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IT'S TIME: PETROLEUM POLICY CHANGE FOR SUSTAINABLE DEVELOPMENT IN THE AUSTRALIAN OFFSHORE UPSTREAM PETROLEUM SECTOR.

TINA HUNTER*

ABSTRACT

This paper argues that Australia's present petroleum policy does not encourage the sustainable development of State-owned offshore petroleum resources. It outlines the development of Australia's petroleum policy, highlighting the current commercial policy focus on international competitiveness, which fails to contribute to the sustainable development of the petroleum resources for present and future generations. In order to generate policy options for Australia to encourage sustainable development of its petroleum resources, this paper examines the petroleum policy framework of Norway, which is viewed as an example of best practice in the sustainable development of petroleum resources for the benefit of present and future generations. By comparing Australian and Norwegian petroleum policies, and heeding the lessons from the Norwegian experience, this paper suggests possible policies for Australia in order to sustainably develop its offshore petroleum resources for the benefit of all Australians.

I. INTRODUCTION

[T]he Australian government is committed to creating a policy framework to expand Australia's resource base, increase the international competitiveness of the resources sector and improve the regulatory regime consistent with the principles of environmental responsibility and sustainable development.¹

So declared the Rudd government in 2008, reflecting the Australian Labor Party's platform on natural resources development.² This commitment concerns all natural resources under Commonwealth jurisdiction. In particular, it is focussed toward the offshore upstream petroleum sector,³ which comprises the majority of Commonwealth-owned mineral resources. It is the policy framework of the offshore upstream petroleum sector that is the focus of this paper.

To date the current Labor government has addressed the regulatory and legislative system of the offshore upstream petroleum resources sector in Australia, commissioning a

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1 Department of Resources, Energy and Tourism, *Resources* (2009) <<http://www.ret.gov.au/resources/Pages/Resources.aspx>> at 12 June 2009.

2 Australian Labor Party, *National Platform and Constitution 2007* (2007) 54. This platform declares that Labor recognises that the development of Australia's natural resources requires that the benefits are shared equitably between producers and the Australian community, and will foster a full return to the community from the development of common resources and maximise the benefits of Australian ownership and control of the natural resources of Australia.

3 The regulation of petroleum resources in Australia is a complex regime, divided between the states and the Commonwealth as a result of the Commonwealth constitution. The States and Territories have jurisdiction from the baseline (low water mark) to three nautical miles seaward, and the Commonwealth from 3 nautical miles to the edge of the Exclusive Economic Zone better in full or the continental shelf, whichever is applicable, as defined in the *Offshore Constitutional Settlement* (1982). The upstream petroleum sector encompasses all the petroleum extraction activities (including exploration, development and processing) preceding the shipment of stabilised crude oil, condensate or sales gas (including liquefied natural gas (LNG)). See <<http://www.ret.gov.au/resources/Pages/Resources.aspx>> at 12 June 2009.

review of the regulatory and legislative burdens and issues affecting that sector.⁴ The review findings and recommendations identified the sources of regulatory and legislative burdens and issues, and recommended a number of changes to the legislative and regulatory framework to encourage efficiency and effectiveness.⁵

To date, a major review of Australia's petroleum policy has not been completed. The present government has determined that Australian petroleum policy should follow a course of action directed to exploit the petroleum resources consistent with the principles of sustainable development,⁶ optimising the benefit for present and future Australians.⁷ Yet the existing petroleum policy is a remnant of the previous liberal government, aiming to encourage an efficient and competitive petroleum exploration and production industry.⁸ The current policy appears to focus on commercial aspects of Australian offshore petroleum exploration and production. It fails to encourage sustainable development of petroleum resources at a time where the current government is committed to developing a petroleum policy that seeks to ensure good stewardship of petroleum resources, maximise economic and social benefits for Australian society whilst encouraging commercial interests and competitiveness.

This paper seeks to demonstrate that the current petroleum policy does not encourage the sustainable development of Australia's offshore petroleum resource, which is the stated policy aim of the current government in Australia. To demonstrate the failure of the current policy, this paper will firstly outline the development of Australian petroleum policy, linking the development of petroleum policy to the political agenda's of the government of the time. Secondly, it will analyse how the current petroleum policy framework is not meeting the policy aims of the current government, by identifying the deficiencies in the current policy framework in encouraging sustainable petroleum development. Thirdly, it will consider options for change of Australia's current petroleum policy by examining policy from jurisdictions that have successfully sustainably developed their petroleum resources for the benefit of current and future generations. In particular, it focuses on the petroleum policy of Norway, a jurisdiction that is acknowledged as being successful in sustainably developing their petroleum resources.⁹ Finally, it will recommend policy

4 See Australian Productivity Commission, *Review of Regulatory Burden on the Upstream (Petroleum and Gas) Sector – Issues Paper* (2008).

5 See Australian Productivity Commission, *Review of Regulatory Burden on the Upstream (Petroleum and Gas) Sector – Research Report* (2009) <<http://www.pc.gov.au/projects/study/upstreampetroleum/report>> at 6 May 2009.

6 The World Commission on Environment and Development defines sustainable development as 'development which meets the needs of the present without compromising the ability of future generations to meet their own needs'. See *Report of the World Commission on Environment and Development*, UN GAOR 96th Plen mtg, UN Doc A/Res/42/187(1987) <<http://www.un.org/documents/ga/res/42/ares42-187.htm>> at 12 December 2007. At the heart of sustainability is inter-generational equity, which is defined in the Australian Intergovernmental Agreement on the Environment (IGAE) as a concept where 'the present generation should ensure the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations' see Australian Government, Department of the Environment and Water Resources, *Intergovernmental Agreement on the Environment* (1990) <<http://www.environment.gov.au/esd/national/igae/index.html>> at 18 November 2007.

7 This is consistent with the acknowledgement by the Australian government that it has a responsibility to ensure that present and future generations of Australians derive optimal benefit from its petroleum resources. Department of Industry, Resources and Tourism, *Offshore Petroleum Guidelines for a Grant of a Production Licence and Grant of an Infrastructure Licence* (2002)

8 Department of Industry, Science and Resources, *Australian Offshore Petroleum Strategy: A Strategy to Promote Petroleum Exploration and Development in Australian Offshore Areas* (1999) 1.

9 Norway's petroleum policy and framework is recognised as 'a potent example of the successful development of the petroleum sector and surrounding industry', since it successfully combined the development of State-owned Oil Company and international oil company as it sought to develop petroleum resources whilst transforming the economy and creating an industry. See Richard Gordon and Thomas Stenvoll, *Statoil: A Study in Political Entrepreneurship* (2007) James A Baker III Institute for Public Policy, Rice University, 1 <

changes to encourage the sustainable development of offshore petroleum resources in Australia.

II. PRINCIPLES OF NATIONAL PETROLEUM POLICY

Policy has been defined by Crennan and Gummow JJ as 'a principle or course of action which is adopted or proposed particularly by the legislature and by the executive in its administration of legislation.'¹⁰ It is essentially a course of action which is intended to influence, determine and guide the decisions, actions and legislative process of a government.¹¹ In the context of natural resource development, policy is the current position or focus of a government in developing its natural resources, and will usually encompass political and fiscal policies. Resources policy is determined by the complex interaction of many factors, including a country's mineral potential, location in the world, political stability and current infrastructure.¹² Sustainable development of petroleum resources is directly linked to resource exploitation policy, since it is the interaction of fiscal, regulatory, depletion and economic diversification policies that interact to create conditions conducive to generating and sustaining wealth.¹³

The building blocks of effective petroleum policy are predicated on an interdependent and often antagonistic relationship between public resource owners and private resource exploiters, often due to conflict over the division of revenues and control of operations.¹⁴ Since governments lack the technical capacity or available capital needed to develop these natural resources, they need to harness the talents and energies of international oil companies to develop the resources. This is particularly evident in the initial phase of resource development, where the government lacks the appropriate knowledge or decision-making capacity.¹⁵ Consequently, national governments are often influenced by political, economic and social forces exerted by the petroleum industry.¹⁶

For the State,¹⁷ the formulation of an appropriate petroleum policy is crucial for the successful development of petroleum resources. Successful, adaptive policies seek to recognise the non-renewable nature of petroleum resources as well as the need to utilise the strengths of private oil companies to exploit the resources the State owns.¹⁸

Companies essentially want to maximise the return in their capital investment, and create conditions of long-term stability for themselves through maximising their share of the financial gains and control of petroleum activity.¹⁹ For oil companies, a comprehensive State petroleum policy ensures the oil companies can utilise their strengths, research and ingenuity to sustain and enhance their competitiveness in petroleum exploitation²⁰ while

http://www.rice.edu/energy/publications/docs/NOCs/Papers/NOC_Statoil_Gordon-Stenvoll.pdf at 14 December 2009.

10 *Thomas v Mowbray* (2007) 237 ALR 194 (Crennan and Gummow JJ).

11 Paolo de Sa, 'Mineral Policy: A World Bank Perspective' in Elizabeth Bastida, Thomas Wälde and Janeth Warden-Fernandez (eds) *International and Comparative Mineral Law and Policy* (2005) 494-5.

12 Ibid.

13 Richard M Auty, *Sustaining Development in Mineral Resource Economies: The Resources Curse Thesis* (1993) 46.

14 Øystein Noreng, *The Oil Industry and Government Strategy in the North Sea* (1980) 234.

15 Kenneth Dam, *Oil Resources: Who Gets What, How?* (1976) 4.

16 Arild Holt-Jensen, 'The Sharing of Petroleum Resources: Resource Poverty and Richness Around the Northern European Seas With Special Reference to the Norwegian Position' (1996) 39(2) *Geojournal* 211, 211.

17 Within the confines of this paper, this term may have two meanings. State refers to a geographically and politically identifiable nation or country. The term state refers to the States of Australia, including Queensland, South Australia, Western Australia and New South Wales.

18 Noreng, above n 14, 21

19 Ibid.

20 Within the confines of this paper, the term 'exploitation' is used to encompass activities required for the production of petroleum, including petroleum exploration, the development of a potential petroleum deposit, and production the of petroleum.

meeting community expectations in all operational aspects.²¹ In addition, a policy statement assists the industry to realise sustained and confident competitiveness by being able to make decisions within a clear and cohesive framework of objectives and principles.²²

Good petroleum policy attempts to balance the needs of the State in the control of resources with the needs of the oil companies in the development of the resources. Therefore, the aim of national petroleum policy should be to maintain a balance between the interests, rights, obligations and benefits of all of the participants in the exploitation of petroleum resources. Practically, this means that a sound domestic energy policy should have as its principal objective the secure possession of and access to petroleum resources.²³ Secondary petroleum policy objectives should clearly define and delineate the role of the State in the exploration and exploitation of petroleum resources,²⁴ fostering investment, enhancing exploration activities²⁵ and economic diversification to encourage the development of goods and services to supply the petroleum industry.²⁶ It should also seek to establish and maintain a suitable fiscal scheme that provides revenue to the government and also rewards the oil companies,²⁷ encourages development of the oil fields, does not promote early abandonment,²⁸ encourages a rational depletion policy,²⁹ and provides benefits for the citizens of that State.³⁰

Petroleum policy should have a phased implementation, with a view to divert the major benefits to the nation through control of foreign companies, effective tax regimes, building national capabilities and capacities, and state participation.³¹ Initially, the dominant party in the exploration of petroleum resources is generally the international oil companies, since they possess as part of their core business the resources, skills, technology and knowledge to exploit the petroleum resources.³² It is only when the State has the knowledge and decision making capacity that it is able to develop policies where the State gains benefits from the exploitation of petroleum resources.³³ The mature phase is a refinement of this intermediate phase, where the State uses the exploitation of petroleum as a tool for the economic and social development of the nation. These phases are illustrated in figure 1 below.

21 Bernard Taverne, *Petroleum Industry and Governments: An Introduction to Petroleum Regulation, Economics and Government Policies* (1999) 87.

22 Ibid.

23 Taverne, above n 21, 87.

24 Ibid 88.

25 International Energy Agency, *Energy Policies of IEA Countries* (2004) 18.

26 Peter Cameron, *The Oil Supplies Industry: A Comparative Study of Legislative Restrictions and Their Impact* (1986) 3.

27 Mike Bunter, *The Promotion and Licencing of Petroleum Prospective Acreage* (2002) 63 .

28 Ibid.

29 Ibid 64.

30 Ibid.

31 M Devaraj, 'Government Policies Concerning the Discovery and Development of New Offshore Oil Provinces, with Focus on India and the North Sea' (1983) 8 *Ocean Management* 251, 253.

32 Ibid 251.

33 Ibid 252.

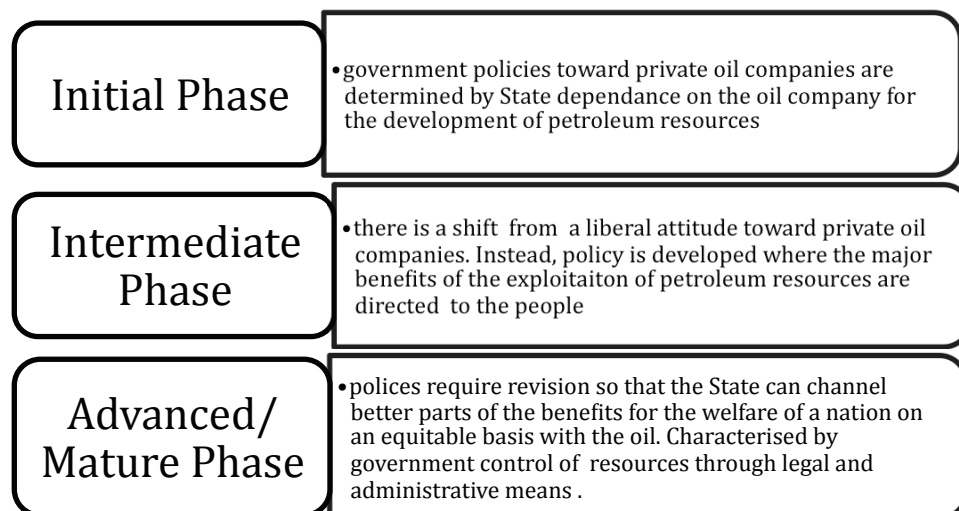


Figure 1: Development of petroleum policy in a petroleum producing State.(Compiled by author from: M Devaraj, ‘ Government Policies Concerning the Discovery and Development of New Offshore Oil Provinces, with Focus on India and the North Sea’ (1983) 8 Ocean Management 251, 251-253)

IV. AUSTRALIAN PETROLEUM POLICY

A. Early petroleum policies

Offshore petroleum production and exploration in Australia has occurred since the 1960s with the discovery of petroleum in Bass Strait in 1965.³⁴ There have been a number of changes in the policy framework governing the petroleum industry since the 1960s. These changes have been influenced by the complex interaction of changes in government, oil strikes over the last 40 years, and the shifting Australian approach to government control over the government owned utilities within the economy.

At the time petroleum was discovered in the 1960s, the Coalition government focused on two main areas of policy: exploration for further deposits and the establishment of petroleum price parity as a policy for the development of Australia’s petroleum resources.³⁵ The Gorton Government established a controlled price concept on all domestic oil in 1968, remaining in place without adjustment until 1975.³⁶

Labor Prime Minister Whitlam announced a major policy change relating to exploration in 1975, however this was not implemented since the government was dismissed in 1975 by a double dissolution of the parliament.³⁷ Upon re-election in December 1975, the Liberal-National government maintained oil pricing parity, raising the price of local oil to full import parity.³⁸ This policy focus remained until a change of government in 1983.

34 Esso/BHP, *Bass Strait Oil and Gas* (2002) 3 <http://www.exxonmobil.com/Australia-English/PA/Files/publication_2002_BassStrait.pdf> at 2 August 2007

35 Paul Keating, ‘The Labor Approach to Petroleum Exploration Development and Pricing’ (1980) 20 *APPEA Journal* 16,16.

36 Ibid.

37 The double dissolution of the Parliament is authorised under s57 of the *Australian Constitution*, where there is irrevocable disagreement between the Houses of Parliament.

38 Keating, above n 35, 16.

B. Petroleum Policy under the First Labor Government: 1983 – 1996

A major shift in Australia's petroleum policy occurred at a time of increasing internationalisation and a shift toward a free market.³⁹ Whilst in opposition, the Labor party had indicated that its policies for the development of offshore petroleum resource would have as its primary aim a long term sustainable indigenous energy economy.⁴⁰ This included the establishment of a national oil corporation that would operate side by side with private oil companies but with strategic as well as commercial objectives.⁴¹ This corporation would also provide information to the government to assist in the development of a national oil and gas policy.⁴²

The new Labor government undertook an assessment of Australia's offshore petroleum resource policies, recognising the importance of maintaining a program of exploration and development of the petroleum industry.⁴³ As early as 1985, the government recognised and articulated the complexity of implementing a new petroleum policy, and the need for the government to tread carefully and slowly.⁴⁴

The Australian government announced a new offshore petroleum policy framework in 1990, with the objective of maximising the benefit to all Australians through an efficient and competitive exploration industry which can fully assess Australia's petroleum resources.⁴⁵ These policy goals were addressed by an offshore petroleum strategy which implemented a comprehensive program for the release of offshore acreage areas for exploration, the provision of geological data from Australian government agencies, and provision and advertising of attractive offshore petroleum title and taxation arrangements.⁴⁶

The major policy elements of this new policy were the release of offshore areas for exploration by companies, the collection of exploration data and its dissemination to companies exploring for petroleum and the improvement of company awareness about Australia's title acquisition and taxation arrangements.⁴⁷ This policy also encompassed a view of developing the petroleum resources for the people of the Australian nation.⁴⁸ This view is somewhat in line with the political ideology of the Australian Labor Party, which advocates the continuing pursuit of a society which values security; champions fairness and equality; believes in communities and families; promotes social justice and compassion; values environmental sustainability; supports freedom, liberty and enterprise; and strives for opportunity and aspiration.⁴⁹

This new policy heralded the maturation of Australian petroleum policy. By seeking to maximise the contribution of petroleum to all Australians, the Australian government took the step from an initial phase of petroleum policy to a more intermediate policy phase.⁵⁰ This phase recognised that the benefits of petroleum exploration were to flow to all Australians, and incorporated some elements of sustainable development by ensuring that the petroleum development was for the benefit of all Australians.⁵¹

39 Gareth Evans, 'The Petroleum Industry: Building Our Achievements' (1985) 25 *APPEA Journal* 22, 23.

40 Keating, above n 35, 19.

41 Ibid.

42 Ibid.

43 Evans, above n 39, 23.

44 Ibid.

45 Australian Government, Department of Primary Industries, *Offshore Strategy: Promoting Petroleum Exploration Offshore Australia* (1990) 1.

46 Ibid.

47 Ibid.

48 Ibid.

49 Australian Labor Party, *Enduring Labor Values* (2007) <http://www.alp.org.au/platform/chapter_01.php> at 18 March 2008.

50 These policy phases were noted by Devaraj, above n 31, 254.

51 Department of Primary Industries, above n 45, 1.

C. Petroleum Policy under the Liberal Government: 1996 - 2007

The Liberal coalition was elected in 1996, ushering in Australia's first conservative government since the early 1980s. One of the early focuses of the new government was a review of the offshore petroleum regulatory framework. Working closely with the petroleum sector, the government set about building on some elements of the 1990 petroleum policy, incorporating the policy position of the petroleum industry. This review (the Parer Review) developed a policy that created certainty to investors and other stakeholders.⁵² In addition, it was premised on the creation of a highly competitive operating environment, in an economic sense, supporting industry efforts for wealth, allowing industry to respond confidently to international challenges and seize international trade and investment opportunities.⁵³

The policy relating to petroleum resources was outlined in the *Minerals and Petroleum Resources Policy Statement* released in 1998. This policy statement delineated a framework for the development of Australian mining and petroleum industries, cementing Australia's commitment to provide investors with a positive, strong, stable framework of government policies to ensure certainty for investors, minimise investment impediments and promote investment in the Australian petroleum industry.⁵⁴ The aim of this policy was to ensure that Australia remained a reliable, long-term supplier to the world's resources and energy markets.⁵⁵ In particular the policy sought to:

- offer high levels of certainty to investors about their rights and responsibilities, the processes of public decision-making, thus seeking to encourage investment in the offshore Australian petroleum industry;
- provide a highly competitive operating environment;
- support the industry's efforts to achieve sustained wealth generation through growth, innovation and enhancement of value;
- promote world best practice in management of environment, health and safety and, in doing so, promote responsible stewardship of the environment and community interests; and
- help industry meet international challenges and seize international trade and investment opportunities.⁵⁶

This policy, which focused on commercial interests and industry control and development of Australian petroleum resources, reflected the Liberal party policies of the inalienable rights and freedoms of all people, a lean government that minimises interference and maximises individual and private sector initiative.⁵⁷

An Australian energy sector policy review in 2004 incorporated a reconsideration of Australia's petroleum policy.⁵⁸ The review was prompted by the leading role that the domestic energy sector has played in the sustained economic growth of Australia's economy.⁵⁹ It sought to maximise the economic value of Australia's energy resources, aiming to provide Australians with a reliable supply of competitively priced energy whilst at the same time ensuring an appropriate return to the community for the depletion of these

52 Warwick Parer, 'Delivering National Prosperity' (Address to the 1998 APPEA Conference, Canberra, 9 March 1998).

53 Ibid.

54 Asia Pacific Economic Cooperation Group on Minerals and Energy Exploration and Development, *Australia's Mineral and Resources Industries: Recent Developments* (2002) 2-3 <<http://www.gemeed.cl/medios/pdf/australiacountryreport.pdf>> at 2 March 2008.

55 Ibid.

56 Ibid.

57 Australian Liberal Party, *What Does the Liberal Party Stand For?* (2008) <<http://www.liberal.org.au/about/ourbeliefs.php>> at 18 March 2008.

58 Energy Task Force, *Securing Australia's Energy Future* (2004) 51-3.

59 Ibid.

non-renewable resources, as well as meeting social and environmental objectives.⁶⁰ This review reiterated the 1998 policy position for Australia's offshore petroleum sector, and the development of the nation's energy resources remains guided by the following broad principles:

- Private decision makers should be allowed to manage risk in a regulatory framework that is predictable, transparent, equitable and timely.
- Energy resource developments should be required to comply with standards of environmental performance which are commensurate with those imposed on other sectors of the economy.
- Commercial decisions should determine the nature and timing of energy resource developments, with government interventions being transparent and allowing commercial interests to seek least-cost solutions to government objectives (e.g. environment, safety or good resource management objectives).
- Government objectives should generally be driven by sector-wide policy mechanisms rather than impose inconsistent requirements on individual private investors.⁶¹

The petroleum policies of the coalition indicated a move toward a petroleum policy consistent with the earlier policy phases in Australia. In particular, it sought to ensure autonomy for oil companies in petroleum activities, with petroleum exploration and production driven by the petroleum sector.

D. Petroleum Policy under the Second Labor Government: 2007 –

The existing petroleum policy framework created by the Liberal coalition policy continues as official policy for the petroleum sector. Today, the current Australian government has demonstrated a need and desire to review and redefine Australia's petroleum regulatory framework and the need for a change in the emphasis of Australia's petroleum policy.

Two significant events occurred in 2008, indicating a shifting policy emphasis. Firstly, it was the commissioning of an issues paper by the Australian Productivity Commission regarding regulatory burdens in the upstream oil and gas sector, with regulatory policy forming a peripheral part of that review.⁶² Secondly, the Department of Resources, Energy and Tourism has publicly declared that:

The Australian Government is committed to creating a policy framework to expand Australia's resource base, increase the international competitiveness of [the] resources sector and improve the regulatory regime, consistent with the principles of environmental responsibility and sustainable development.⁶³

V. CURRENT POLICY FAILURES

Clearly, the Australian Labor government seeks to build on the previous government's framework of increasing international competitiveness. However, the government seeks to encourage this international competitiveness as a foundation for an improved regulatory regime and a resource exploitation policy consistent with the principles of sustainable development.

Whilst the policy framework addresses exploration and commercial aspects of Australian offshore petroleum exploration and production, it does not encourage

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Australian Productivity Commission, *Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector: Productivity Commission Issues Paper* (2008) 4
<http://www.pc.gov.au/data/assets/pdf_file/0018/82026/upstream-petroleum-issues.pdf> at 11 August 2008.

⁶³ Energy Task Force, above n 58, 51-5.

sustainable development of the resources for all Australians. Although the petroleum policy seeks to ensure good stewardship of commercial interests, the policy and resulting legislation fails to maximise the benefit to the community.

Previous Australian petroleum policy has been characterised by the desire to provide high levels of certainty to investors and to encourage investment in the offshore industry. As such, political policy decisions have been geared to attracting oil companies into Australian offshore waters. Whilst there have been a number of policy statements addressing development of Australia's petroleum resources for the community, government objectives generally remain driven by sector wide policy mechanisms and commercial development.⁶⁴ As a consequence of these commercial-oriented policies, Australian resource development is generally not directed towards the development of the resources to maximise the benefit for present and future generations. Rather, Australian petroleum policy is geared toward attracting foreign investment through making itself attractive to foreign investors, by minimising State participation, allowing the companies to manage and control the type and rate of resource development, and ensure that investors have a free hand in the exploitation of the petroleum resources that they have heavily invested in.

Australia's petroleum policy has seen two major reviews in the last twenty years. The petroleum policy that was formulated by the governing Australian Labor Party in 1990 aimed at promoting efficient and competitive petroleum exploration and production industry and based on the perceived need to expand the petroleum industry in Australia.

The petroleum policy implemented in 1998 was the instrument developed by the Australian Liberal-Coalition parties in government from 1996 – 2007. This new policy focussed on:

- certainty to investors and other stakeholders;
- highly competitive operating environment, in an economic sense, supporting industry efforts for wealth; and
- allow industry to respond confidently to international challenges and seize international trade and investment opportunities.⁶⁵

Whilst Australian policy has been through a number of shifts, it essentially has left the development of the petroleum resources of Australia to the Australian Petroleum industry, with the Liberal-National coalition government committed to 'a thriving competitive upstream petroleum industry ... working in close cooperation with the private sector'.⁶⁶ The vision of the Australian government was of

'...an aggressively competitive, innovative and growing minerals and petroleum sector which contributes strongly to rising national prosperity, employment and regional development'.⁶⁷

At the conference for Australia's peak petroleum body, the Australian Production and Exploration Association (APPEA) in 1998, Senator Parer, Minister for Minerals and Resources noted that the challenge for the government was to put in place a legislative and policy framework that allowed industry to efficiently develop the resources to create sustained increases in wealth.⁶⁸

This challenge appears to have not been met. Today, the petroleum industry, through its peak body APPEA, has indicated that its strategic objective is to ensure the value of Australia's oil and gas resources to the Australian people is maximised, petroleum energy security delivered and long term sustainability of the Australian oil and gas industry

64 Ibid 51-3.

65 Parer, above n 52.

66 Ibid Part 2. 7.

67 Ibid Part 2. 8.

68 Ibid Part 2. 11.

assured.⁶⁹ Furthermore, it is calling for an increased role of the Australian Government in the exploration for petroleum provinces:

...whilst there is no substitute for a frontier discovery to stimulate exploration there is an important role for the Australian governments in facilitating exploration of these frontier areas by undertaking the pre-competitive geosciences work required to demonstrate their petroleum potential.⁷⁰

...It must be further developed by [governments of] all jurisdictions if the opportunity to discover new oil provinces, and thereby sustain Australia's oil industry, is to be maximised.⁷¹

Arguably, current petroleum policy does not encourage maximisation of the value of oil and gas resources for the Australian people. This is partly attributable to changes in the global petroleum market, and Australia's petroleum reserves. Australia's last petroleum policy was reviewed in the late 1990s, at a time Australia's attractiveness as an exploration destination was second only to the United Kingdom.⁷² Today, Australia is still a minor petroleum province, and it is no longer attractive in prospective terms. In the ten-year period to 2002, 154 companies commenced or recommenced exploration operations in Australia, whilst 168 companies left Australia's petroleum provinces in the same period.⁷³ It would appear that current aggressive petroleum policies that mandate commercial investment and strong industry control are not successful. Australia needs to rethink its petroleum policies. In additions, regulatory challenges and burdens have eroded the attractiveness of Australian petroleum provinces as a place for commercial investment.

The current minimalist 'referee only' policy taken by the previous Australian government has failed the Australian petroleum industry. This single minded policy of industry attraction and investment has failed. The targets that were set 10 years ago, in relation to achievements for the Australian industry have gone largely unfulfilled.⁷⁴ Production is decreasing, exploration is down and Australia is less attractive as a petroleum exploration province.⁷⁵ Furthermore, by its own admission, the petroleum industry is requesting more government intervention, especially in the area of pre-competitive data to encourage exploration, especially in frontier areas.⁷⁶

VI. CHOICES FOR POLICY CHANGE – LESSONS FROM NORWAY

There are lessons to be gleaned from how other jurisdictions have developed their petroleum policy in order to sustainably develop its petroleum resources. In particular, the Norwegian jurisdiction provides a useful comparison since it was an economically similar nation when oil was discovered in the North Sea at the same time as the discovery of oil in Bass Strait in Australia.

Norway's development of petroleum resources is seen as exemplary and is acknowledged by a number of institutions as best practice.⁷⁷ It is recognised as 'a potent example of the successful development of the petroleum sector and surrounding industry',⁷⁸ since it successfully combines the development of State participation in the exploitation of petroleum through state-owned oil companies, oil company participation,

69 APPEA, *Platform for Prosperity: Australian Upstream Oil and Gas Strategy* (2007) iii.

70 Trevor Powell, *Discovering Australia's Future Petroleum Resources: The Strategic Geoscience Information Role of the Government* (2008) 8.

71 Ibid 39.

72 Parer, above n 52, Part 2.11.

73 Powell, above n 70, 36.

74 Ibid 37.

75 Ibid 38.

76 Ibid 39.

77 Organisation for Economic Cooperation and Development, *Economic Survey: Norway* (2005) 11.

78 Gordon and Stenvoll, above n 9, 1.

and State control of petroleum licensing and activities through the licensing and concession system, and it seeks to develop petroleum resources whilst transforming the economy and creating an industry.⁷⁹ The uniqueness of Norway's policy framework lies in the multiple policies which assists the nation in developing suitable policies for the exploitation of petroleum resources.

The petroleum policy implemented by Norway could serve as an example reference for the Australian government of a policy framework that embraces sustainable development of petroleum. The petroleum policy objective in Norway has been, and continues to be, to secure a pattern of licensing which effectively promotes the best possible resource management of Norwegian petroleum resources, thereby laying the basis for creating the highest possible value and government revenues.⁸⁰

When oil was discovered in the North Sea and Bass Strait in the 1960s, the predominant model for the interaction between companies and governments in the exploitation of petroleum was the traditional concession system of the North American model.⁸¹ This model was predicated on the notion that governments imposed a certain number of regulations but did not intervene directly in the petroleum industry.⁸² The development of this model in North America was borne out the historical precedent of regulation of industry and enterprise in North America, where there had been a long history of minimalist regulation and a laissez affair approach to business.

The North American system of regulation was the only model available for consideration by the governments of Norway, the UK and Australia when formulating policy and regulatory framework for the newly discovered oil resources in their respective territories. Since these governments had no experience in the exploitation of petroleum resources, there was little precedent that they could draw on to emulate when formulating policy and regulation relating to petroleum exploitation in the North Sea.

Australia's historical origins and precedent regarding industry and enterprise was similar to that of the United Kingdom, given the colonial origins of Australia. The UK and Australian approach to business and private sector investment has been a 'liberal-pluralist' approach, characterised by the government uninvolved in capital accumulation and allocation, arms length relations with business, the development of policies subject to societal pressures, and the reliance on market solutions to economic problems.⁸³

Given this historical precedent of the interaction between government and the private sector, it is not surprising that Australia considered the North American non-interventionist form of regulation when developing its offshore petroleum policy. The result was the formulation of a non-interventionist policy by the Australian government, and the implementation of a regulatory framework that was characterised by minimal intervention and regulation.⁸⁴

When the UK and Norwegian governments began formulating petroleum exploration and development policies in the 1960s, they decided early on that they could not accept the prevailing international relationship between governments and oil companies in the exploitation of sovereign petroleum resources.⁸⁵ Whilst they knew that they did not want to

79 Ibid.

80 Norwegian Government, Ministry of Petroleum and Energy, *Facts 2003: The Norwegian Petroleum Sector* (2004) 63.

81 Noreng, above n 14, 14.

82 Ibid 17.

83 Brent Nelsen, *The State Offshore* (1992) 184. For a commentary on the history and origins of British economic policy and the interaction of government and the private sector in the UK see John Zysman, *Governments, Markets and Growth: Financial Systems and Politics of Industrial Change* (1983); David Vogel, *National Styles of Regulation: Environmental Policy in Great Britain and the United States* (1986); and Peter A Hall, *Governing the Economy: The Politics of State Intervention in Britain and France* (1986).

84 Australian Government, Department of Primary Industries, *Offshore Strategy: Promoting Petroleum Exploration Offshore Australia* (1990) 1

85 Noreng, above n 14, 14.

accept the North American model of petroleum regulation, the governments did not have an alternative regulatory framework. The UK government relied on precedent in commerce in industry, initially adopting a non-participatory approach in the early regulation of oil and gas.⁸⁶

Given the inexperience of the Norwegian State in the regulation of petroleum resources, they emulated the UK's approach, initially adopting a similar non-participatory approach to regulation in the 1960s.⁸⁷ However the Norwegian State was dissatisfied with this minimalist role of the state, particularly given their historical precedent of strong state regulation and intervention in the management of natural resources, illustrated by the State's strong regulation of hydropower since the early 20th century for the power of electricity.⁸⁸

In the early 1970s there was a significant shift in Norwegian petroleum policy. The State implemented changes reflecting Norway's traditional social democratic approach to economics and regulation of the private sector.⁸⁹ This shift in policy emphasis was grounded in policy precedent, but given impetus as new petroleum discoveries on the Norwegian Continental Shelf (NCS) shifted the Norwegian State's bargaining position with the oil companies in the favour of the State, as Norway realised that companies were willing to pay a higher price for the right to explore on the NCS. Consequently, the Norwegian State was able to expand its control of and participation in offshore activities.

This increased control and participation in petroleum activities on the NCS was formulated and developed against the influence of and in interaction with global events that has significant impact on the capacity of the Norwegian State to increase its control over petroleum activities in the North Sea. Norwegian policy was influenced by pressure groups that exerted their views and desires about regulation of industry in Norway. This pressure came from both oil companies and government officials from both sides of the political spectrum; however the Norwegian tradition of strong government control meant that both the Left and Right contributed to the formulation of the participatory intervention approach to the regulation of NCS petroleum activities.⁹⁰

Generally, Norwegian policies tend to be principle-based and ideological, with an explicit trade off between values and interests and explicit value references.⁹¹ This is partly attributable to the Norwegian administrative tradition where business is expected to conform to public policies and regulations of their own volition, with little supervision.⁹² Australia is very much like the United Kingdom, in that it is more bureaucratic and less free will, but ensures systematic control. The Norwegian system is well suited for homogenous society whereas the United Kingdom is better for industrialised society.⁹³ However, Australia has many characteristics similar to Norway. Australia is not an industrial economy like the UK, rather a society based on agriculture and service industries similar to Norway.

Prevailing geopolitics and global economics were also a major contributing factor to the formulation of petroleum policy in Norway. Oil companies in the 1970s were increasingly affected by the political and economic events of the decade, particularly the Organisation

86 Nelsen, above n 83, 186.

87 Ibid.

88 Ibid 187-8.

89 Ibid.

90 It is important to note that three separate governments from both conservative and social democratic sides of politics were involved in the formulation and implementation of petroleum policy in Norway in the 1970s. The Borten government (Conservative) initiated the policy review, the Bratelli government (Labour Party) largely formulated the new policies, and the Korvald government (Conservative) implemented most of the new regulatory system when it came to power. For a discussion on this see Brent Nelsen, above n 83, 34.

91 Noreng, above n 14, 27.

92 Ibid 28.

93 Ibid 28.

of Petroleum Countries (OPEC) embargo and crisis in 1973, and events in the Middle East, particularly the Iranian Revolution in 1979.⁹⁴

These international threats from foreign entities and a shift in global geopolitics stirred nationalistic fervour in many States and in Norway these 'sentiments inspired a long-range strategy aimed at bringing the greatest possible benefit to Norwegian society'.⁹⁵ Ongoing Norwegian petroleum policy has been predicated on this concept of developing its resources in a responsible controlled manner for the benefit of Norwegian society as a whole. This benefit has not only included the development of policies for the extraction of petroleum, but also policies for the management of revenue. In addition, from the beginning, the Norwegian State has focused on the concomitant development of the supply industry within the domestic and international petroleum business arena. The combination of these policies has seen Norway flourish under a management system that implements this overriding principle.

The implementation of these nationalistic sentiments was the formulation of a policy aimed at the economic diversification of the Norwegian industry, ensuring that there was a development of the domestic industrial capability and reduced reliance upon the oil industry as the major economic force to ensure Norway did not fall victim to Dutch disease,⁹⁶ instead formulating and implementing procurement policies that encouraged research and development in the petroleum industry, and created diversification within the industrial sector.⁹⁷

These global geopolitical and economic threats also influenced the activities of oil companies, who began to seek proven oil fields in 'safe' provinces. Norway, with its guaranteed fields of *Ekofisk*, *Statfjord* and *Frigg* was highly sought after, further strengthening its bargaining position and enabling it to develop a highly regulatory framework that became known as the North Sea model, characterised by government control of all aspects of exploration, field development and production.

The principles of Norwegian petroleum policy were laid out in 1971 in the 'ten oil commandments',⁹⁸ a set of goals and strategies to guide national involvement in the development of petroleum resources throughout the value chain, whilst focusing on the

94 Nelsen, above n 83, 40.

95 Ibid 69-70.

96 Ibid.

97 Brent Nelsen, 'Explaining Petroleum Policy in Britain and Norway, 1962 – 90' (1992) 15(4) *Scandinavian Political Studies* 307, 318.

98 The Norwegian ten oil commandments were approved by the Norwegian Parliament (the Storting) on 14 June 1971, and comprised the following:

1. that national supervision and control must be ensured for all operations in the Norwegian continental shelf;
 2. that petroleum discoveries are exploited in a way that makes Norway as independent as possible of others for its supplies of crude oil;
 3. that new industry is developed on the basis of petroleum;
 4. that the development of an oil industry must take necessary account of existing industrial activities and the protection of nature and the environment;
 5. that flaring of exploitable gas on the Norwegian continental shelf must not be accepted, except during brief periods of testing;
 6. that petroleum from the Norwegian continental shelf must as a main rule be landed in Norway, except in those cases where socio-political considerations dictate a different solution;
 7. that the State becomes involved at all appropriate levels, and contributes to a coordination of Norwegian interests in Norway's petroleum industry as well as the creation of an integrated Norwegian oil community which sets its sights both nationally and internationally;
 8. that a State oil company be established which can look after the government's commercial interests and pursue appropriate collaboration with domestic and foreign oil interests;
 9. that a pattern of activities is selected north of the 62nd parallel which reflects the special socio-political conditions prevailing in that part of the country; and
 10. that large Norwegian petroleum discoveries could present new tasks for Norway's foreign policy.
- See Bjørn Vidar Lerøen, *Drops of Black Gold: Statoil 1972-2002* (2002) 46.

protection of the environment.⁹⁹ These commandments underpinned Norwegian oil policy from the early 1970s, and continue to do so today.. The commandments dictated two essential policy elements that have remained central to Norwegian petroleum policy: sound macroeconomic policy and the creation of a fully state-owned oil company to participate in the exploitation of oil resources and development of the domestic industry.¹⁰⁰

These commandments outlined three areas of importance for the Norwegian government in the exploitation of their petroleum resources. Firstly, the commandments outlined the role of the Norwegian State, in the exploitation of petroleum. This included supervising and controlling all aspects of the Norwegian petroleum industry at appropriate levels, the coordination of Norwegian interests, and the creation of an integrated Norwegian oil community.¹⁰¹ Secondly, the petroleum concession system was to ensure energy security for Norway, reducing the reliance on other States as much as possible for its energy requirements.¹⁰² Thirdly, the commandments ensured that there was fair consideration of social, economic, political and environmental factors in the development of the petroleum resources.¹⁰³ Finally, the Norwegian concession system was to develop petroleum-based industries, based on the foundation of existing industries.¹⁰⁴

Norwegian petroleum policies have been through a number of distinct phases, although they have always been underpinned by the ten oil commandments. Initially, from the mid 1960s until the early 1980s, petroleum policy in the infant Norwegian petroleum industry was characterised by nationalist and protectionist policies. The objective of this nationalist strategy was to nurture and encourage Norwegian petroleum companies through information exchange, technology transfer and skilling, and to build the capacity for Norwegian companies to develop the petroleum resources.¹⁰⁵ Although international oil companies were also intended to play an important long-term role, the goal of building up a Norwegian oil community was defined in the early stages of petroleum policy.¹⁰⁶ Protectionist policies in the form of a favourable procurement regime existed to assist in the development of domestic industries.¹⁰⁷

The petroleum licensing system is based on the policy of State direction and control. This had its genesis in the early 1970s as Norway debated what form of State control and participation it would take. Labour justified the need for heavy State control and participation by examining the UK licensing policy of rapid development, noting:

... they are committed to the free play of market forces, and are primarily concerned to organise operations so that a large number of companies and groups should be tempted to take part. This is claimed to provide the best guarantee that the resources will be exploited quickly and efficiently. I say: good luck to them. We have chosen a different approach, and should continue it. The Industry Minister has stated on several occasions that we should take our time and make haste slowly. I agree. Nobody – and least of all the Norwegian community – would be served by pursuing a policy in this area which creates a kind of oil fever, and lays the basis for an industry which nobody has control over or comprehends. Norway is a *novice* oil nation in every respect. That makes it all the more necessary that

99 Willy H Olsen, *Petroleum Revenue Management- An Industry Perspective* (2002) 2 (Paper presented at the Oil, Gas, Mining and Chemicals Department of the WBG and ESMAP, Workshop on Petroleum Revenue Management, Washington DC, 23-24 October 2004).

100 Gordon and Stenvoll, above n 9.

101 See in particular commandments 1, 7 and 8.

102 See in particular commandment 2.

103 See in particular commandments 3, 4, 5, 6, 7 and 9.

104 See in particular commandments 3 and 4.

105 Dam, above n 15, 4.

106 Norwegian Government, Ministry of Petroleum and Energy, *Facts 2003: The Norwegian Petroleum Sector* (2004) 63.

107 Noreng, above n 14, 19.

we take the time necessary to achieve *acceptable* and *controllable* progress in what is a new field for us.¹⁰⁸

The Norwegian government sought to exert control over the development resources, with one government minister articulating the government fears by noting that ‘this isn’t a battle field where wealthy private interests will be allowed to fight over who should take the profits.’¹⁰⁹ The parliament also voiced its apprehension over the conduct of international oil companies, who were seen to be ‘enjoying excess profits at the expense of consumers and oil exporting countries.’¹¹⁰ Therefore, the Norwegian government adopted a mercantilist role,¹¹¹ tying oil interests to other interests by developing a procurement policy that encouraged the development of an indigenous petroleum industry. The rationale was that the petroleum industry operated on public land, and was extracting resources-in-the-ground that were in public ownership. Consequently, lifting oil and gas means depleting a public capital base, for which compensation should be found in the building up of other assets to secure a continuity of income. Norway, like the UK, practices discretionary licensing, awarding licenses through bargaining with oil companies over multiple objectives

To implement this policy, the Norwegian government embarked on an aggressive strategy of development of associated industries in the first twenty years of petroleum exploration and production. This economic diversification was encouraged through the active participation of a mix of national and international companies, and especially the building up of Norwegian competence. Since 1970, Norwegian governments have regarded it as essential to promote competition in the oil industry while at the same time actively promoting the business opportunities for Norwegian industry thereby achieving success in obtaining high local content in activities.¹¹² This policy was formally declared in 1972 by the Royal Decree of 8 December 1972, and implemented through conditions attached to the granting of licences from the third petroleum licensing round.¹¹³

This decree required, amongst other things, all licensees to use Norwegian offshore supplies when competitive with regard to quality, service, schedule of delivery, and price.¹¹⁴ Local content provisions were incorporated to encourage and promote the development of infant petroleum industries. This policy approach was implemented through the petroleum licensing system from the third licensing round.¹¹⁵ The licensing conditions stipulated strict control over actual supplies of goods and services to the development and production activities, securing Norwegian companies an active part in the competition for deliveries.¹¹⁶ During the awarding of supply contracts, the operator was required to inform the Ministry of its recommended supplier and Norwegian content, and

108 as noted by the Norwegian politician Thorbjørn Berntsen, in Bjørn Vidar Lerøen, *Drops of Black Gold: Statoil 1972-2002* (2002) 47 (emphasis added by Author).

109 Ibid.

110 Norwegian Government, Ministry of Petroleum and Energy, *Petroleum Industry in Norwegian Society* (1974) Storting Report No. 25 1973-4, 30.

111 Øystein Noreng and Farshad Tehrani, ‘The Norwegian Experience of Economic Diversification in Relation to Petroleum Industry and the Relevance to Iran’ (2005) (Paper presented at the 10th Institute for International Energy Studies (IIES) Conference, Tehran, 4 and 5 December 2005) 6.

112 Øystein Noreng, ‘Norway: Economic Diversification and the Petroleum Industry’ (2004) XLVII (45) *Middle East Economic Survey* < <http://www.mees.com/postedarticles/oped/a47n45d01.htm>> at 23 December 2006.

113 Nelsen, above n 83, 71.

114 Ibid.

115 This round occurred in 1974, therefore it was the first official use implementation of the procurement policy from the 1972 Decree. However, there had been some development of local industry prior to this official decree.

116 Bjorg Sandal, *Government Policies in the Development of the Norwegian Supply Industry* (Speech delivered at the Ministry of Petroleum and Energy, Baku, Azerbaijan, 5 June 2000) < http://www.odin.no/odinarkiv/english/stoltenberg_I/loed/026031-090011/dok-bn.html> at 23 December 2006.

the Ministry ensured that the Norwegian bidder was awarded the contract.¹¹⁷ This Norwegian focus was essential for all oil companies, resulting in Norwegian contracting and supply ranging from 50-70 per cent during this period.¹¹⁸

Compliance to the Decree was monitored through the Goods and Service Office, which was specifically created to control company contracting and procurement activities. This protectionist policy as a tool for economic diversification of the Norwegian industrial sector continued in the 1970s, since market forces alone were seen as insufficient to promote economic diversification therefore Norwegian government saw the need for government intervention.¹¹⁹

Norway consistently maintained a procurement policy until 1994, in order to reduce dependence on petroleum revenues and the ensuing risk exposure to oil and natural gas price instability. This initial period of reliance was reduced during the early 1980s and 1990s as increased knowledge and developments in skill and technology strengthened the Norwegian national position.

Today there is a policy of internationalization, spearheaded by Statoil as operator and participant in international fields. The reasoning for this was primarily to capitalise on Norwegian competence and technology. Other reasons included exploiting the potential of emerging markets, to even out fluctuations in the level of petroleum activity on the Norwegian Continental Shelf, and to acquire new technology and know-how.¹²⁰ This policy is pursued to ensure long-term value creation, continued industrial development and employment after the depletion of the Norwegian petroleum resources.

There are two enduring elements of the Norwegian petroleum policy that have remained throughout this whole period. First, Norwegian oil and gas resources are identified as part of the national wealth. Thus, the whole population (both current and future generations) should benefit from the depletion of these resources, implying that petroleum revenues must be managed to optimise the social and economic benefit from the exploitation of petroleum for present and future generations. In order to meet this first goal of Norwegian petroleum policy, the second element of Norwegian policy is to attract the best of international expertise and competence, and to promote co-operation between domestic and international players. The Norwegian Governments views this as essential for sustainable resource development, since the combination of domestic and international knowledge and effort ensures the maximum value for its petroleum resources.¹²¹

Clearly, the petroleum policy of Norway has developed through distinctive phases. Initially, it was developed to enable the Norwegian State to utilise the skills, knowledge and capital of oil companies to develop its petroleum resources. However, this was underpinned by a policy of maximising the value of these resources for the benefit of the Norwegian people.

Petroleum policy has matured as a consequence of this 'whole of society' view of petroleum resources in Norway. Today there are six main areas of petroleum policy in Norway, refined to meet the collective needs of the petroleum industry, the Norwegian State, the European Economic Area and other international requirements. These areas include:¹²²

117 Noreng, above n 14, 21.

118 Ibid.

119 Noreng and Tehrani, above n 111, 3.

120 Odd Roger Enoksen, 'Building a Sustainable Petroleum Industry: The Norwegian Experience' (Speech delivered at Mexico-Norway Meeting on Cooperation in the Energy Sector, Oslo, 22 March 2007) <http://www.regjeringen.no/en/tidligere_statsraader/Minister-of-Petroleum-and-Energy/Speeches-and-articles/2007/Building-a-sustainable-petroleum-industr.html?id=460505> at 10 December 2007.

121 Norwegian Petroleum Directorate, *Norwegian Organisation of the Petroleum Sector* (2006) <<http://www.regjeringen.no/en/dep/oed/The-Ministey/Other-political-Staff/avskjedigete/State-Secretary--Anita-Utseth-/Speeches-and-articles/2006/The-Norwegian-organisation-of-the-petroleum-sector.html?id=420787>> at 12 October 2009.

122 As defined by the Minister of Petroleum and Energy, Odd Roger Enoksen, above n 120.

1. The right to subsea petroleum deposits is vested in the state, and therefore the State has the right to decide what means shall be used to exploit the resources. This includes inviting oil companies to develop the resources in conjunction with national oil companies;
2. Maintaining national control of and benefits from the petroleum industry by establishing frameworks aimed at giving national companies incentives;
3. The petroleum resources shall be managed for the benefit of the Norwegian Society as a whole;
4. Nurturing, developing and encouraging a skilled and competitive oil company and supply industry;
5. Establishing and maintaining a Norwegian 'future' fund for today's and future generations;
6. Focus and attention on the environment to ensure environmental sustainability for present and future generations.

Norwegian petroleum policy as a whole, and particularly the role of Statoil, demonstrates how 'one can structure the petroleum policy in a manner that serves the economy as a whole rather than the interests of a limited number of individuals in the economy'.¹²³ The 'Norwegian Model' is now frequently considered by other oil and gas producing countries who seek to repeat the Norwegian experience of developing a strong, competent and competitive domestic industry.¹²⁴ Norway is one of the few nations that have accomplished resource exploitation and avoided the resources curse, and other nations seek to emulate them. The Norwegian experience provides an example for any country that seeks to succeed in exploiting petroleum resources sustainably with its long-term policy outlook on resource management, and a transparent and active management of the hydrocarbon revenues.¹²⁵

VII. A NEW PETROLEUM POLICY FRAMEWORK FOR AUSTRALIA?

In order for Australia to create wealth and economic sustainability, there needs to be a fundamental shift in policy from a commercial focus to a focus on the host State and the host community. Given that there is a Labor government in Australia at present, it is time for a major review of Australian petroleum policy. This is especially timely since the Labor Party has as its platform a commitment to a fairer distribution of political and economic power, greater equality in the distribution of income, wealth and opportunity, and greater democratic control, ownership and participation in Australian industry.¹²⁶

The analysis of Norwegian and Australian offshore petroleum resource policy has highlighted similarities and differences between Australian and Norwegian petroleum policies. Importantly, this analysis has highlighted the difference in policy planning in the two nations. Norway's fundamental policies were developed in the early 1970s, with the policies formulated to establish suitable fiscal, regulatory and political policies to develop the resources and regularly revised, and often adapted to incorporate legal, social and political changes. Conversely, Australia developed its first comprehensive petroleum policy in 1990, some 25 years after the discovery of petroleum in Bass Strait.

A comparison of the petroleum policies of Australian and Norway is illustrated in figure 2 below. Importantly, it demonstrates the fundamental policy difference being government control over the development of the resource in Norway, but not in Australia.

123 Gordon and Stenvoll, above n 9, 2.

124 Olsen, above n 99, 3.

125 Ibid.

126 Australian Labor Party, *Objectives of the Labor Party* (2008)

<<http://www.alp.org.au/about/index.php#objectives>> at 15 March 2008.

Factors	Australia	Norway
Political Policy <ul style="list-style-type: none"> • Controlled development of resource • Stated policy objective to maximise wealth for the benefit of present and future generations • Participation of the State in petroleum exploitation • Politically stable • People as owners of the resource and beneficiaries • Role of the state as manager and participant • Role of the state - minimalist 	<ul style="list-style-type: none"> × × × ✓ ✓ × ✓ 	<ul style="list-style-type: none"> ✓ ✓ ✓ ✓ ✓ ✓ ×
Regulatory Policy <ul style="list-style-type: none"> • Strong Legal Institutions • Licensing and Concession System (LCS) • Discretionary system to assist state in times of change • Regulatory framework for capture of economic rent • Ability to control rate of depletion • JOA/ contractual framework • Transparency and accountability 	<ul style="list-style-type: none"> ✓ ✓ × ✓ ✓/× × × 	<ul style="list-style-type: none"> ✓ ✓ ✓ ✓ ✓ ✓ ✓
Other policy areas <ul style="list-style-type: none"> • Active development of technology and R&D • Role of oil company controlled for balanced return of income to both MOC and State 	<ul style="list-style-type: none"> × × 	<ul style="list-style-type: none"> ✓ ✓

Figure 2: Comparison of Norwegian and Australian petroleum policies

This table above highlights three fundamental political differences between the Australian and the Norwegian political policies for the exploitation of petroleum resources.

1. Development of resources for the community. The Norwegian State has developed policies that focus upon the development of petroleum resources for the benefit of the Norwegian people and for the maximisation of wealth. Australian policies are commercial in focus, seeking to attract foreign investment. This may well be a remnant of Australian self critical view as a province of low attractiveness and prospectivity;
2. Role of the State as manager and controller of the exploitation of petroleum resources. The Australian policy position in relation to the development of petroleum resources is one of minimal participation. This is contrasted to the Norwegian position of State participation and control.
3. State participation in the development of the resources: the Norwegian State developed and implemented, from an early stage, a public policy which created a State Oil Company which competed with multinational oil companies and demanded the exchange of information, skills and technology.

Success of the Norwegian petroleum industry can be attributable to the multiple policy choices by the Norwegian government, underpinned by a framework of oil commandments that it is solidly built upon.¹²⁷ Norwegian petroleum policy as a whole, and the creation and role of Statoil in particular, has demonstrated how

...one can structure the petroleum policy in a manner that serves the economy as a whole rather than the interests of a limited number of individuals in the economy.¹²⁸

With suitable adaptation, these policy choices can be applied to a cross section of energy-producing countries.

The Australian policy framework, incorporating political, regulatory, and fiscal policies has undergone a number of fundamental alterations. Since Australia has failed to develop a coherent policy framework to develop the petroleum resources for the benefit of the Australian people, both for this and future generations, the resultant fiscal and regulatory policies lack the ability to create wealth and economic sustainability for the Australian State and people. In order for the Australian people and community to benefit from the endowment of petroleum resources, there needs to be a shift in the Australian petroleum policy framework. As such, Australia's petroleum political, fiscal and regulatory policies are in need of re-evaluation. A suitable policy framework to use as a point of reference for Australia is the Norwegian policy framework. The Norwegian policy framework is useful since it has many similarities and objectives to the Australian policy framework, especially the political, economic and social framework, as well as the desire to generate optimal benefit for the country. In addition, both nations also utilise the licensing and concession system for the regulation of petroleum resources.

Considering the example of the Norwegian petroleum policy framework, perhaps a change that Australia requires in its petroleum policy is greater state regulation in the exploitation of Australia's petroleum resources. Australian petroleum policy needs to encompass greater state control in the exploitation of petroleum resources. Rather than embracing a policy predicated on commercial investment, there needs to be a focus on the exploitation of the resources by oil companies for the benefit of the host state and host community. Any policies embraced by Australia need to be based on the concept that Australia's petroleum resources belong to the Australian people, and should be exploited in a manner that is beneficial to present and future generations. This is a fundamental policy shift for Australia, with a focus on the people and the State rather than partnership with oil companies for the exploitation of resources.

At present, the Australian government, by its own admission, merely plays referee to the petroleum industry,¹²⁹ within the licensing and concession system that regulates petroleum activities. Control over the production of petroleum has been considered by Norway to be essential for the generation of wealth. Using a controlled, analytical approach to petroleum exploitation similar to the Norwegian approach, the commonwealth may be able to facilitate the sustainable development of Australia's offshore petroleum resources. Therefore, appropriate policies that are developed should consider the rate of depletions and factor this into the regulatory framework to control the rate of depletion of petroleum resources.

Policy Recommendation 1:

Australian Petroleum policy focuses on the development of petroleum resources for the benefit of present and future generations. To that end, petroleum policy

127 Richard Gordon, *Statoil: Lessons From a Study of Political Entrepreneurship* (2007)

<http://www.rice.edu/energy/publications/docs/NOCs/Presentations/Dubai-Gordon_Stenvoll-Statoil.pdf>
at 12 January 2008.

128 Gordon and Stenvoll, above n 9, 2.

129 Parer, above n 52, Part 2. 7.

should emphasise maximising wealth and creating enduring value, rather than attracting commercial investment.

Policy Recommendation 2:

Australian petroleum policy should emphasise greater control of the development of Australian petroleum resources, through greater transparency, regulation and participation by the Australian government.

This shift in policy needs to be accompanied with a number of other policy shifts. First and foremost is greater accountability of the Australian petroleum industry. This is only possible through greater government participation, control, and transparency. By instilling a policy of openness and accountability, together with policies for the exploitation of petroleum for the Australian people, it may be possible to sustainably develop the offshore petroleum resources for Australian State and the Australian people for this and future generations.

Policy Recommendation 3:

A petroleum policy is formulated that incorporates a strong regulatory framework and licensing system that is transparent and accountable but also incorporates discretion to ensure petroleum regulation can be adjusted to suit economic conditions whilst still providing clear direction and guidelines. This may include the establishment of a national petroleum company.

Australian petroleum regulatory policies need to focus on the wealth creation through controlled exploitation of the resources by developing a policy framework that encompasses a coordinated approach to petroleum resource development between all participants. This may include the establishment of an Australian Petroleum Directorate as a policy tool for coordinated petroleum exploitation.

Policy Recommendation 4:

A single regulatory body that coordinates petroleum resource development between government agencies and industry be established for the exploitation of Australian petroleum resources.

One of the lynchpins of the successful sustainable development of Norwegian petroleum resources had been the government control over the depletion of petroleum resources. Analysis of Australian petroleum policy to date has indicated that oil company control over extraction has failed to sustainably develop these resources. Regulation of the rate of depletion of petroleum resources by the Australian State through control over the rate of exploration and production may enable the sustainable development of the petroleum resources, maximising the benefit for present and future Australians.

Policy Recommendation 5:

Regulation of the rate of depletion of petroleum resources through field development and production policies.

VIII. CONCLUSION

Petroleum policy is crucial in the development of petroleum resources. Without sound policies, resource development becomes ad hoc, uncontrolled and is not likely to benefit

the host State and its people, Furthermore, experience in Norway had demonstrated that high levels of government control and regulation on petroleum exploitation by oil companies and the revenue generated encourages sustainable development of the resources for the benefit of present and future generations.

The policy combination of government control and participation, strong institutions and regulatory framework, responsiveness to change through regulatory discretion, and appropriate fiscal policy for the generation of wealth has created a policy framework that is conducive to generating wealth for the benefit of the all of the participants in the exploitation of petroleum.

Australia, on the other hand, has developed its petroleum policy in an ad hoc manner since the discovery of petroleum in Bass Strait in the 1960s. In the 1990s there were several policy reviews, with petroleum policy in the last ten years focused on commercial exploitation and attraction of investment to the Australian petroleum industry. Australian policy is directed toward industry control of the petroleum industry, with the Australian government and the Australian petroleum industry working in close cooperation to achieve petroleum resource exploitation.

Currently, the major beneficiary of current Australian petroleum policy appears to be the petroleum industry. Current Australian policy focuses on encouraging overseas investors to exploit Australian petroleum resources. The political focus and regulatory policies are all oriented towards enticing investment by oil companies. As a consequence, Australia's policies favour the oil companies rather than the Australian State and people.

In order to redress this imbalance, it is suggested that Australia requires a substantial re-examination of its petroleum policy framework. To generate options for the sustainable development of Australia's petroleum resources, the Norwegian petroleum policy framework is almost universally recognised as the best policy framework for the development of petroleum resources. Since the discovery of petroleum on the Norwegian Continental Shelf in the late 1960s, the Norwegian State has developed a cohesive petroleum policy with State control and participation for the benefit of its people as the lynchpin. From the beginning, Norwegian petroleum policy was formulated with a focus on State participation and control to ensure benefit for the people. Whilst there have been reviews of Norway's petroleum policy, the focus on the benefit for the people has remained constant. The regulatory and fiscal policies that were developed continue to focus on State control and participation for the benefit of the State and host community.

Australia needs to refocus their policy from a commercial focus to the host community. In addition, Australian needs to alter their policy focus. Rather than the policy solely directed toward commercial development, Australian policy needs to focus on the development of this State-owned resource for the benefit of the community. Certainly, this development needs to be done within an international framework, however it is argued that in defining a new policy, Australia should assert the role of the State in developing the people's resource for the benefit of all generations.

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