

20 June 2014

Competition Policy Review Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600Via email: contact@competitionpolicyreview.gov.au

Dear Competition Policy Review Secretariat

**RE: COMPETITION POLICY REVIEW ISSUES PAPER – SUBMISSION FROM THE AUSTRALIAN
PETROLEUM PRODUCTION & EXPLORATION ASSOCIATION**

The Australian Petroleum Production & Exploration Association (APPEA) is the peak national body representing Australia's oil and gas exploration and production industry. APPEA has more than 85 member companies that explore for and produce Australia's oil and gas. In addition, APPEA's more than 290 associate member companies provide a wide range of goods and services to industry. Further information about APPEA can be found at www.appea.com.au.

APPEA welcomes the opportunity to provide comment on the *Competition Policy Review Issues Paper*. This Review provides an important opportunity to further develop a policy framework that encourages competition and removes excessive regulations to guide and facilitate Australia's long-term economic growth.

Australia's oil and gas industry is a major contributor to Australia's economic prosperity. It is experiencing unprecedented growth, with almost \$200 billion currently being invested in Australia seven new LNG projects. This investment has already made a significant contribution to Australia's economic and employment growth, and there are additional billions of dollars of investment in the planning stage. Positive future investment decisions are dependent on the right policy settings.

The LNG industry is a major local success story for Australia, but genuine threats are now emerging to its plans for further investment and development. Economic history shows that Australia has prospered when government policies have encouraged an open, competitive economy. It also shows living standards have declined when governments have pursued inefficient regulation, protectionism and other forms of intervention in business decision-making.

If Australia is to attract another wave of substantial oil and gas investment and realise the next phase of resource development, governments must work with industry to identify the best policy options to benefit all Australians.

APPEA acknowledges the fact that reducing regulatory burden and addressing Australia's declining cost competitiveness is of paramount importance to all industries in Australia and acknowledges the positive actions undertaken by the Government since its election in September 2013.

There are broadly speaking five critical policy areas:

1. Fiscal stability and globally competitive taxation terms;
2. Regulatory reform: red tape and green tape reduction including streamlining Australia's greenhouse policies and programs;
3. Maintaining the industry's access to resources;
4. Market-based energy policies; and
5. Labour markets that encourage mobility, flexibility and productivity.

Australia needs a growing oil and gas industry to contribute to its long-term economic prosperity. Vital policy action taken now — on tax, market-oriented policies, access to resources and regulatory reform on unnecessary red and green tape — will improve the industry's international competitiveness and help secure that future.

APPEA would be pleased to further expand on any of the issues raised in the submission. Contact in APPEA is Mr Damian Dwyer, Director – Economics, telephone 6267 0902 or email at ddwyer@appea.com.au.

Yours sincerely



David Byers
Chief Executive

Enc.

Competition Policy Review Issues Paper April 2014 – APPEA Comments

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KEY POINTS

- The oil and gas industry is one of Australia's highest value adding industries. As such, it should be a key point of focus in any government policy measures assured aimed at developing high value-added products and services – whether for the domestic or export market.

The Australian upstream oil and gas industry

- Reliable, secure and competitively priced energy is crucial to our everyday lives. Oil and gas plays a key role in meeting many of our energy needs.
- The Australian oil and gas industry is today part way through building almost \$200 billion worth of projects – and has the potential to invest another \$180 billion in new projects. Ever since the first significant Bass Strait discoveries in the mid-1960s, Australia's oil and gas industry has helped underpin Australia's economic prosperity and growth.
- Australia has vast gas resources, with more than enough gas to meet both domestic and export markets for decades.
- Natural gas makes it possible for Australia to meet its own and the region's growing energy needs over the coming decades in an environmentally responsible manner.

International Competitiveness

- The major challenge to the industry's continued growth is maintaining Australia's international competitiveness in the face of growing global competition. A high-cost local environment and the emergence of new LNG competitors in East Africa, North America and elsewhere will make it much harder to win market share and attract investment.
- The industry and governments, including through the National Competition Policy Review, must do everything possible to ensure projects under construction commence production in a timely manner and new projects continue to be developed.

Fiscal Stability

- To maximise its oil and gas production, Australia needs a stable, predictable and competitive taxation regime that will maintain a fiscal framework that encourages exploration and development investments. Long-term projects (30–40 years duration) need long-term stability.

Regulatory Reform: cutting green tape

- Inappropriate and inefficient regulation is threatening to stifle future investment in large oil and gas projects and could bring the resources boom to a premature end. Australia's oil and gas industry is truly global in nature and competes for a limited pool of international investment capital. Funding lost from the domestic oil and gas industry will not be spent in other parts of the Australian economy — it will be redirected overseas.

Access to resources

- Continued development of the industry relies on continued access to oil and gas resources (both onshore and offshore). Any restrictions on access must be consistent with an evidence based, scientifically driven principles.

Market-based energy policy

- APPEA supports the need for market-based energy policies. In all sectors of the economy – not just oil and gas – maintaining access to open and competitive markets is in Australia’s best interest.
- Our best policy response to rising prices lies in bringing more gas to market – by reducing the green and red tape currently constraining new projects, rather than intervening through interventionist policies (such as a domestic reservation policy).

Viable labour markets

- Labour reform is crucial to boosting Australia’s competitiveness. Australia needs viable labour markets that are appropriately skilled, mobile, flexible and productive. Developing the skilled workforce and the local industry supply capability needed to build and operate the oil and gas projects now under construction is a major challenge.
- While APPEA welcomes the Australian Government’s planned changes to the *Fair Work Act 2009*, the industry believes the Government should go further, as the Act reduces the industry’s capacity to deliver the current wave of projects on time and on budget.
- Problems on major projects relate to both how terms and conditions are set at the outset of the agreement (greenfields agreement provisions) and risks to project performance and competitiveness despite one or more agreements being in place. These problems include:
 - the risk of protected industrial action during renegotiation;
 - the broad scope of ‘permitted matters’ over which bargaining can take place;
 - the misuse of right of entry provisions; and
 - the impact of unprotected action.

INTRODUCTION

Australia's oil and gas industry is a major contributor to Australia's economic prosperity. It is currently experiencing unprecedented growth with almost \$200 billion currently being invested in Australia in seven LNG projects. Deloitte Access Economics¹ estimated in 2012 that this investment will increase Australian GDP by up to 2.2 per cent a year and require a construction workforce peaking at over 100,000 full-time equivalent jobs. By 2025, the construction and operation of these projects will add more than \$260 billion (in net present value [NPV] terms) to Australian GDP and contribute between \$6.3 billion and \$7 billion a year in taxation revenue. Nearly \$150 billion in taxes have been paid by the industry since the mid-1970s.

As an integral part of the Australian economy, the oil and gas industry:

- supplies reliable and competitively priced energy;
- invests hundreds of billions of dollars of capital;
- pays billions of dollars in taxes to governments;
- directly employs tens of thousands of Australians;
- supports regional investment; and
- generates significant amounts of export income.

Currently seven LNG projects are at various stages of construction around Australia. These projects could boost Australia's LNG export capacity to over 80 million tonnes per year² and deliver significant benefits to the nation.

While the Australian economy has benefited and will continue to benefit significantly from LNG investments committed in the past, there are even more projects under consideration, representing a potential additional investment that could exceed \$180 billion. Realising these would benefit the entire nation. Analysis by McKinsey & Co³ shows GDP would increase by 1.5 per cent, about 150,000 jobs would be created across the Australian economy, and tax revenues would significantly grow. The benefits of improving productivity would also flow to other sectors.

This means that the stakes are high in realising the industry's potential benefits. The major challenge to the industry's continued growth is maintaining Australia's international competitiveness in the face of growing global competition. A high-cost local environment and the emergence of new LNG competitors in East Africa, North America and other locations has increased the level of competition Australia faces as it seeks to win market share and attract investment.

The industry and governments must do everything possible to ensure the \$200 billion in projects under construction commence production in a timely manner and that Australia secures future oil and gas investment opportunities.

¹ Deloitte Access Economics, (2012), *Advancing Australia: Harnessing our comparative energy advantage*, June (available at www.appea.com.au/wp-content/uploads/2013/04/120625_DAEreportAPPEAfinal.pdf) and Deloitte Access Economics (2012), *Advancing Australia: Harnessing our comparative energy advantage: Supplementary analysis*, November (available at www.appea.com.au/wp-content/uploads/2013/04/DAE-supplementary-analysis-report-november2012.pdf).

² Bureau of Resources and Energy Economics (2013), *Resources and energy major projects*, April (available at www.bree.gov.au/publications/remproj.html).

³ McKinsey & Co (2013), *Extending the LNG boom: Improving Australian LNG productivity and competitiveness*, 28 May (available at www.mckinsey.com/locations/australia/knowledge/pdf/extending_lng_boom.pdf).

This review of competition policy seeks to protect, enhance and extend competition. In addition to examining the laws that protect and encourage competitive behavior in key markets, the review further examines regulations and restrictions impeding competition. APPEA strongly supports the review in ensuring any policy changes are well considered and support efficient businesses – both big and small – to compete, invest and innovate.

APPEA believes there are critical policy areas that require genuine reform. Five major State and Federal policy priorities are clear:

1. Fiscal stability and globally competitive taxation terms;
2. Regulatory reform;
3. Timely and certain access to resources;
4. Market-based energy policies; and
5. Labour markets that encourage mobility, flexibility and productivity.

In addition to this submission, APPEA has, in recent months, provided reports and submissions to a number of inquiries and reviews that are relevant to areas discussed in the *Issues Paper*. These include submissions to the:

- The Federal Government 2014-15 Budget⁴,
- House of Representatives Standing Committee on the Environment’s inquiry into streamlining environmental regulation, ‘green tape’ and one-stop shops⁵
- Senate Standing Committee on Education and Employment Inquiry into the provisions of the *Fair Work Act*⁶
- Productivity Commission Commissioned Study in Geographic Labour Mobility⁷,
- The National Commission of Audit⁸.

THE IMPORTANCE OF FISCAL STABILITY

The oil and gas industry in Australia is confronted with a vast array of taxes, charges and fees in relation to petroleum activities. Fiscal imposts include resource taxes (including the nation-wide petroleum resource rent tax, petroleum royalties and production excise), company income tax and a wide variety of other taxes, fees and charges.

To maximise our oil and gas production, Australia needs a stable, predictable and competitive taxation regime that will maintain a fiscal framework that encourages exploration and development investments. Long-term projects (30–40 years duration) need long-term stability. Yet over the past five years the industry has been confronted with a range of disruptive changes or threats to the taxation regime, including:

- the imposition of excise on condensate production;
- extending the scope of the PRRT regime to cover the onshore industry (noting the pre-existing onshore resource taxes have been retained);

⁴ See bjh.ministers.treasury.gov.au/media-release/036-2013 for further information.

⁵ See www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=environment/ for further information.

⁶ See http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/Fair_Work_Amendment for further information

⁷ See www.pc.gov.au/projects/study/labour-mobility/submissions for further information.

⁸ See www.ncoa.gov.au/index.html for further information.

- the introduction of a carbon tax not borne by international competitors;
- denying the immediate deductibility of certain exploration related costs for income tax purposes;
- proposing a restriction in the costs that are considered to be exploration for the operation of PRRT regime; and
- the introduction of cash bidding for certain exploration acreage.

These changes have had two major detrimental effects on the industry.

First, they have increased the taxation burden faced by the industry and the costs of compliance. Many of the fiscal imposts are highlighted in *APPEA's Pre Budget Submission* and a number of recommendations have been proposed to improve the competitiveness by easing the regulatory burden on oil and gas companies.

Secondly, they have created uncertainty. Managing fiscal uncertainty is within the control of government. It represents the major risk to the success of current projects and the development of future projects as further international investment is at risk.

REGULATORY REFORM: CUTTING GREEN TAPE

Australia's oil and gas industry must operate within duplicative and inefficient regulatory approvals processes. Much inefficiency exists in the over-laps between federal and state government regimes. However, there are also opportunities to reduce duplication and inefficiency between Federal Government departments and agencies.

Australia's environmental regulatory framework contains overlapping, excessive and inconsistent requirements which cause unnecessary project delays and increased costs without additional environmental benefit. Australian governments have identified reforming excessive legislation and red/green tape as an important issue.

In the submission to the House of Representatives Standing Committee on the Environment's inquiry into streamlining environmental regulation, 'green tape', and one-stop shops, APPEA has lodged a joint submission with the Business Council of Australia and the Minerals Council of Australia to emphasise the fact that reducing regulatory burden and addressing Australia's declining cost competitiveness is of paramount importance to all industries in Australia.

Green tape is consistently raised by oil and gas companies as one of the top issues impacting the global competitiveness of Australia's resource sector. The Australian oil and gas industry works continuously to maintain the highest standards of environmental performance and fully understands the importance of building the trust of governments, the public and the communities in which we operate. Strong, efficient, independent and transparent regulatory oversight of our activities is a critical component in developing that trust. APPEA therefore supports the Federal Government's environmental regulatory reform agenda, and specifically the focus on reducing unnecessary regulation and duplication, while upholding strong environmental protection.

A recent report from the World Economic Forum has ranked Australia's trade competitiveness down by nine spots to 23rd in the world in 2014, with government regulation identified as one of the main

contributors to the fall⁹. At a time when new and lower cost oil and gas competitors in other locations are emerging, it is critical that Australia reduces unnecessary regulatory costs and improves productivity.

The Australian industry is in transformation on several fronts: economic, technical and regulatory. Offshore, the industry is moving into deeper waters. At the same time, some existing production fields are ageing and associated infrastructure is undergoing life extension or in some cases, faces possible decommissioning.

Given the substantial benefits to the national economy, regulation of the oil and gas industry should be designed and implemented to support the maintenance of high standards of performance and risk management for integrity (wells and facilities), safety, health and the environment without imposing unnecessary regulatory burdens.

Principles of good environmental regulation

The one-stop shop process has the potential to deliver significant streamlining of Australia's environmental regulation as reflected in the recommendations of numerous Australian reports and reviews. However, there are further potential areas of legislative reform.

APPEA supports strong objective based regulation that sets a science based framework for reducing risk while providing certainty to industry. The Federal Government's recent "Ten Principles for Australian Government Policy Makers" provides an important set of criteria against which regulatory frameworks should be assessed¹⁰.

APPEA supports the adoption of a "one-stop shop" for Commonwealth and State/Territory environmental and planning assessment and approvals that:

- Enables robust and consistent environmental regulation and high environmental standards and performance;
- Reduces regulatory burden and removes duplication of assessment and approvals between jurisdictions;
- Provides for efficient, streamlined processes and faster timeframes for assessment and approvals; and
- Increases certainty and global competitiveness and thereby facilitates further business investment

Further, APPEA believes governments at all levels should aim to establish environmental and planning approval processes based on the following principles:

- Clear objectives and transparent oversight:
 - The rationale for any regulation must be well defined and understood; government regulation may not always be the most effective policy solution or mechanism to manage risk
 - Objectives should be transparent, clear, uniform and logical processes for implementing regulation
 - Regulations should meet economic and social objectives as well as environmental ones

⁹ World Economic Forum (2014) <http://www.weforum.org/issues/global-competitiveness>

¹⁰ See cuttingredtape.gov.au for further information.

- Underpinned by sound science and evidence
 - An evidence-based approach should be adopted based on rigorous and reliable information and be based on well-defined risks and environmental values
 - Information, science and evidence used to underpin regulations should be transparent
- Risk-based and focused:
 - Objective and risk-based regulation should be adopted rather than prescriptive standards
 - Regulation should allow for a flexible and dynamic approaches to changing circumstances (technology, environments, science and financial arrangements)
 - Regulation should allow for actions to be taken to mitigate risk in conditions of scientific uncertainty rather than stopping or banning projects or activities
- Appropriate to the nature and scale of the project:
 - Regulation should be focused on what is appropriate to the ‘nature and scale’ and to the risks and impacts from the activity being regulated
 - The ongoing compliance activity and costs imposed on governments and proponents should be appropriate to the risks and impacts
- Transparent processes supported by guidance on regulator expectations
 - Guidance should be flexible enough so as not to become prescriptive regulation by stealth.

There does not need to be a trade-off between environmental outcomes and economic growth and industry development in Australia. Sensible reforms to current legislative and regulatory arrangements can reduce the regulatory burden and do not mean less rigorous or transparent protection of the environment.

APPEA supports a detailed sector-by-sector audit of the regulatory ‘green-tape’ burden faced by industry in order to fully identify further areas for reform.

Inappropriate and inefficient regulation is threatening to stifle future investment in large oil and gas projects and could bring the resources boom to a premature end. Australia’s oil and gas industry is truly global in nature and competes for a limited pool of international investment capital. Funding lost from the domestic oil and gas industry will not be spent in other parts of the Australian economy – it will be redirected overseas.

MAINTAINING INDUSTRY ACCESS TO RESOURCES

The oil and gas industry is committed to continuously striving to improve health, safety and environmental performance. People and the environment are protected through the responsible management of operations and their impacts, and by incorporating scientifically-based risk management strategies. The industry supports stable, predictable, robust regulation of its activities based on sound scientific principles and assessment.

A growing industry relies on continued and predictable access to oil and gas resources, both in onshore and offshore areas. Any restriction on access must be consistent with an evidence based, scientifically driven policy approach.

It is estimated that Queensland’s onshore natural gas industry is responsible for the employment of about 40,000 people, has signed more than 4,500 landholder agreements and has so far contributed more than \$123 million to community projects and causes.

In NSW, where arbitrary government regulation continues to send the signal that the state is closed for business, it is estimated that the industry employs fewer than 300 people, has signed just 285 agreements with landholders, and has contributed \$1 million to community projects.

Policies that undermine the development of energy projects and curtail energy production impose costs on the Australian community, in jobs, in economic growth and ultimately put upward pressure on energy costs.

THE NEED FOR MARKET-BASED ENERGY POLICY

APPEA supports the need for market-based energy policies. In all sectors of the economy – not just oil and gas – maintaining access to open and competitive markets is in Australia’s best interest.

Australia’s upstream oil and gas industry is delivering substantial, economy-wide benefits in terms of investment, jobs, and regional development. For these benefits to be sustained, governments must resist calls for policy interventions that force non-commercial outcomes.

As one of Australia’s highest value-adding industries, the oil and gas industry should be a key part in any government policy measures aimed at developing high value-added products and services, whether for domestic or export markets.

In APPEA’s February 2014 submission to the Energy White Paper (EWP) *Issues Paper*, we noted that the EWP should in particular focus on efficient and competitive markets, increases in new energy sources to ease demand/supply constraints, regulatory reform and the need for removal of unnecessary barriers to continued investment in exploration and production.

Australia’s oil and gas industry is a source of comparative advantage that should be harnessed, not hindered. Just as Australia’s long-term national interest is served by maintaining access to open and competitive markets for globally traded goods such as wine, coal, wheat, and iron ore, the same is true for oil and gas.

Calls for reservation policies must be rejected

Rather than achieving its stated purpose, a domestic reservation requirement would be counterproductive and undermine long-term gas supply security. Such a policy is fundamentally anti-competitive. Rather than increasing domestic gas supply, it would have the perverse effect of discouraging new market entrants and supply diversity and would reduce supply competition, ultimately leading to higher prices, by discouraging investment. It would represent, effectively, a unique form of resources tax on gas projects not applied to any other part of the resources industry. This would discourage domestic gas exploration and development activity by the industry.

Calls for government intervention in the gas market are also premised on a misunderstanding that both finding and developing gas resources is a relatively easy task. In reality, liquefied natural gas projects, to which Australia now looks to underpin the national economy for decades to come, are complex, extremely costly and require a decades-long horizon. Importantly, Australia does not have this arena to ourselves – the LNG market is a globally competitive field and not one in which Australia can participate at our convenience.

The industry faces a range of cost pressures reflecting production from fields in deeper water and further from the coast and fields. In addition, many new projects contain lesser quantities of associated liquids and with higher levels of impurities that further increase costs. In addition, the industry faces more conditions and objections regarding environmental protection, delays to approvals and regulatory processes, increased wages and industrial unrest and the growth of ‘user pays’ and cost recovery in industry regulation.

The importance of rigorously applying a market failure test

It is important that market failure be correctly defined. Too often, calls for policy interventions reflect dissatisfaction with the operation of competitive markets, or have an ‘industry development’ justification, and do not reflect genuine market failure.

In economics, the term market failure has a clear technical meaning which can be used to assess the different sides of the argument regarding domestic gas reservation. Three key aspects are worth emphasising:

- When markets are out of equilibrium, say because the economy is experiencing rapid growth, imbalances between supply and demand are typically a feature. The fact that some experience the consequences of that disequilibrium does not connote market failure: it is a necessary precursor for resolving imbalances. Suppressing these market signals will aggravate rather than resolve any imbalance.
- Even in an economy that is broadly in equilibrium, the fact that some believe that they are not getting as good a deal as they desire does not mean there is market failure. For example, where high initial (sunk) costs are required to secure output, then if buyers could escape covering these costs, supply would never be forthcoming (absent public subsidies). That would constitute a market failure.
- Even where there are market failures, it does not necessarily follow that society would be better off seeking to correct the situation. All forms of government intervention involve costs, and those costs may exceed the efficiency benefits achievable from correcting the market failure. The risks and costs of ‘government failure’ need to be given no less weight in the assessment of policy options than those of market failure.

Value adding – a closer look is required

Recent years have seen a resurgence of arguments advancing – as a policy objective in and of itself – the idea of ‘adding more’ value to our raw materials by further processing¹¹. Value adding is often seen as a way of:

- Increasing employment – through jobs in processing;
- Improving our net export performance – through exporting higher value products;
- Reducing Australia’s exposure to price fluctuations for raw materials; and
- Improving regional or national income.

Recent analysis by Deloitte Access Economics (DAE)¹² considered the value-adding provided to the Australian economy by a range of industries and found:

¹¹ See, for example, www.manmonthly.com.au/features/plastics-and-chemicals-industry-fix-australia-s-ex for comments by Plastics and Chemicals Industry Association (PACIA) asserting (on the basis of discredited analysis prepared by the National Institute of Economic and Industry Research) that “... for each dollar gained by exporting LNG, \$21 in value-add locally was lost.”

The gas sector in particular has a high value added component, with the most recent ABS Input Output table suggesting a value add ratio of 0.80 for the oil and gas sector, compared to an average of 0.28 across the manufacturing sector as a whole (with the ratio in some parts of the sector as low as 0.13). Notably, 0.80 is the highest value added ratio observed in the Australian economy, and 0.13 is the lowest of the value added ratios.

This means that, as one of Australia's highest value-adding industries, any focus on further developing the export of value-added energy products and services, should have Australia's oil and gas industry as a key point of focus.

Our best policy response

Our best policy response to rising prices lies in bringing more gas to market – by reducing the green and red tape currently constraining new projects, rather than intervening through a domestic reservation policy. Put simply, the best way to create downward pressure on gas prices is more gas, not more regulation. Governments can help ease price pressures by removing regulatory and planning barriers to the safe and responsible development of resources for domestic and export use.

Government has no place, however, in commercial negotiations over volumes, price, duration and other contractual terms. A commercial negotiation should remain just that – one conducted between buyers and sellers.

In all sectors of the economy (not just oil and gas), maintaining access to open and competitive markets – and rejecting protectionism and other forms of anti-competitive interventions – is in Australia's long-term national interest.

DEVELOPING VIABLE LABOUR MARKETS THAT ENCOURAGE MOBILITY, FLEXIBILITY AND PRODUCTIVITY

Labour reform is crucial to boost Australia's competitiveness. Australia needs viable labour markets that are appropriately skilled, mobile, flexible and productive. Developing the skilled workforce and the local industry supply capability needed to build and operate the oil and gas projects now under construction is a major challenge.

Given the rapid expansion trajectory and largely concurrent project scheduling, there are significant demands on industry to source and place workers to ensure that the pace of development can be sustained. These challenges are compounded by relatively low levels of unemployment and the relatively labour demand deriving from other sectors of the economy.

APPEA has discussed a range of issues to improve labour productivity in Australia in the report *Improving Labour Productivity: A Regulatory Reform Agenda*. Sector specific problems highlighted in this report range from problems with the *Fair Work Act 2009*, capacity constraints imposed on major projects by recent changes to local content and temporary skilled migration laws and the additional regulatory requirements introduced as part of the *Australian Jobs Act 2013*.

¹² Deloitte Access Economics (2013), *The economic impacts of a domestic gas reservation*, 2 October, page 24 (available at www.appea.com.au/wp-content/uploads/2013/10/DAE-Economic-impacts-of-gas-reservation-2.pdf).

The Fair Work Act 2009

Of particular note are the provisions of the *Fair Work Act 2009*. The APPEA report notes the Act reduces the industry's capacity to deliver the current wave of projects on time and on budget. Importantly, it also finds certain aspects of the Act threaten future investment in major projects.

Problems on major projects relate to both how terms and conditions are set at the outset of the agreement (so called 'greenfield' agreement provisions) and risks to project performance and competitiveness despite one or more agreements being in place. These problems include the:

- Risk of protected industrial action during renegotiation;
- Broad scope of 'permitted matters' over which bargaining can take place;
- Misuse of right of entry provisions; and
- Impact of unprotected action.

While APPEA welcomes the Government's planned changes to the *Fair Work Act 2009*, the industry believes the reforms should go further. The report recommends the Government develops a new form of enterprise agreement that would specifically apply to major capital projects, such as multi-billion dollar LNG plants.

These Major Project Agreements (MPAs) would reflect both the scale of these projects and the timeframe required to develop them by limiting the time available to negotiate, having the Agreement apply for the entire period of project construction (as opposed to a renegotiation every four years) and requiring negotiations to be specific to individual major projects' circumstances. This would prevent the most recent deal struck automatically becoming the minimum benchmark for the next.

APPEA is also urging the Government to consider further reforms to protect major capital investments once an MPA has been put in place, including:

- Changing Right of Entry provisions, applying them only to those unions with which agreements have been made and subjecting permit applications to greater scrutiny;
- Bigger fines for unlawful industrial action;
- Raising the threshold for protected industrial action;
- Anti-picketing laws that deliver faster determinations regarding lawfulness; and
- Re-introducing a well-resourced Australian Building and Construction Commission.

A mobile and flexible workforce

While investment in the industry is strong, workforce issues require greater policy attention to address development needs.

During the project capital expenditure/construction phase, there is a far greater labour requirement as large-scale civil works and facility development occurs. Project operations typically require fewer but highly specialised workers to manage the operation and maintenance of production facilities. Using temporary workers to bolster the local workforce during the peak construction phase makes good sense when local labour forces are unable to meet all the required demand of the projects.

This is especially the case with the regional nature of oil and gas production, where there are smaller, localised labour pools which are unlikely to be able to meet demand for highly specialised trade,

technical and construction fields. Labour markets in regional and remote areas tend not to be in as great a state of flux as in metropolitan areas, with generally less job movement and a fewer people seeking alternate employment. As a result of this, a local labour market may not always be able to meet the needs of oil and gas developments.

Increasing the size of the local workforce through regional development has been tabled as a possible option in some cases – particularly addressing the long term operational requirements. This phase also provides considerable opportunities for local and indigenous businesses and for skills development in both oil and gas and also supporting services such as environmental monitoring.

The oil and gas industry is a global industry, and its people move across these global projects taking their experiences and skills with them. This is good for Australia. It not only provides us with a market where our workforce is able to gain international experience, it also provides the opportunity to bring to Australia highly skilled people to mentor and up-skill the local workforce.

Targeted skilled migration programs must be part of the solution, particularly for short-term or highly specialised roles and for periods of high employment such as Australia is currently experiencing. Industry needs efficient and timely access to temporary skilled migrants for these situations to ensure that skill shortages do not create constraints to major projects and jeopardise economic growth and thereby broader Australian jobs.

Employers need to be able to access critical project skills through skilled migration in an efficient and timely way. Recent changes to Australia's skilled migration program have seen the system become complex, onerous and time consuming. They also have the potential to restrict intra-company transfers and skills development for international companies, beyond those for senior management positions. These transfers across countries (but within companies) have great potential to skill up Australians, but are being threatened for the bulk of participants who are not degree qualified or in a senior managerial role. Technical and tradespeople are excluded from the benefits of international experience.

If Australia is to enjoy the benefits of large resource projects can bring, then an adequate supply of workers must be assured. With a more finely-tuned skilled immigration program, Australia will benefit from a strong economic return and further employment opportunities which can be enjoyed Australian workers.

CONCLUSION

Australia's oil and gas industry is a major contributor to Australia's economic prosperity. It is experiencing unprecedented growth, with almost \$200 billion currently partly being invested in seven LNG projects. This investment has already made a significant contribution to Australia's economic and employment growth, and there are additional billions of dollars of investment in the planning stage, providing potential scope for considerably more benefits. The LNG industry is a major local success story for Australia, but genuine threats are now emerging to its plans for further investment and development.

Economic history shows that Australia has prospered when government policies have encouraged an open, competitive economy. It also shows living standards have declined when governments



have pursued inefficient regulation, protectionism and other forms of intervention in business decision-making.

If Australia is to attract another wave of substantial oil and gas investment and realise the next phase of development of resources, governments must work with industry to identify the best policy options to benefit all Australians.

Australia needs a viable oil and gas industry to contribute to its long-term economic prosperity. Vital policy action taken now, on fiscal settings, market-oriented policies, access to resources and regulatory reform on unnecessary red and green tape, that will improve the industry's international competitiveness and help secure our future prosperity.