

ISSUES PAPER
COMMISSION OF INQUIRY
MONTARA WELL HEAD PLATFORM
UNCONTROLLED HYDROCARBON RELEASE

The Commission of inquiry (the **Inquiry**) was established by the Minister for Resources and Energy on 5 November 2009 to report on the uncontrolled release of hydrocarbons at the Montara Well Head Platform and subsequent events (the **Uncontrolled Release**). The Terms of Reference for the Inquiry are available from the Inquiry's website at www.montarainquiry.gov.au.

The Inquiry is being undertaken pursuant to Part 9.10A of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the **OPGGS Act**) which relates to inquiries into significant offshore incidents. The Inquiry's powers as prescribed in the Act are wide, incorporating the provisions of the *Royal Commissions Act 1902* (the **Royal Commissions Act**) (other than sections 4 and 5) (see section 780E (1) of the OPGGS Act).

The present intention of the Commissioner is to obtain evidence utilising, as appropriate, the full range of mechanisms available to him, including:

- the conduct of public hearings (see section 780B of the OPGGS Act);
- the utilisation of inspection powers (see section 780F of the OPGGS Act); and
- by requiring the production of relevant document(s) (see section 2(3A) of the Royal Commissions Act).

Call for Submissions

As a first step, the Commissioner has called for submissions from interested parties. These include all companies involved with the Montara Field Development (currently, or as a former owner or operator, contractor or installer of plant and equipment), companies involved in the response to the Uncontrolled Release, the petroleum industry at large, Commonwealth and State/Territory agencies (including those with relevant policy and regulatory responsibilities), environmental experts, Non-Government Organisations and individuals or parties who have a material interest in the Inquiry.

Submissions should be in response to the Terms of Reference, either as a whole, or with respect to specific items.

Confidentiality

It is the Commissioner's preference that submissions to the Inquiry be placed on the public record. It is therefore intended that submissions will be published on the Inquiry's website as soon as possible after they are received and will therefore be available to the public. However, the Commissioner will allow information to be provided to him confidentially if there is a good reason for doing so. The Inquiry's website has further information about this topic.

Preparation of Submissions

The Inquiry's website contains information on making submissions. Anyone making a submission should carefully read this section of the website before preparing their submission.

To assist parties in the preparation of submissions, the Inquiry has outlined below some issues and questions relating to its Terms of Reference. It is emphasised that these issues or questions do not seek to limit or define matters that may be pertinent to the Inquiry. Submissions should address all matters that authors consider pertinent to the Inquiry's Terms of Reference.

The Inquiry expects all relevant information and documents that have a bearing on the Terms of Reference will be revealed by parties in their submissions.

For the purposes of this Issues Paper the Terms of Reference have been grouped under headings as a means of separating out key components.

A. CIRCUMSTANCES AND LIKELY CAUSES

1. Terms of Reference: Investigate and identify the circumstances and likely cause(s) of the Uncontrolled Release.

This section of the Terms of Reference is central to the Inquiry. The Commissioner has not made any presumptions as to the factor(s) that may have contributed to, or caused, the Uncontrolled Release. It may be that there was a single factor or a series of factors, for example:

- a. A failure (or failures) of a technical kind, such as an engineering, product or design fault.
- b. A series of events of a human or technical kind which individually may or may not have led to the Uncontrolled Release but which cumulatively may have caused the Uncontrolled Release.

- c. Whether failures of the above kinds could be attributed to the actions (or lack of action) by an owner, operator, contractor or supplier, current or past, or a failure within the regulatory regime.

Where there is knowledge of any such events or failures, submissions should, if possible, include reference to documentary material that supports the propositions that are put forward.

2. Terms of Reference: Review the adequacy and effectiveness of the regulatory regime applicable to operations at or in connection with the Montara oil field, including under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, and including the adequacy and effectiveness of all safety, environment, operations and resource management plans, and other arrangements approved by a regulator and in force at relevant times.

The regulatory regime applicable to the Montara oil field appears to cover a number of elements, including the following.

- a. The *Environment Protection and Biodiversity Act 1999* (the **EPBC Act**) - this governs the approval processes in respect of proposed actions (the approval for the Montara Oil Field Development was given in September 2003). For further information see the

Department of the Environment, Water, Heritage and Arts website
(<http://www.environment.gov.au/epbc/index.html>).

- b. The Australian Maritime Safety Authority (**AMSA**) is Australia's national maritime safety agency with responsibility for maritime safety, protection of the marine environment and aviation and marine search and rescue.
- c. The National Offshore Petroleum Safety Authority's (**NOPSA**) functions relate to the occupational health and safety of persons engaged in offshore petroleum operations at facilities.
- d. The policy and administration of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* is within the Commonwealth Resources, Energy and Tourism Portfolio:
 - i. The Northern Territory (**NT**) Department of Regional Development, Primary Industry, Fisheries and Resources undertakes the day-to-day administration and management of offshore petroleum environment and resource management activities in Commonwealth waters within the offshore area of the Territory of the Ashmore and Cartier Islands on behalf of the Commonwealth. This authority is provided through the Joint Authority/Designated Authority arrangements outlined in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

- ii. The Department of Resources, Energy and Tourism provides advice to the Minister for Resources and Energy in relation to the administration of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.
- iii. Geoscience Australia (GA) provides technical advice to the Department of Resources, Energy and Tourism on the administration of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

The Inquiry invites submissions to examine the regulatory regime at both the pre and post-approval of development stages. Issues which may be relevant include whether the current regulatory regime was sufficiently robust, having regard to the risk and possible consequences of an uncontrolled release and related events. For example:

- a. Could the regulatory regime reasonably have been framed and structured, or be monitored and enforced, in a way that would have avoided or mitigated the Uncontrolled Release?
- b. Were the magnitude and risks of the Uncontrolled Release adequately foreseen by established environmental plans relating to exploration, drilling, installation and production or by the plan established to handle an oil spill? What additional measures, if any, might have been taken either before approval of the Montara

Field Development, or subsequently, in terms of on-going monitoring or auditing of the performance of parties involved in the Montara Field Development? What impediments, if any, may have prevented any additional measures being taken?

- c. What improvements could be made to the way the regulatory regime is framed or monitored with a view to lowering, for example, the environmental and safety risks in offshore petroleum operations?
- d. To what extent do regulatory arrangements under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* in relation to petroleum exploration in Commonwealth waters, which involve the Commonwealth delegating responsibility, in this case to the NT Government through its Department of Regional Development, Primary Industry, Fisheries and Resources, contribute to or detract from best regulatory practices?
 - i. Is there a more appropriate way in which regulatory responsibility can be allocated as between the Commonwealth and State/Territory Governments in relation to Commonwealth waters?
 - ii. To what extent have the current arrangements in relation to delegation of responsibility led to differing regulatory practices between jurisdictions? If there are regulatory

differences, to what extent do these reflect circumstances particular to individual jurisdictions and/or different approaches to regulation across jurisdictions?

- e. How does Australia's offshore regulatory regime compare with relevant offshore regulatory arrangements in other countries?
- f. To what extent does the current legislation (for example, the EPBC Act) and the current regulatory regime provide an adequate framework to meet environmental objectives with respect to the offshore petroleum industry?

3. Terms of Reference: Assess the performance of relevant persons in carrying out their obligations under the regulatory regime.

Relevant persons are defined in footnote 1 of the Terms of Reference as:

‘persons who have engaged at any time in petroleum-related operations at the Montara Wellhead Platform that may have contributed to the cause(s) of the Uncontrolled Release, including but not limited to: the titleholder or former titleholder of AC/L7 permit, a present or former owner or operator of the Montara Wellhead Platform, a present or former operator of a drilling rig, a drilling contractor or a supplier or installer of plant or equipment.’

There are various facets to the current regulatory regime, with a number of bodies having different responsibilities and accountabilities. The

Inquiry will seek to determine whether each requirement of the regulatory regime was complied with and, if not, why not.

Relevant persons should set out:

- a. Their role and responsibilities in relation to the regulatory regime.
- b. How they gave effect to compliance with regulatory requirements, both broadly and with respect to specific obligations established by the regulatory regime.
- c. To the extent that the regulatory regime provides an overall framework which may or may not have been able to anticipate all events, how the relevant person exercised their responsibility to give effect to the intent of the regulatory regime.

4. Terms of Reference: Review the adequacy and effectiveness of monitoring and enforcement by regulators of relevant persons, under the regulatory regime.

An effective regulatory regime should have appropriate mechanisms to monitor and enforce that regime.

In this context, monitoring and enforcement can involve both:

- ensuring that the detailed provisions of the regulatory regime are adhered to by relevant persons; and
- ensuring that the overall intent of the regulatory framework (in terms of operational, safety and environmental considerations) is met.

There may also be issues that strike at the appropriate balance of responsibilities and obligations between regulators and relevant persons which the Inquiry will need to consider.

Having regard to these considerations the Inquiry invites submissions to address:

- a. The precise nature of the monitoring and enforcement regime implemented by each regulator and whether their activities were in keeping with the requirements of the regulatory regime.
- b. The overall regulatory framework within which each regulator implements a monitoring and enforcement regime and whether that framework is able to effectively deal with events such as those leading up to and subsequent to the Uncontrolled Release.
- c. Whether the specific actions taken prior to the Uncontrolled Release by the NT Department of Regional Development, Primary Industry, Fisheries and Resources; the Commonwealth Department

of Resources, Energy and Tourism; NOPSA; and the Commonwealth Department of the Environment, Water, Heritage and the Arts, were appropriate.

- d. Whether the monitoring and enforcement actions undertaken by the regulators reflects international best-practice.

B. ADEQUACY OF THE RESPONSE

5. Terms of Reference: Assess the adequacy of the response to the Uncontrolled Release by the current title-holder of AC/L7, the owner and/or operator of the Montara Wellhead Platform and the owners and/or operator of the West Atlas drilling rig.

This section of the Terms of Reference seeks to determine the adequacy of the response by the owner/operators and the current title holder. As noted above, the respective interrelationship and responsibilities as between the owner/operator and the regulators may also be relevant considerations.

The Inquiry seeks to gain an understanding of:

- a. Why the owner/operator chose to tackle the Uncontrolled Release in the way that it did?

- b. Whether there were alternative ways of stemming or stopping the release of hydrocarbons and why these were not pursued? To what extent was the decision influenced by safety, commercial, environmental, technical or other considerations?
- c. Might decisions taken have been different in the event of a larger uncontrolled release of hydrocarbons, an alternative location, or if the consequences of that release had been thought to have been greater? How were decisions in that regard made?
- d. The effectiveness of the relationship between the owner/operators and regulators and governments, and how this relationship may have impacted the adequacy of the response to the Uncontrolled Release by the owner/operators.

6. Terms of Reference: Assess the adequacy of regulatory obligations applicable to the titleholder of AC/L7, the owner and/or operator of the Montara Wellhead Platform, and the owner and/or operator of the West Atlas drilling rig in relation to the response to the incident and make any recommendations necessary to improve the regulatory obligations that may be applicable to any future incidents.

The key legislation and regulations that appears to bear on the response to the Uncontrolled Release are:

- a. The National Marine Oil Spill Contingency Plan, managed by AMSA.
- b. The *Offshore Petroleum and Greenhouse Gas Storage Act 2006* under which the NT Department of Regional Development, Primary Industry, Fisheries and Resources undertakes the administration and management of offshore petroleum environment and resource management activities within the offshore area of the Territory of the Ashmore and Cartier Islands on behalf of the Commonwealth.
- c. Schedule 3 to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* and the *Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996* provide an occupational health and safety regime administered by NOPSA.
- d. The conditions of approval of the Montara Field Development under the EPBC Act, including Condition 1, which required the submission of an Oil Spill Contingency Plan, and Condition 6, which allows the Minister to request the owner/operators to revise the Oil Spill Contingency Plan. Other functions of the Minister under Chapter 4 of the EPBC Act may also be relevant.

Some of the issues in terms of the efficiency and effectiveness of the regulatory frameworks and obligations addressed in Part A (2) above are also relevant to this section of the Terms of Reference. To the extent that the issues listed below do not fall within Terms of Reference 6 the Commissioner will consider them within Terms of Reference 11.

During the 10 weeks in which the Uncontrolled Release continued, actions were taken by both the owner/operator and the regulators. The Commissioner wishes to understand the interplay between the actions of the owner/operator and the various regulators over the period and how this affected the options available to the owner/operator.

Issues to be addressed include:

- a. Whether the National Marine Oil Spill Contingency Plan adequately envisaged an uncontrolled release of hydrocarbons of the magnitude and duration of the Uncontrolled Release and in such a remote location in Commonwealth waters, or at least provided an adequate framework that could be adapted effectively to cope with differing events.
- b. The extent to which the response should have been left to the owner/operator, or should have been subject in certain

circumstances to direction by regulators. In other words, to what extent does the existing regulatory regime strike an appropriate balance between the commercial interests of the owner/operator compared with broader public interest considerations?

- c. To what extent did the decisions by the owner/operators and regulators alike comprehend the overall picture, especially since there are a number of regulators, with differing responsibilities? What steps did regulators take to ensure that they had a shared understanding of emerging events? And to what extent did regulators work separately or jointly with the owner/operator to ensure an appropriate response? To what extent could other response mechanisms available within the regulatory regime have been used if the attempts to stop the Uncontrolled Release had continued to fail, and at what stage would these mechanisms have been implemented?
- d. Whether the responses from the NT Department of Regional Development, Primary Industry, Fisheries and Resources; the Commonwealth Department of Resources, Energy and Tourism; the Commonwealth Department of the Environment, Water, Heritage and the Arts; NOPSA; and AMSA were appropriate.
- e. Whether any steps taken by other regulatory agencies to respond to the incident, including the Western Australian Department of

Fisheries and the Australian Fisheries Management Authority, were appropriate.

- f. To what extent might the regulatory regime and specific obligations under the regulatory regime be improved upon in order to more effectively deal with future incidents?

The Commissioner seeks an explanation from the relevant regulators (and other parties) as to whether the method for plugging the Uncontrolled Release reflected best practice and their respective roles in that context. The Commissioner also wishes to understand what alternative options there might have been, and why they were not pursued. The Inquiry also seeks to understand the extent of consultation undertaken by regulatory agencies and between those agencies and the owner/operator (or other parties) in determining the chosen course of action.

- a. If the Uncontrolled Release had been of a greater magnitude, if the location of the incident had been different (including its proximity to other response equipment), or if the environmental or other consequences of the Uncontrolled Release had been greater, were there alternative avenues that regulators may have been able to pursue with the owner/operator (and other parties) to stem or plug the Uncontrolled Release?

- b. Was the response appropriately determined between regulators and owner/operators, especially in view of the fact that public interest considerations may not necessarily align with commercial considerations or the specific interests of individual regulators?
- c. Alternatively, if there were no other appropriate alternatives, what implications might this have for the way offshore petroleum developments should be regulated in the future? For example, might consideration need to be given to a more searching examination of what is proposed for offshore petroleum developments at the preapproval stage (covering environmental, safety or operational considerations)?

C. ENVIRONMENTAL IMPACTS

- 7. Terms of Reference: Assess and report on the environmental impacts following the Uncontrolled Release using available data and evidence including the outcomes of the monitoring activities already underway, review any proposed environmental monitoring plans, and make recommendations on whether any further measures are warranted to protect the environment from the consequences of the uncontrolled release.**

The Inquiry seeks submissions that assess the impact of the Uncontrolled Release on the environment. Submissions should present, and be based on, available data and evidence.

The Inquiry also seeks submissions on the adequacy of the environmental response, including:

- a. The adequacy of the “Monitoring Plan for the Montara Well Release Timor Sea as agreed between PTTEP Australasia and the Department of the Environment, Water, Heritage and the Arts, 9 October 2009” (the **Monitoring Plan**)
(see <http://www.environment.gov.au/coasts/oilspill.html>). Relevant to this issue is the fact that:
 - i. The Monitoring Plan includes an Operational Monitoring Programme, with the monitoring to be undertaken by AMSA in accordance with the National Marine Oil Spill Contingency Plan.
 - ii. The Monitoring Plan also incorporates a Scientific Monitoring Programme, which will be managed by the owner/operator. Specific studies under this Programme will require approval by the Department of the Environment, Water, Heritage and the Arts prior to initiation.

- b. How effective was the Operational Monitoring Programme and what lessons have emerged?
- c. Is the Scientific Monitoring Programme adequate; and are there worthwhile enhancements that could be made to it?
- d. It is noted that the Department of the Environment, Water, Heritage and the Arts is required to approve study proposals under the Scientific Monitoring Programme, which will then be managed by the owner/operator. What role will the Department of the Environment, Water, Heritage and the Arts be taking in assessing or reviewing the veracity of the studies that are being commissioned? What will be the Department's role in determining how the studies might be modified or evolve as circumstances change over time? Will there be independent peer reviews of the studies?
- e. What public reporting is envisaged to flow from the Operational and Scientific Monitoring Programmes?
- f. What, if any, other action is envisaged following receipt of outcomes from the Operational and Scientific Monitoring Programmes?

D. THE OFFSHORE PETROLEUM INDUSTRY'S RESPONSE

8. Terms of Reference: Consider and comment on the offshore petroleum industry's response to the Uncontrolled Release.

Apart from safety and environmental concerns and possible commercial losses to the owner/operator and affected third parties, uncontrolled releases of hydrocarbons have the potential to impact on the reputation or standing of the overall Australian petroleum industry.

Responding to such events is technically challenging and expensive. It is important that every effort is made to tap into the considerable expertise and equipment that may be available within the petroleum industry, both within Australia and internationally.

The Inquiry notes the Australian Petroleum Production and Exploration Association Media Release of 27 October 2009 that stated:

“PTTEP and expert advisers have been regularly considering and assessing all the options available to seal the leak since it began.

Yesterday, representatives from a number of oil and gas operating companies conducted a review of the current operations” and that a “peer review concluded that the current approach was the safest and

most effective way of containing this serious incident on the basis of the current operational circumstances and information available, including advice received from safety authorities”.

The Commissioner seeks submissions on the following:

- a. What steps did the owner/operators take to tap into the expertise of the Australian and international petroleum industry?
- b. Was expertise or equipment sought or offered from other Australian or international operators? Was it taken up and, if not, why not?
- c. Could the Australian petroleum industry effectively establish arrangements to ensure the availability of equipment and/or materials that may assist in minimising the duration and/or impact of any future uncontrolled release of hydrocarbons?
- d. Are there ongoing lessons that the petroleum industry can take from this event?

E. PROVISION AND ACCESSIBILITY OF INFORMATION

9. Terms of Reference: Consider and comment on the provision and accessibility of relevant information regarding the Uncontrolled Release to affected stakeholders and the public.

There are two types of information that may be relevant to this section of the Terms of Reference:

- information provided by the owners/operators and from the petroleum industry; and
 - information provided by agencies with regulatory responsibilities.
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- a. To what extent has the information that has been provided to stakeholders and the public been adequate and timely?
 - b. Is it envisaged that at key points throughout the on-going response to the incident that there will be a stocktake – drawing together the key threads and findings – in a systematic way (for example, key operational, engineering or design issues that might be of significance for the petroleum industry); or drawing together findings from the various environmental studies?

F. OTHER MATTERS

11. Terms of Reference: Consider, assess and make recommendations in relation to any other matters the Commission of Inquiry considers relevant to or arising from the Uncontrolled Release and the prevention of similar events occurring in the future.

Parties submitting submissions are invited to put views on matters that are material to the Inquiry that may not be adequately covered by the specific matters addressed in the Terms of Reference.