

## BOOK REVIEWS

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### DISCRETION IN THE ADMINISTRATION OF OFFSHORE OIL AND GAS: A COMPARATIVE STUDY

**Professor Terence Daintith**

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Over the last 2 decades, the offshore oil & gas industry has become increasingly internationalised, with host governments competing to attract oil & gas investment. One of the key factors in attracting oil & gas investment is a regulatory regime that offers transparency and certainty to investors.

In most countries, Governments maintain stringent controls over oil & gas activities, in the form of wide statutory discretions. In Australia, the PSLA requires Governmental approvals for just about every step and every activity, but provides little or no guidance on how this right of approval is to be exercised. Lawyers and others working in the area are often confronted by this fact. On what grounds could the Government refuse an approval? Can Government take account of fiscal considerations? What about “national interest” considerations? Can Government use discretionary powers to achieve broader economic policy aims?

In this context, Professor Daintith’s *Discretion in the Administration of Offshore Oil and Gas: A Comparative Study* (the Study) is very timely.

Professor Daintith is well known to members of AMPLA as Professor in the Centre for Mining, Energy and Resources Law at the University of Western Australia. He is also the Professorial Fellow at the Institute of Advanced Legal Studies of the School of Advanced Study at the University of London.

The primary scope of the Study undertaken by Professor Daintith is:

- to indicate the degree to which administration of offshore oil and gas relies on discretionary power as opposed to prescriptive rules;
- to explain the particular balance between discretion and prescription encountered in Australia, the UK, Canada and the USA; and
- to assess the suitability of that balance having regard to the interests of both government and industry.

The Study examines each major area of oil & gas administration, i.e. acreage release, control of exploration, from discovery to development, production, control of offtake, termination of titles and cessation of activity, transfers and dealings, royalties and other payments.

Each area is examined by reference to the laws and regulations applying in Australia, the UK, Canada and the USA. This is followed by a discussion of how the laws and regulations are applied in practice in Australia and the UK.

There are a number of things about the Study we found very helpful:

First, the Study was carried out contemporaneous with the writing of the *Offshore Petroleum Act 2006* (OPA) which will replace the *Petroleum (Submerged Lands) Act 1967* (PSLA) at some future date. The author's commentaries address the position under both the PSLA and the OPA, which assists the reader to understand the differences in approach between the two.

Secondly, as one would expect from the author, the research is meticulous. The author conducted interviews and received submissions from oil and gas companies, regulatory bodies and professional bodies. The views of each are balanced and evaluated throughout. Notwithstanding the detail of his research, the author always provides overview and context, which make the Study readable and accessible.

Thirdly, the Study is not limited to addressing strictly "legal" positions, but also provides detailed commentary on the practical application of the law. The author has identified and examined not just laws and regulations but also other relevant instruments such as Government directives or statements. The author has also provided commentary on how administrative discretions have in fact been exercised. In this regard the Study is a valuable resource, because in the oil & gas area, the reference to precedent is often the only thing we have to guide us. Chapter 8 (dealing with the Governmental role in approving transfers and dealings in petroleum titles) is a good example of this.

Fourthly, the author is not afraid to express an opinion on issues where there is legal uncertainty. These views are always carefully researched and logically supported.

Fifthly, I found the Study to be informative about the regulatory regimes for oil & gas in the UK, the US and Canada. The author's comparison of these regulatory regimes is lucid and engaging. It is interesting to note the similarities and differences between the four regimes, particularly on the issue of Governmental control and discretion.

The conclusions in the Study generally reflect positively on the legal regimes in Australia and the UK. Insofar as Australia is concerned, the author finds that there is generally a very low level of dissatisfaction with the regulatory regime and the administration of that regime. The author finds that there is a general "philosophical acceptance" of the discretions in the PSLA/OPA by companies in Australia.

I would support these conclusions, but I would also suggest that this acceptance results from the fact that Governmental discretions under the PSLA have historically been exercised responsibly and predictably. We should not underestimate the importance of maintaining this approach, nor should we forget the potential for even a single imprudent exercise of discretion to result in a marked change of perception.

The Study makes a significant contribution to oil and gas law, both as an academic work and as a practical reference resource.

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