

REGULATION IMPACT STATEMENT

**GOVERNMENT RESPONSE TO THE REPORT OF THE
MONTARA COMMISSION OF INQUIRY**

April 2011

TABLE OF CONTENTS

1. Background.....	3
2. Problem.....	4
3. Objectives	7
4. Options.....	8
Maintain the Status Quo.....	8
Implementing a prescriptive regime	9
Implementing Governments final response to the <i>Report of the Montara Commission of Inquiry</i>	10
5. Impact analysis.....	11
6. Consultation.....	13
Government.....	13
Industry	14
Industry Body.....	15
Environmental Groups	16
Community	17
7. Conclusion and recommended option.....	17
8. Implementation and Review	18

1. Background

Commencing on 21 August 2009, the Montara wellhead platform was the site of an uncontrolled oil and gas release into the Timor Sea for a period of just over 10 weeks.

On 5 November 2009, two days after the leak was stopped, the Minister for Resources and Energy established the Montara Commission of Inquiry and announced the appointment of Mr David Borthwick AO PSM as the Commissioner. The Montara Commission of Inquiry had all the powers and authority of a Royal Commission under the *Royal Commissions Act 1902*.

The Montara Commission of Inquiry was tasked with investigating the likely causes of the incident and making recommendations to the Government on how to prevent future incidents. The Commissioner provided the *Report of the Montara Commission of Inquiry* to Minister Ferguson on 18 June 2010.

The *Report of the Montara Commission of Inquiry* outlined 100 findings and 105 recommendations directed at the offshore petroleum industry's well operations and activities; the offshore petroleum regulatory regime related to areas of well regulation; environmental monitoring and management; and arrangements for incident response.

On the 24 November 2010, the Government released its draft Government response to the Report of the Montara Commission of Inquiry. Following a comprehensive three month stakeholder and community consultation period the final Government response remains similar with 92 recommendations accepted, nine of which are completed, two amended to "accepted in principle", 10 noted and three not accepted due to being technically inappropriate. The amendment of two recommendations to "accepted in principle" reflects the concerns raised in the submission process for greater clarification in the final Government's response.

Australia is one of the top five producers of the world's key mineral and energy commodities. In 2008-09, the upstream oil and gas sector generated oil and gas sales revenue of approximately \$28.3 billion and total revenue of about \$35.6 billion and directly employed about 20,000 people.¹ Historically, about 95 per cent of Australia's petroleum production has come from our offshore basins. In 2009-10, Australia exported \$9.5 billion of crude oil, \$7.8 billion of liquefied natural gas (LNG) and \$1.1 billion of liquefied petroleum gas (LPG).²

Ensuring that Australia's offshore petroleum regulatory regime has appropriate measures in the areas of well regulation; environmental monitoring and management; and arrangements for incident response are imperative for a strong economy.

Our challenge is to minimise the risks and rebuild community confidence in Governments ability to effectively regulate and monitor the activities of the offshore

¹ Australian Petroleum Production and Exploration Association (APPEA) and IBIS World (2009) *Oil and Gas Production in Australia*

² Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) *Australian Commodities*, March 2011

petroleum industry, and the industry's ability to recover petroleum safely in an environmentally responsible manner.

To meet this challenge collectively the Australian Government, industry and the community must be absolutely committed to a culture of high safety standards and environmental protection within a framework of continuous improvement.

The effective implementation of the Government's Response to the Montara Commission of Inquiry will demonstrate its commitment to effectively regulate the offshore petroleum industry and provide the community with confidence in the industry's ability to undertake operations in a safe and environmentally sound manner. This will ensure that Australia continues to have a safe, strong and competitive offshore petroleum industry, which contributes to Australia's ongoing energy security and economic prosperity, and that of our major trading partners.

2. Problem

Ensuring the integrity of oil and/or gas wells (that is, preventing blowouts) is a fundamental responsibility of companies involved in offshore petroleum exploration and production activities. The Australian objective-based regime places the onus on the industry to ensure and demonstrate to regulators that the risks of an incident relating to oil and gas operations are reduced to 'as low as reasonably practicable'.

Within this framework the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGGS Act) and its associated regulations, provide the overarching instruments for approval, and also provide direction to companies and the Regulators on their obligations in ensuring the prevention of the escape of hydrocarbons into the environment. If operators and Regulators do not abide by these requirements the consequences can be severe.

Blowouts offshore can have major and long lasting effects - including the loss of human life; the pollution of marine and shoreline ecosystems; substantial commercial losses by the companies directly involved, and other parties affected by the spill.

One example of the ramifications from an uncontrolled oil and gas release is demonstrated by the incident at the August 2009 Montara Wellhead Platform, Australia. Another example is demonstrated by the April 2010 incident at the Deepwater Horizon rig, Macondo Prospect, in the Gulf of Mexico.

Montara incident

On the 21 August 2009, the Montara wellhead platform located around 100km and 150km from Cartier Island and Ashmore Reef (which is an area of Australian Commonwealth waters) commenced an uncontrolled release for a period of 74 days, causing a fire that continued to burn for three days, and the third largest oil spill in Australian history. Fortunately, unlike the Macondo incident in the Gulf of Mexico, there were no fatalities.

On 5 November 2009, two days after the leak was stopped, the Commonwealth Minister for Resources and Energy, the Hon Martin Ferguson AM MP, established the Montara

Commission of Inquiry and announced the appointment of Mr David Borthwick AO PSM as the Commissioner. The Montara Commission of Inquiry was established under urgent amendments to the Commonwealth Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPGGS Act) which were introduced, and received the support of all parties in the Parliament, in September 2009.

The Montara Commission of Inquiry was tasked with investigating the likely causes of the incident and making recommendations to the Government on how to prevent future incidents. The Commissioner provided the Report of the Montara Commission of Inquiry (Report) to Minister Ferguson on 18 June 2010.

Macando Incident

On the 20 April 2010, the Macondo Prospect located in the Gulf of Mexico commenced an uncontrolled release for a period of 87 days, causing 11 fatalities, 17 injuries, a fire that continued for 36 hours until the rig sank, and the largest offshore oil spill in the history of the United States.

On 21 May 2010, United States President Barack Obama established a National Commission to examine the facts and circumstances concerning the root causes of the Macondo, Deepwater Horizon incident and to develop options to mitigate against the impact of any oil spills in the future. The US National Commission's final report was released publicly on 12 January 2011.

There are a number of synergies between both the *Report of the Montara Commission of Inquiry* and the *US National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling*. Specifically both Reports identified that each incident was preventable and was caused through systemic failures of the company and the Regulator.

In relation to Australia, the *Report of the Montara Commission of Inquiry* identified the following issues as contributing to the blowout, including:

Regulatory Regime

- Inadequacies relating to the implementation of the legislation by the Regulator and operator of the Montara Wellhead Platform.
- Deficiencies in the Regulators compliance and enforcement activities in monitoring compliance and ensuring that the operator maintained the principles of good oilfield practice and compliance with regulations.
- The existing Regulatory arrangements have demonstrated weaknesses in enforcement and compliance monitoring, recommending that single, independent regulatory body be established.
- There is no ability for a petroleum production licence in the event of an incident, to be suspended, with the Commissioner recommending that the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act) be amended.
- Recommended that the OPGGS Act be amended to provide the Minister responsible for Resources and Energy, with the ability to direct Designated Authority's (DA) in relation to the performance of their regulatory role in administering the Act, as the Commonwealth's delegate.

Legislation

- the existing legislation has gaps and these need to be identified and amended across a number of legislative instruments applicable to the marine environment including the OPGGS Act and associated regulations; the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and associated Acts; the Protection of the Sea Acts, the Navigation Act 1912 and relevant international treaties.
- A lack of civil penalties in relation to breaches by operators and titleholders, legislative amendments, to provide a civil penalties regime for the offshore petroleum industry are required.
- The need for greater engagement between the Regulator(s) and the offshore petroleum operators in regards to development, implementation and compliance with the safety aspects of petroleum operations to prevent future incidents.
- The existing environmental protection regime for Commonwealth waters is not sufficiently robust to facilitate scientific monitoring of an incident, legislative amendments are required to give effect to scientific monitoring.
- A perceived lack of safety culture in the offshore petroleum industry.

Environmental Response

- A lack of clarity and legislative authority regarding the implementation of the ‘polluter pays’ principle for costs associated with both preparedness and response capability for the offshore petroleum industry, as articulated through the *National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances* (National Plan). Amendments are required to the EPBC Act and the OPGGS Act to give affect to the polluter pays principle.
- A lack of monitoring in regards to the environmental implications of an incident and transparency. The development and requirement of “off-the-shelf” monitoring programs is required for offshore petroleum operations in Commonwealth waters, and the publication of operators Oil Spill Contingency Plans.
- There are no clear provisions regarding “cost sharing arrangements” for incident response and preparedness between the shipping and offshore petroleum industries. A framework that provides equitable cost sharing arrangements between the shipping and the offshore petroleum industry as it relates to preparedness for and response to a future offshore petroleum incident needs to be developed.

Response Arrangements

- There is lack of clarity surrounding the roles and responsibilities under Australia’s National Plan.
- There is a need to ensure appropriate stockpile levels of emergency equipment and appropriate contingency planning for emergency response, a review of the

current level of risk of pollution of the sea. This is to be reviewed as a risk assessment through the review of the National Plan.

- There is a lack of clarity in relation to communication with the public when an incident occurs. An incident management and coordination framework, based on proven frameworks such as the *Australian Government Crisis Management Framework* and the *National Counter-Terrorism Plan* is being developed.

3. Objectives

The primary and overarching objective for the Australian Government is to ensure that Australia's offshore petroleum industry is the best and safest in the world.

This can be achieved through the provision of a legislative and operating framework that clarifies and strengthens legislation and regulation to support prevention and facilitate preparedness of Governments and industry should another incident occur.

Each objective is outlined below.

Regulatory Regime

- To clarify and strengthen the role of the Regulator in discharging its regulatory obligations.
- To establish a national offshore petroleum regulator, for Commonwealth waters, that is beyond three nautical miles from the territorial sea baseline namely National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA). NOPSEMA will assume responsibility for environmental approvals, including oil spill contingency plans under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*. NOPSEMA will also regulate safety, integrity and environment plans for minerals extraction and greenhouse gas storage activities in Commonwealth waters.
- To establish a National Offshore Petroleum Titles Administrator (NOPTA) within the Department of Resources Energy and Tourism to administer titles and data relating to offshore petroleum, minerals and greenhouse gas storage activities in Commonwealth waters.

Legislation

- To undertake a review of all Commonwealth legislation applicable to petroleum activities undertaken in the marine environment to strengthen the marine and offshore petroleum legislative frameworks to ensure a comprehensive, consistent approach to the regulation of petroleum activities in Commonwealth waters.
- Strengthening the objective-based regulatory regime for well control and integrity.
- Development and implementation of a model that ensures an appropriate cost sharing framework between shipping and marine industries relating to incident response and preparedness.

- Provide clarity that the cost of responding to an oil spill, or other damage to the offshore marine environment will be totally met by the owner/operator through the ‘polluter pays’ principle.

Environmental Response

- Ensure the ‘polluter pays’ principle for costs associated with both preparedness and response capability is clearly articulated through the appropriate frameworks.
- Strengthen the existing environmental protection regime for Commonwealth waters and the need of scientific monitoring following an incident.

Response Arrangements

- Clarify the roles and responsibilities in responding to an offshore petroleum incident under the National Plan.
- Ensure appropriate stockpile levels of emergency equipment and appropriate contingency planning for emergency response are in place.
- Ensure a robust incident management and coordination framework is developed and in operation.

4. Options

The role of this Regulation Impact Statement is to identify the options to ensure Australia’s offshore petroleum industry is the best and safest in the world.

Three proposed options are:

1. Maintain the status quo (no change);
2. Implementing a prescriptive regime; and
3. Implementing the Government’s Response to the Montara Commission of Inquiry.

Each option is considered in more detail below.

Maintain the Status Quo

Should the Australian Government not progress implementation of its final response to the Report of the Montara Commission of Inquiry, the offshore petroleum industry will be susceptible to the reoccurrence of another incident.

Ensuring a robust compliance and monitoring regime through an objective-based legislative regime is the only way to prevent another incident occurring. As the *Report of The Montara Commission of Inquiry* identified, the Montara incident was caused through systemic failures of the company and the Regulator.

In the longer-term, not implementing the recommendations will inhibit Australia’s resources security and expose a risk to the second largest industry that contributes to the Australian economy. The International Energy Agency states that oil and gas will

continue to dominate world energy supply until at least 2030; Australia has a role to play in ensuring supply to the world whilst contributing to the Australian economy.

As there is uncertainty surrounding the costs of preparing for and responding to an incident, the Australian government will be susceptible to bearing those economic costs. Additionally, should the recovery efforts not be met, there will be irreversible environmental damage to Australia's pristine environment.

The Australian people need to have confidence in the government and the offshore petroleum industry, that all avenues of safeguard are being sought to prevent another incident like Montara and Macondo from reoccurring.

Implementing a prescriptive regime

Australia's offshore petroleum legislative regime is an objective based regime. Under this regime the onus is placed on the industry to ensure and demonstrate to regulators that the risks of an incident relating to oil and gas operations are reduced to 'as low as reasonably practicable'. The regime ensures flexibility in operational matters to meet the unique nature of differing projects, and avoids a 'lowest common denominator' approach to regulation that can be observed in a prescriptive regime. This regime is not self-regulation by industry, as industry must demonstrate to regulators - and regulators must assess and approve or not approve - that it has reduced the risks of an incident to as low as reasonably practicable in order to conduct operations.

An important feature of objective-based regulation is that it encourages an improvement rather than a compliance mentality. It also seeks to maintain clarity that the operator is responsible for evaluating risk and achieving fit for purpose design that reduces risk to 'as low as reasonably practicable'.

In 2008, the Council of Australian Governments (COAG) announced the Productivity Commission (the PC) *Review of the Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector*. The PC was requested to consider Australia's framework for upstream petroleum regulation and consider opportunities for streamlining regulatory approvals, providing clear timeframes and removing duplication between jurisdictions. COAG committed in-principle to broad reform of the upstream petroleum sector by signing the *National Partnership Agreement to Deliver a Seamless National Economy*. COAG identified the upstream petroleum sector as one of 27 deregulation priorities to reduce the level of unnecessary regulation and inconsistent regulation across jurisdictions.

On 30 April 2009, the PC presented the final report of its *Review of the Regulatory Burden on the Upstream Petroleum (Oil & Gas) Sector* to all Australian governments. The report found that duplication, overlap and inconsistent administration of the 22 petroleum and pipeline laws and more than 150 statutes governing offshore and onshore upstream petroleum activities, regulated by over 50 agencies at the national and state level impose significant, unnecessary burdens on the sector and raise international competitiveness concerns.

The PC found that the regulatory burdens on industry could be reduced through new institutional arrangements – principally the establishment of a single national regulator for offshore petroleum – as well as implementation of best practice regulatory principles

in all jurisdictions. The PC recommended that a new regulator for offshore petroleum be established.

The PC confirms through its review that full regulatory prescription to the offshore petroleum sector would only create regulatory burden and impose competition restrictions. Furthermore, the Commissioner of the Montara Commission of Inquiry supported the establishment of a single, independent regulatory body and identified that the Montara incident occurred due to a lack of adherence to operational instructions.

Furthermore, lessons from the Macondo incident include moving towards a more objective-based regime. The *US National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling* identified that a new approach to risk assessment and management was needed. Regulatory prescription was not enough to ensure that reducing and managing risk was done effectively. The US Department of Interior, who is the responsible agency, is now developing a proactive, risk-based performance approach specific to individual facilities, operations and environments, similar to the “safety case” approach in the North Sea.

Implementing Governments final response to the *Report of the Montara Commission of Inquiry*

The Government considered the *Report of the Montara Commission of Inquiry* in detail and prepared a draft whole of government response. The Report’s 100 findings and 105 recommendations are directed at the offshore petroleum industry’s well operations and activities; strengthening the regulatory regime in areas of well regulation; environmental monitoring and management; and future incident response arrangements.

The draft Government response, released on 24 November 2010 reflected the Government’s initial consideration of the Report’s 105 recommendations. In ensuring that the final response was achievable and considered both community expectations and current industry operating practices, a comprehensive three-month stakeholder and community consultation period was initiated on the draft response. Fifteen submissions (15) were received by the closing date of 25 February 2011. The non-confidential submissions were published on the Montara Inquiry response website.

The final Government response incorporates issues raised in the 16 submissions, which were received from governments, industry and environmental stakeholders. In general, the submissions were supportive and demonstrated broad support for the Government’s draft response to the majority of the 105 recommendations. The key issues identified by the submissions specifically related to industry operations (both technical and procedural). The key changes proposed for the final Government response have come from the industry.

Based on the submissions received, and actions undertaken by the Government since November 2010, the final Government’s response remains similar with 92 recommendations accepted, nine of which has been completed and two amended to “accepted in principle”; 10 noted; and three not accepted due to being technically inappropriate.

Drawing on the activities undertaken by the government in responding to and establishing its final position in response to the recommendations of the Montara Commission of

Inquiry, and the learnings arising from the Gulf of Mexico incident, prevention of another incident will only be achieved through:

- strengthening and clarifying the objective based regulatory regime;
- improving regulations surrounding well integrity clarify and implementing best practice regulation approach;
- reviewing a suite of legislations to ensure gaps are identified and amended;
- ensuring the ‘polluter pays’ principle for costs associated with preparedness and response capability is enforced; and
- strengthening the existing environmental regime including environmental monitoring.

Implementation of the final Government's response provides a platform for Australia's offshore petroleum industry to become the best and safest in the world. Additionally, the public will have confidence in the offshore petroleum industry and its ability to prevent another incident and the government's role in effectively ensuring regulations are complied with. Furthermore, should another incident occur, the industry will have the necessary strategies in place to manage and contain the spill.

5. Impact analysis

The stakeholders affected by the implementation of the Government's final report to *The Montara Commission of Inquiry* are the State and Northern Territory Resources and Energy portfolios, and the shipping and offshore petroleum industry, operating in Commonwealth waters.

It is intended that through the implementation of the final Government's response, systemic changes – that will prevent a blowout re-occurring – will occur throughout the offshore petroleum industry.

The Department of Resources, Energy and Tourism (RET) has provided the Office of Best Practice a Cost Recovery Impact Statement (CRIS) for the establishment of National Offshore Petroleum Titles Administrator (NOPTA) and National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) to ensure it complies with Australian Government Guidelines.

In relation to NOPTA, the Australian Government has provided RET with \$6.7 million in 2010-11 and \$3.4 million in 2011-12 to cover the cost of establishing NOPTA. The funds will cover legal advice, capital and staffing establishment costs; ensuring that the impact on the stakeholders will be very minimal.

In relation to NOPSEMA, The Australian Government has provided RET with \$2.1 million in 2009-10, \$2.3 million in 2010-11 and \$8.05 million in 2011-12. These will cover legal advice; capital and staffing costs. The establishment cost will be recovered through retaining the ad valorem registration fees paid by industry, from 1 July 2011 to 30 June 2013 or until the establishment costs have been recovered. Currently the ad valorem registration fees are returned by the Commonwealth to the

states and the Northern Territory. By retaining the ad valorem registration fee revenues for 24 months, beginning prior to 1 January 2012, excessively high charges on industry in the early years of NOPSEMA's operation will be avoided. The CRIS will be made public in due course.

Under the National Plan, response to an offshore petroleum incident requires access to equipment, a dispersant stockpile, and other resources to help reduce marine pollution in Commonwealth waters. Therefore, it is viewed as reasonable and equitable, that an appropriate level of contribution from the offshore petroleum industry be recognised towards the costs of establishing equipment/dispersant stockpiles and the ongoing annual costs of maintaining that capability to respond. The funding of Australia's National Plan response capability is based on the "potential polluter pays" principle that is a risk based methodology.

Australian Maritime Safety Authority's (AMSA) costs in relation to the maintenance of the response capability are fully funded by the Protection of the Sea (PSL) levy. The PSL is applied to all ships which are more than 24 metres in length and have on board more than 10 tonnes of oil in bulk as fuel or cargo which enter Customs-declared Australian ports.

The recovery of the actual cost of response actions, in cases of marine pollution, is sought from the polluter..

At present offshore oil and gas platform operators provide a limited contribution to the preparedness and response capability arrangements under the National Plan. The offshore oil and gas operators' primarily contribute to Australia's response capability preparedness and arrangements through the Australian Marine Oil Spill Centre (AMOSC), located in Geelong.

Whilst the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act) provides a legislative mechanism to recover the costs from the polluter, it is limited to the extent of the value of the petroleum title. The issue of ensuring that the polluter pays principle is clarified in the appropriate legislative and regulatory frameworks will be addressed through the Government's broader review of Commonwealth legislation. Through this process the Government will identify and implement an ability to legislatively enforce the 'polluter pays' principle for the offshore petroleum industry, following an offshore petroleum incident.

Environmental Response

The requirements for scientific monitoring and environmental remediation will be solely met by the offshore petroleum operators in Commonwealth waters. The costs associated to the scientific monitoring obligation are unclear as 'off the shelf' monitoring plans/programs are yet to be developed by the Australian Government.

In regards to environmental remediation, all new approved offshore production facilities are required to obtain sufficient baseline information to enable appropriate assessment of any impacts in the event of an incident. This facilitates the appropriate level of environmental remediation. Again, it is difficult to assess the recovery costs due to the

variations of potential environmental impact. Nevertheless, this obligation will ensure that there is remediation of the environment following an incident.

Response Arrangements

The objectives surrounding the clarity of roles and responsibilities in the event of an incident will bear no costs to the offshore petroleum industry. In this regard, the Government is developing an incident management and coordination framework, based on proven frameworks such as the *Australian Government Crisis Management Framework* and the *National Counter-Terrorism Plan*, to facilitate interaction and communication between stakeholders and with the public. The framework will provide clearly defined responsibilities for agencies, including procedures and accountabilities for the management of future oil spill incident. It is body will clarify public communication in the event of an incident.

Furthermore, in line with 'prevention' principles, the Noetic Report, *Review of PTTEP Australia's response to the Montara Blowout*, also identified a series of lessons arising from the Montara incident that have relevance to the offshore petroleum industry, demonstrating that strong corporate governance, provides results in safety benefits and effective change initiatives. The independent review from Noetic was made public by the Minister for Resources and Energy on 4 February 2011 and is available on www.ret.gov.au.

6. Consultation

The Australian Government sought submissions to its *Draft Government Response to the Report of the Montara Commission of Inquiry* through a three month public consultation periods between the months of December 2010 and February 2011. Furthermore, during the development of and after the release of the draft response, the Government undertook extensive consultation with the relevant Commonwealth Government agencies through a Montara Inter-Departmental Committee process.

By the closing date of 25 February 2011, sixteen submissions, two of which were confidential and one which was deemed as not relevant were received from a range of stakeholders including governments, industry, environmental representatives and the community. The remaining thirteen non-confidential submissions that made substantive comments on the Government's draft response are available at www.ret.gov.au/montarainquiryresponse.

The responses include;

Government

The submissions received from Government based agencies all identified support for a minimum of two or more barriers being adopted in regulation and noted that the removal or installation of barriers was assessments on a case-by-case basis. The submissions also requested further clarity in the formal arrangements for the performance of the Designated Authority regulatory functions.

The *Northern Territory Government* indicated support for the establishment of a national offshore petroleum regulator, while the Western Australian Department of Mines & Petroleum (WA DMP) suggested that the recommendation supporting a national offshore petroleum regulator contradicts the evidence presented by the Report. The WA DMP made several comments relating to the National Offshore Petroleum Safety Authority's approval or compliance checking of the safety case, expressing some criticism that these matters were not considered by the Montara Commission of Inquiry. They also noted that initial verbal approval is sufficient for the regulator to be satisfied that the changes to the well bore will occur without incident, followed up with a written request as soon as reasonably practicable (usually within 6-8 hours). The WA DMP notes that requiring written approval prior to a change of well bore will not allow for a rapid approval of Management of Change matters and may lead to increased cost to operators.

All the submissions presented by the Government agencies agreed to the Commissioner's recommendation to make environment plans publicly available in full, provided issues around commercial confidentiality were addressed. Some submissions also suggested that a payment of environmental security bonds or the establishment of a contingency fund as possible mechanisms to address costs associated with preparedness and responsible capabilities. Submissions noted that specific responsibilities for key roles in oil spill response should be documented in National Plan, and take into consideration the mobile nature of oil slicks in that they often involve multiple jurisdictions.

The WA DMP in its submission noted that, as Western Australia has the highest level of offshore oil and gas activity in Australia, equipment stockpile locations in WA should form part of the 2011 Review of the National Plan being undertaken by the Australian Maritime Safety Authority to ensure that equipment and resources are strategically placed and are readily accessible where most needed.

Industry

Submissions received from *industry* demonstrated broad support for the Government's draft response and outlined detailed information regarding industry operating practices in a number of areas including clearly articulated Management of Change processes and procedures, well barrier design and operations management, and accepted industry procedures, practices and commitment to the application of best practice.

Industry however sought further consultation and clarification regarding the Government's position on Well Operations Management Plans and well integrity hazard 'worst-case' scenario planning. The submissions also noted that the licensee (not the rig operator or contractor) is responsible for the well design, including installation of barriers, and there are many practical examples where barriers are installed or removed offline. Submissions also indicated that the logistics team is not the appropriate party to assess the adequacy of well management (or well design) as suggested by the Commissioner in Recommendation 56. Industry also noted that any change brought forward in the definition of 'good oil field practice' should not diminish from the objective-based regulatory regime.

Submissions received from *industry* indicated support for the objective-based regulatory regime and noted that this approach encourages continuous improvement by industry. The submissions provided information on agreed industry practice relating to situations where collaboration with the regulator was required. Submissions also noted that the

regulator should be accountable through a governance board, and that a change/management transition plan developed jointly by industry and government would assist in smoothing the transition to the new regulatory arrangements under the National Offshore Petroleum Safety and Environmental Management Authority.

Industry through its submissions indicated its support for greater clarity in respect of incident response management and co-ordination when responding to an offshore incident. Industry also emphasised the importance of an integrated industry/government response team supported by sufficient resources for response personnel. Submissions noted that the offshore petroleum industry is committed to contributing to Tier 2 regional spill clean-up response capability and maintaining a Tier 3 oil spill clean-up equipment stockpile under the management of the industry-funded Australian Marine Oil Spill Centre (AMOSC).

In respect of equitable cost-sharing between the shipping and offshore petroleum industries, the submissions indicated in principle support for the proposal, using a risk-based approach to determining the appropriate level of contribution. Submissions noted that the responsibility for meeting costs incurred in the clean-up of an offshore petroleum incident rests with the facility operator, and requested clarification of the legislative position around this and associated insurance and liability issues as well as the scope and application of the 'polluter pays' principle.

AMOSC noted that the oil and gas industry supports a minimum requirement for response capacity and capability to be identified in contingency plans, and implemented and resourced by the industry in the event of an incident. AMOSC also noted that the oil industry has well established mutual aid arrangements with other oil spill response organisations around the world that have been operationalised to mutual aid can be provided at short notice, with pre-agreed arrangements to manage liabilities and costs. AMOSC also pointed to the training programs provided by industry to maintain personnel competency in oil spill response.

Industry Body

In its submission, the Australian Petroleum Production & Exploration Association (APPEA), as the peak industry body representing Australia's offshore oil and gas industry, noted that through the APPEA Montara Response Taskforce, the industry has developed:

- A self Audit Tool for Management of Well Operations;
- A draft Mutual Aid Memorandum of Understanding;
- An agreed position for Australian Industry on Cap and Containment; and
- Oil Spill Preparedness and Response Improvement Strategies.

APPEA also noted that the offshore petroleum industry acknowledges that it must be able to demonstrate its leadership and commitment to achieving the highest standards if it is to retain its social license to operate and achieve strong public confidence in its operations.

In its submission APPEA noted the work of the industry in establishing an Oil Spill Preparedness and Response Focus Team to advise the APPEA Board on industry's response to the Montara and Macondo incidents. The Focus Team is also liaising with the International Oil and Gas Producers Forum on international developments in this

area. Some of APPEA members are also working on the development of a Scientific Monitoring Program for the Prelude floating liquefied natural gas project.

APPEA's submission noted that any attempt to diminish legal professional privilege in relation to reporting into the causes of well blow outs should be resisted as decision-makers in the offshore petroleum industry need the benefit of professional legal assistance free from the apprehension of disclosure.

Environmental Groups

The *environmental groups* recommended that the requirement for minimum standards for well operations and barriers be set in legislation, and that the Government should review and approve training programs for industry and regulators, and establish well control competency standards.

The *environmental groups* expressed support for Australia's objective-based regulatory regime and recommended that a combination of both prescriptive and objective-based regulation be implemented, which was supported by a clear definition of 'sensible oil field practice'. Submissions expressed support for the establishment of a national offshore petroleum regulator that is empowered to enforce a clearly defined regulatory framework and is adequately resourced to do so, and strongly supported the Government's commitment to consider improving the penalty regime for pollution of Commonwealth waters.

The *environmental groups* noted the parallels between the Montara and Deepwater Horizon incidents and recommended that an appropriate penalty regime be established.

The *environmental groups* requested that the Australian Government in its final response acknowledge the current Marine Bioregional Planning process and support the establishment of a network of "highly" protected marine parks. Submissions also recommended that a comprehensive risk assessment of the offshore petroleum industry be undertaken to indicate any high conservation areas and values as a matter of priority, and suggested that requirements for sufficient baseline information be extended to include exploratory drilling activities near sensitive marine environments. Submissions also suggested that the distinction between operational and scientific monitoring be removed in the National Plan to give equal status to both types of monitoring.

The West Timor Care Foundation in its submission presented unverified new data relating to water pollution that was said to have been collected in the West Timor region. The submission noted concerns that the implementation identified in the draft response does not address 'marine casualties and pollution by oil and hazardous noxious substances' beyond Commonwealth waters. It also discussed Australia's obligations under the United Nations Convention on the Law of the Sea.

The Australian Network of Environmental Defender's Offices (ANEDO) submission on behalf of *environmental representatives* raised concerns with the decision of the Minister for Resources and Energy not to issue a 'show cause' notice to PTTEP Australasia (Ashmore-Cartier) Pty Ltd (PTTEP AA), and suggested that the Minister should cancel the company's Montara production licence or suspend the licence until the requisite remedial action has been taken. ANEDO also suggested cancelling all other production licences held by PTTEP AA to send a message to other oil field operators.

Community

Community stakeholders provided an opinion on the causes of the spill, and suggested that industry could fund the modelling of geological complexities and their impact on barrier quality in regards to well control, matter which the Government considers are appropriate for the offshore petroleum industry to consider.

Community stakeholders noted that the Draft Government Response addresses the numerous issues raised in submissions made to the Montara Commission of Inquiry, and suggested that further discussion between the linkages of the off shelf monitoring plans and baseline data need to be undertaken so that both baseline assessments and scientific monitoring can be developed in tandem.

7. Conclusion and recommended option

Based on the findings and recommendations of the Montara Commission of Inquiry and the Government's draft and the significant consultation that has been undertaken across Government and industry, on both the Report of the Montara Commission of Inquiry and the draft Government Response, the preferred option is to implement the recommendations from the Government's final response.

This option allows for a suite of initiatives, legislative, administrative, and operational to be instigated, supporting best practice and establishing Australia's offshore petroleum industry is the best and safest in the world. Implementation of the final Government response provides direction for the Australian offshore petroleum industry and regulators to focus on improvements in their operations and to ensure best practice regulatory frameworks are in place.

Furthermore, through implementation of the final Government's response to the *Report of the Montara Commission of Inquiry* and action already taken, the public can have confidence in the Government's ability to effectively regulate the offshore petroleum industry and in the offshore petroleum industry's ability to undertake operations in a safe and environmentally sound manner.

Governments and industry are supportive of the Australian Government's final response and recognises the importance of prevention and preparedness, and gaining a social license to operate.

8. Implementation and review

The implementation of the final Government response to the Report of the Montara Commission of Inquiry will provide operational direction for industry and will establish a regulatory framework for approval and compliance monitoring by the regulators.

The final Government's response is supported by an implementation plan that outlines timeframes against each recommendation it has accepted in response to the report. The Implementation Plan addresses the recommendations against the following key themes:

1. Regulatory Regime.
2. Regulator Operating Practices.
3. Response Arrangements.
4. Environmental Management.
5. Review of PTTEP Australasia's Response to the Montara Blowout and how those lessons apply to the offshore petroleum industry.

The other themes to be addressed outside of the final Government's Response Report of the Montara Commission of Inquiry and the Independent Review of PTTEP Australasia's Montara Action Plan include:

6. Additional Recommendations, includes those specific to industry, that have been completed and those recommendations that the Government has agreed to "Note" or are "Not accepted".

The Department of Resources, Energy and Tourism will be the lead agency working with other relevant agencies to take forward the final Governments response to the Montara Commission of Inquiry.

A significant number of recommendations are already being implemented by the Commonwealth Government, the Northern Territory Designated Authority and industry. Implementation will require significant and sustained efforts over several years by governments, industry and regulators.