Storage Amendments (Miscellaneous Matters) Bill 2015* https://www.legislation.gov.au/Details/C2015A0003 *and*
- *Offshore Petroleum and Greenhouse Gas Storage Amendment (Petroleum Pools and Other Measures) Bill 2016* http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5714

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Yours sincerely

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