



Australian Government



Draft Government Response
to the Report of the Montara Commission of Inquiry

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Executive Summary

The 21 August 2009 uncontrolled oil and gas release at the Montara oil field, operated by PTTEP Australasia (Ashmore-Cartier) Pty Ltd (PTTEP AA), and the more recent incident on 20 April 2010 at the BP operated Macondo oil field in the Gulf of Mexico, where 11 lives were lost, serve as strong reminders to governments, regulators, the offshore petroleum industry and the broader community of the risks of complacency in the operation and regulation of offshore petroleum activities.

The Commonwealth Government (the Government) has moved quickly to learn the lessons from the Montara and Gulf of Mexico incidents and is working to improve the protection of human health and safety and the protection of the marine environment so as to ensure that Australia continues to have a safe, strong and competitive offshore petroleum industry which is able to contribute to Australia's ongoing energy security and economic prosperity, and that of our major trading partners.

Even as efforts to respond to and halt the spill continued, the Commonwealth Minister for Resources and Energy, the Hon Martin Ferguson AM MP, moved amendments to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGGS Act) to provide for the establishment of an Inquiry with Royal Commission powers into the Montara incident. These amendments received the support of all parties in the Parliament and were duly passed.

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 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* (the Report) to Minister Ferguson on 18 June 2010.

The Government believes that in implementing its response to the Report and through actions already taken in advance of its release, the public can have confidence in the ongoing operation and regulation of the offshore petroleum industry.

The Government has considered the Report 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 of the offshore petroleum regulatory regime in areas of well regulation and environmental monitoring and management; and future incident response arrangements.

The draft Government response proposes accepting 92 recommendations, noting 10, and not accepting three. The three recommendations that are proposed not to be accepted relate to actions which are technically inappropriate.

The Government will undertake a three month comprehensive stakeholder and community consultation period in relation to the draft Government response, including a call for public submissions. This process will fully inform the Government's final response to the Montara Inquiry.

The Government's response to matters arising from the incident and the Inquiry process has been prompt and appropriate. The Government acted quickly in respect of evidence arising from the Inquiry process relating to PTTEP AA and the responsible regulator, the Northern Territory Department of Resources (NT DoR).

The Report's findings and recommendations are just one element of a broader reform agenda for Australia's offshore petroleum industry. The Government is committed to the establishment of a single national regulator for offshore petroleum activities by January 2012 to ensure Australia's offshore petroleum industry is the best and safest in the world.

To create a single national regulator the Government will expand the functions of the existing National Offshore Petroleum Safety Authority (NOPSA) to include regulation of structural integrity, environment plans and day-to-day operations associated with petroleum activities in Commonwealth waters. There is a fundamental connection between the integrity of structures, the safety of people, and protection of the environment. The expanded authority – to be named the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) – will also regulate safety, integrity and environment plans for minerals extraction and greenhouse gas storage activities in Commonwealth waters.

The Government will retain the Joint Authority concept in relation to titles matters, thereby ensuring that the states and territories have proper input into resources development issues in Commonwealth offshore areas, and will establish a National Offshore Petroleum Titles Administrator (NOPTA) which will primarily deal with title administration and resource management issues. Separating titles and resources management from the regulation of safety and the environment will avoid conflict of regulatory objectives.

In recognition of the global nature of the offshore petroleum industry, and Australia's increasingly important role, the Government intends to host an international conference for governments, regulators and the offshore petroleum industry to share the lessons from Montara and to learn from the experience of other nations. The conference will be held in Australia during 2011.

It is important that consideration of the draft and subsequent final Government response be undertaken with an understanding of the policy and legislative framework in which offshore petroleum activities are approved and conducted in Australia.

Australia's regulatory regime for offshore petroleum activities

Offshore petroleum operations beyond the designated state and territory coastal waters (three nautical mile baseline to 200 nautical miles of Australia's Exclusive Economic Zone) are governed by the OPGGS Act and related regulations.

While ultimate responsibility for Australia's offshore areas beyond the three nautical miles from the territorial baseline rests with the Commonwealth, the Government currently jointly administers the regulatory regime and supervises offshore petroleum industry activities with the State and Northern Territory governments through a Joint Authority/ Designated Authority arrangement. The establishment of the single national regulator will see the proposed NOPSEMA become the regulator for all offshore petroleum activities beyond three nautical miles from the territorial sea baseline.

In 1991, in responding to *The Public Inquiry into the Piper Alpha Disaster by the Hon Lord Cullen*, the Government made a policy decision to implement the key outcomes of that report, in particular that a safety case regime be adopted and new performance/objective-based regulations be developed to replace the then prescriptive regulations. Today, Australia's regime is now largely a performance/objective-based regime, in which the operator of an offshore facility is responsible for the safe and effective operation of the petroleum facility.

An important feature of objective-based regulation is that it encourages continuous improvement rather than a compliance mentality. It is essential that a regulatory system encourage the creator of the risk to move beyond minimum standards in a continuous effort for improvement, and not just accept the minimum standard. The risk of specific standards is that they can shift the burden of responsibility from the operator to the government and stifle innovation. The Australian objective-based regime retains the focus clearly on the operator to evaluate risk and achieve fit for purpose design in order to reduce risk to 'as low as reasonably practicable'.

This regime provides that the regulatory function will be fulfilled by:

- Designated Authorities assessing Well Operation Management Plans (WOMPs) and applications to conduct well activities in order to ensure that well operations are conducted in accordance with sound engineering principles and good oil field practice.
- NOPSA assessing and challenging the operator's safety cases and seeking through oversight to ensure that health and safety risks are properly managed by the operator.

This regulatory oversight and control is currently exercised pursuant to the *Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004* and the *Offshore Petroleum (Safety) Regulations 2009*.

Commonwealth, state and territory governments require petroleum companies operating in state/territory waters to conduct their activities in a manner that meets a high standard of environmental protection.

The OPGGS Act contains a broad requirement for titleholders to operate in accordance with 'good oil field practice'. Specific environmental provisions relating to work practices require operators to control and prevent the escape of wastes and petroleum. The OPGGS Act also requires activities to be carried out in a manner that does not interfere with other rights, including the conservation of the resources of the sea and seabed.

Key objectives of the Environment Regulations under the OPGGS Act include encouraging industry to:

- continuously improve its environmental performance;
- adopt best practice to achieve agreed environment protection standards in industry operations; and
- ensure operations are carried out in a way that is consistent with the principles of ecologically sustainable development.

Australia's national environment law, the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), also plays a key role in the regulation of offshore petroleum activities. The EPBC Act establishes a national approach to the protection and conservation of Australia's environment, and sets out a regulatory framework to protect those aspects of the environment considered to be matters of national environmental significance (NES), which includes the Commonwealth marine area.

Offshore petroleum activities that are likely to significantly impact NES matters require assessment under the EPBC Act and approval by the Environment Minister. The Environment Minister may attach conditions to an approval to protect, repair or mitigate damage to NES matters. The EPBC Act includes a wide range of coercive powers as well as criminal, civil and administrative sanctions for breaches of the Act.

Oil Spill Response Management

Australia is a State Party to both the *International Convention on Oil Pollution Preparedness, Response and Cooperation 1990* and the *Protocol on Preparedness, Response and Cooperation to Pollution Incidents by Hazardous and Noxious Substances (HNS) 2000*. These conventions require Parties, individually or jointly, to take all appropriate measures in accordance with their provisions to prepare for and respond to a pollution incident by oil and HNS. Since October 1973, Australia has had in place a pre-planned national strategy to respond to marine spills. The original strategy dealt only with oil spills and was known as the National Plan to Combat Pollution of the Sea by Oil. In April 1998, the strategy was extended to deal with the response to maritime chemical spills in Australian waters and is now the National Plan to Combat Pollution of the Sea by Oil and other Noxious and Hazardous Substances, more commonly known as the 'National Plan'.

The National Plan is a national integrated government and industry organisational framework enabling effective preparedness and response to marine pollution incidents. On behalf of the Commonwealth, the Australian Maritime Safety Authority (AMSA) manages the National Plan, working with State/ Northern Territory governments and the shipping, oil, exploration and chemical industries and emergency services to maximise Australia's marine pollution response capability. The aim of the National Plan is to protect the community and the environment of Australia's marine and foreshore zones from the adverse effects of oil and other noxious or hazardous substances. It also aims to minimise those effects where protection is not possible.

Under the National Plan, AMSA has responsibility for the response effort, as the Combat Agency, where an incident takes place in Commonwealth waters (more than three nautical miles from the coastline). This responsibility involves:

- management and application of the National Oil and Chemical Contingency Plans;
- fixed wing aerial dispersant spraying of the spill site;
- maintenance of the oil spill response equipment stockpiles at the Australian Marine Oil Spill Centre (AMOSC);
- leadership of the National Response Team;

- provision of on-site advice during the incident in the role of the Combat Agency;
- facilitation of training programs in relation to a spill response, research and development and oil spill trajectory modelling; and
- the reviewing and reporting of incident responses and field exercises.

A comprehensive assessment and strengthening of the National Plan has been instigated by AMSA. This work, to be completed by the end of 2011, will consider Australia's marine oil and HNS spill preparedness and response capability and the National Maritime Emergency Response Arrangements (NMERA), which includes emergency towage capability. The aim of the work is to determine if current arrangements are adequate to provide an effective response to marine casualties and pollution of the sea by oil and HNS, and where deficiencies are identified, make recommendations to rectify them. It will provide an analysis of accountabilities, roles and resources required to meet the needs of AMSA and its National Plan/NMERA stakeholders for marine casualties and marine oil/HNS spill preparedness and response. The review will also provide details on the gaps in response preparedness and capabilities and any efficiencies that can be gained through improvements, as well as recommendations for the enhancement of the preparedness and response regime currently in place in Australia.

The Montara Incident

On Friday 21 August 2009, during activity being undertaken by the *West Atlas* jack-up drilling rig operated by Atlas Drilling, a hydrocarbon release was observed from the H1-ST1 well through the Montara Wellhead Platform at 0530 (WST). On 14 September 2009, work commenced on drilling a relief well. On 1 November 2009, a fire broke out on the West Atlas drilling rig and the Montara Wellhead Platform after the *West Triton*, which was drilling a relief well, successfully intercepted the leaking well on the fifth attempt. On 3 November 2009, successful well-kill operations were undertaken, the fire was extinguished and the oil leak was contained.

Australia's Response Efforts

The Government's response effort to this incident was rapid and consistent with international best practice and was very successful in minimising the impact of the oil spill. The ongoing response effort in the weeks following the start of the incident was highly effective, with excellent cooperation between the company, the broader petroleum industry through AMOSC, and governments at all levels. The effectiveness of the response is evidenced by the containment of the spill area in avoiding the highly sensitive Ashmore Reef Marine National Nature Reserve and limiting the flow of oil outside of Australia's Exclusive Economic Zone, and what appears to have been a minimal impact on the marine environment as represented by the potential loss of marine life and damage to the marine industry. An ongoing environmental monitoring plan is currently in place.

Operational Response to the Spill

Within fifteen minutes of notification of the incident, AMSA was able to mobilise equipment and personnel to ensure operations could begin as quickly as possible. Once the situation was assessed, AMSA aircraft began applying dispersant to accelerate the natural evaporation and weathering of the oil. This was very successful in minimising the impact of the oil spill in the early stages. Further, in a world first, recovery and containment operations with boom and skimmer vessels were also deployed to remove the oil. This was the most effective method of removing the spilled oil and minimising its impact. This practice was subsequently adopted in the Gulf of Mexico incident.

In total AMSA advised that 844,000 litres of product (oil/water mix) were recovered during the containment operations of which an estimated 493,000 litres was oil. Dispersants are considered to be less hazardous to the environment than oil and the use of dispersants is consistent with international best practice for oil spill response. The dispersants enhance the natural dispersion of the oil by speeding up the weathering process. The purpose of using dispersants in the Montara incident was to minimise impacts upon the environment, as well as limit the spread of the oil. The dispersant that was used was selected for its suitability of purpose in the particular

environment and in response to the type of oil seeping from the Montara Wellhead Platform. It was subject to a strict testing protocol established by AMSA to meet benchmark standards. It was not sprayed directly onto reefs or other vulnerable areas and was applied in a controlled manner from specialised dispersant spray aircraft and vessels.

Environmental Response

Despite having no legislative powers to require environmental monitoring by PTTEP AA, the Government negotiated the development and implementation of a PTTEP AA-funded long term environmental monitoring plan. To ensure the monitoring program was appropriate, comprehensive and transparent, the Government brought together a range of scientific experts to form a Technical Advisory Group (TAG). The TAG provided advice during the program's development and peer review for each scientific study proposal before it was approved and implemented.

An extensive surveillance program was established to maximise the chances of finding and treating wildlife affected by the incident. To ensure oil-affected birds were given the best care possible, a remote site stabilisation centre was established at the Ashmore Reef National Nature Reserve which is home to the largest breeding and nesting seabird colony in the region. Furthermore, the Montara incident highlighted that the potential extent and duration of an uncontrolled oil and gas release can be greater than that previously considered as representing a worst case scenario. Although the likelihood of such events remains low, the Government now requires that offshore petroleum drilling proposals (both exploration and production) assess a 'worst case scenario' loss of well control and describe the measures in place to prevent and respond to such an incident. In addition, all new approved offshore production facilities will include requirements to obtain sufficient baseline information to enable an assessment of any impacts and implement an agreed monitoring program in the event of a spill.

Legislative Response

Immediately following the Montara incident and upon becoming aware of the significance of the incident (in relation to the scale and technical complexity in bringing it under control), the Government obtained legal advice on the "direction powers" available to the Designated Authorities to use under the OPGGS Act. Based on this advice, the Government initiated an urgent amendment to the OPGGS Act to provide the Minister with general powers to initiate an investigation into offshore petroleum incidents particularly for the Montara incident. The legislative amendment package was arranged, introduced and came into force within two weeks, reflecting the Government's determination to ensure that governments, regulators and industry understand and learn from the Montara incident.

Technical Response

The Government, through Geoscience Australia, provided independent technical advice on drilling actions; rig types and availability; and assessment of options for arresting the blowout and more broadly of the potential effect on the well and reservoir to PTTEP AA.

In recognition of the uniqueness of the situation for the Government and the Designated Authorities more generally, the Government supported a joint assessment and approval of PTTEP AA's revised well operation drilling plans for the relief well phase by facilitating the streamlining of approvals through regular contact with the Northern Territory 9 Designated Authority, which enabled the relief well drilling activities to commence promptly. This involved technical experts from Geoscience Australia, the Victorian Department of Primary Industry and the NT DoR. The Government, through the Department of Resources, Energy and Tourism (DRET), also initiated and led the facilitation of the efficient transit of the *West Triton* drilling unit into Australian waters to undertake relief well drilling operations.

Summary of the Report of the Montara Commission of Inquiry

The Report contains 100 findings and 105 recommendations which have implications for governments, regulators and the operational processes and procedures of the offshore petroleum industry. It addresses the likely causes of the incident, the adequacy and effectiveness of the regulatory regime for offshore petroleum (including safety and environmental management), the level of compliance with legislative obligations, adequacy of the incident response by governments and the offshore petroleum industry, and the environmental impacts of the incident.

Chapter 3 The Circumstances and Likely Causes of the Blowout

Chapter 3 of the Report specifically focuses on the circumstances and technical causes of the Montara incident. The Report identifies 'direct causes' and 'systemic contributory factors'. The chapter also considers employee competency and the level of compliance by technical staff with the regulatory obligations for well activity.

The Report concluded that the source of the blowout was largely uncontested and was a result of the primary well control barrier failing. The Report further notes that initial cementing problems were compounded by the fact that only one of the two secondary well control barriers – pressure containing anti-corrosion caps – was installed.

Chapter 4 The Regulatory Regime

Chapter 4 of the Report concluded that the existing regulatory regime supporting offshore petroleum activities provides sufficient powers to the regulator to enable the effective monitoring and enforcement of offshore petroleum-related operations. The inadequacies identified by the Inquiry primarily relate to the implementation of this regime.

Despite the deficiencies in the administration by the NT DoR of its Designated Authority functions, the Report concluded that the incident could have been avoided if PTTEP AA had adhered to the well control practices approved by the regulator and its own well construction standards.

The Report recommended pursuing regulatory reform through the establishment of a single, independent regulatory body looking after safety as a primary objective, well integrity and environmental management. The Government notes that the performance/objective-based regulatory regime will be further enhanced by the establishment of a single national regulator for offshore petroleum, mineral and greenhouse gas storage activities.

Chapter 5 Arresting the Blowout

Chapter 5 of the Report concludes that in considering the initial response to the incident at the Montara Wellhead Platform and the steps taken by all parties involved in arresting blowout, it commends the response efforts by PTTEP AA and AMSA as the Combat Agency, NOPSA as the offshore petroleum safety regulator, and the former Department of Environment, Water, Heritage and the Arts (now DSEWPaC) as the environmental regulator.

The Report does however recommend changes to the Government's response to future incidents involving the offshore petroleum industry under the National Plan. The recommendations are aimed at improving the operation of the National Plan, including matters regarding the environmental response to future incidents. It has also recommended there be greater clarity regarding the roles and responsibilities of agencies in responding to future incidents under Australia's current incident response framework, which has been accepted by the Government. The review of the National Plan is currently underway.

Chapter 6 Environmental Response

Chapter 6 of the Report concludes that the protection and management of the marine environment is critical to the Australian community's confidence in the ability of the offshore petroleum industry to undertake operations in a safe and environmentally sound manner. The Inquiry considered those matters relating to the impact on, and remediation of, the surrounding environment during and post the response to the uncontrolled oil and gas release at the Montara Wellhead Platform.

The Report notes a lack of clarity 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. The Inquiry has recommended amendments to the EPBC Act and the OPGGS Act to reaffirm the Government's support of the 'polluter pays' principle as it applies to the offshore petroleum industry. Other recommendations made by the Inquiry include the establishment of "off-the-shelf" monitoring programs to be implemented following incidents in Commonwealth waters, and publication of Oil Spill Contingency Plans.

Chapter 7 Review of PTTEP AA's Permit and Licence at Montara and Other Matters

Chapter 7 of the Report details views regarding the conduct of PTTEP AA in respect of its interaction with the regulators and the Inquiry. The Report concludes that PTTEP AA, as operator of the Montara oil field, did not observe sensible oil field practices and that the company's widespread and systemic procedural shortcomings were a direct cause of the incident. Specifically the Report recommends that a review should be undertaken of PTTEP AA's permit and licence to operate through the issuing of a 'show cause' notice under the OPGGS Act.

The Report does note that PTTEP AA provided the Commission of Inquiry with an Action Plan to address the technical and governance issues identified through the Inquiry process. The Action Plan was also provided to the Commonwealth Government Minister for Resources and Energy. The Commissioner noted it was "comprehensive and impressive".

Key recommendations from the Report and implementation

Recommendations for Immediate Action

Actions of the operator PTTEP Australasia (Ashmore–Cartier) Pty Ltd

The Report concludes that PTTEP AA's widespread and systemic procedural shortcomings were a direct cause of the Montara incident. In addition, the Report identified concerns relating to the integrity of the remaining wells (H2, H3, H4 and GI) at the Montara Wellhead Platform. The Commissioner concluded that PTTEP AA did not achieve proper control of any of the five wells at the Montara oil field, and that PTTEP AA's internal systems were insufficient to achieve a high quality of assurance in respect of well operations.

In this regard, the Commissioner considered the continuation of PTTEP AA's licence to operate and the role of the Action Plan submitted by PTTEP AA to address the shortcomings identified through the Inquiry process and to bring its operations in line with industry leading practice and management. The Commissioner recommended that the Minister review PTTEP AA's licence to operate at the Montara field and that the Minister issue a 'show cause' notice to PTTEP AA as the mechanism for instigating this review (Recommendations 101–103).

The Minister for Resources and Energy has the power to cancel a petroleum title under section 275 of the OPGGS Act for non-compliance with the terms of the OPGGS Act and associated regulations. The decision to commence action under the cancellation of title provisions is discretionary and the Minister is not bound by any legal duty to commence a review of compliance.

In respect of the Montara incident, the Minister has the power to issue a 'show cause' notice to PTTEP AA for a failure to carry out "petroleum recovery operations in a proper and workmanlike manner" or a failure to "prevent the

escape of petroleum" from the Montara Wellhead Platform. In considering whether to issue a 'show cause' notice, the Minister is required by the OPGGS Act to take into account any action taken by PTTEP AA to either remove the grounds of cancellation or to prevent recurrence of the grounds, and any submission made by PTTEP AA in support of the continuation of their licence.

The Minister for Resources and Energy has accepted the Commissioner's recommendation to review PTTEP AA's licence to operate.

However, PTTEP, through its various Australian subsidiaries, is the operator of seven exploration permits, five production licences and seven retention leases and has interests in a further five exploration permits where it is not the operator. As a show cause notice can only be issued where a breach of the Act has been identified, and then only in relation to the Title relevant to that breach, the Minister for Resources and Energy has determined that a review of PTTEP AA's licence to operate which was restricted to its operations in the Montara field would, in these circumstances, be insufficient.

Rather, the Minister for Resources and Energy has directed the Department of Resources, Energy and Tourism to instigate an independent review of the Action Plan presented by PTTEP to the Commission of Inquiry. The independent review is to be completed before the end of this year. The independent review process will provide advice to the Minister for Resources and Energy on whether the Action Plan, once implemented, will ensure that PTTEP's operational and procedural measures meet industry best practice standards. It will also identify whether PTTEP has the organisational culture and capability to properly implement the Action Plan. Evidence that PTTEP's Action Plan is implementing industry best practice and its ongoing commitment to operational improvement will be central to the consideration of whether a 'show cause' notice is issued, as it demonstrates measures to remove or prevent recurrence of the grounds for cancellation. The independent review will also provide recommendations to support more generally improvement of the Australian offshore petroleum industry practices to meet best practice standards.

Furthermore, the Minister for Resources and Energy requested that the integrity of the remaining wells at the Montara Wellhead Platform be clarified by PTTEP AA and co-assessed by the NT DoR, the Western Australian Department of Mines and Petroleum and Geoscience Australia. PTTEP AA has implemented a work program to test the integrity of the remaining wells on the Montara Wellhead Platform. AGR, a leader in the field of drilling, well operations and underwater trenching and excavation in the global offshore petroleum industry, witnessed the barrier testing of the wells at the Montara Wellhead Platform. AGR's verification report on behalf of PTTEP AA has been assessed by Geoscience Australia and the NT DoR. All possible work to ensure the integrity of the suspended wells at the Montara Wellhead Platform has been completed.

PTTEP AA has also been directed to verify the integrity of all of their remaining suspended wells. Due to the nature of active producing wells, ongoing monitoring is undertaken by the operator and as such any integrity issues are identifiable through this process.

Actions of the Northern Territory Designated Authority

The Inquiry concluded that the existing legislative regime provides sufficient powers to allow effective monitoring and enforcement by regulators of offshore petroleum-related operations. The inadequacies identified by the Inquiry relate primarily to the implementation of this legislation and adherence to the regulations by the operator.

The Report concludes that the NT DoR was not sufficiently diligent in its assessment of PTTEP AA's well activity operations to ensure that principles of good oil field practice would be implemented. The Minister also considered the Commissioner's recommendation to revoke the Designated Authority delegation for the Territory of Ashmore-Cartier Island offshore area, which was being exercised by the NT DoR Director of Energy on behalf of the Commonwealth (Recommendation 76).

Section 72 (3) of the OPGGS Act provides the power for the delegation of the Commonwealth's Designated Authority powers and functions for the Ashmore Cartier Islands (where the Montara field is located) to the NT to be revoked. In considering this recommendation, the Minister for Resources and Energy recognises that this delegation has always

been viewed as an extension to the principal Northern Territory offshore area, for which the Northern Territory has ongoing responsibility. The Designated Authority function is also administered through the NT DoR. As such the withdrawal of the delegation would not address the full range of issues in respect of the NT DoR regulatory operations.

Noting the seriousness of the Report's findings and recommendations, the Minister for Resources and Energy requested the Northern Territory Government to demonstrate how they will fulfil their obligations as the Designated Authority. In response, the Northern Territory Government provided the Minister for Resources and Energy with a set of actions to address the concerns raised in the administration of the Designated Authority regulatory function for the Ashmore–Cartier Island offshore area and the principal Northern Territory offshore area. In light of these actions, the Minister for Resources and Energy determined that a full revocation of the Designated Authority function was not required. However, the Minister requested the appointment of a new delegate in the Director of Energy position. This appointment was formalised on 1 September 2010.

The Northern Territory and the Australian Government are working closely to implement appropriate mechanisms to ensure the integrity of wells in the Northern Territory's administered offshore areas and a consistent application of the approval, assessment and compliance monitoring of all offshore petroleum activities by the Northern Territory in its capacity as the Designated Authority. The Northern Territory has also sought the formal engagement of the Western Australian Department of Mines and Petroleum in co-assessing approvals relating to the Ashmore–Cartier and Northern Territory offshore areas. The Commonwealth's technical agency, Geoscience Australia, is also providing expertise and advice to the Northern Territory. The Northern Territory Government has also moved to address the resourcing capacity of the NT DoR to ensure it is appropriately skilled and informed to administer the Designated Authority regulatory function.

Furthermore, the Australian Government has commenced work with all Designated Authorities to clarify the integrity of wells in their respective jurisdictions, and to develop a consistent approach to the regulation of Australia's offshore petroleum industry in the areas of well operations, environment and well integrity. This is a key step in providing the Australian community with confidence that the regulatory framework has the right checks and balances to ensure the safe operation of Australia's offshore petroleum industry, and will be reinforced by the expansion of NOPSA's regulatory role to include responsibility for well structural integrity and environmental management.

Other Key Recommendations

i. Single national offshore petroleum regulator

The Report recommends pursuing regulatory reform through the establishment of a single, independent regulatory body looking after safety as a primary objective, well integrity and environmental approval at a minimum.

The Australian Government is committed to the establishment of a single national regulator for offshore petroleum activities to ensure Australia's offshore petroleum industry is the best and safest in the world. To create a single national regulator the Government will expand the functions of the existing National Offshore Petroleum Safety Authority (NOPSA) to include regulation of structural integrity, environment plans and day-to-day operations associated with petroleum activities in Commonwealth waters. There is a fundamental connection between the integrity of structures, the safety of people, and protection of the environment. The expanded authority – to be named the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) – will also regulate safety, integrity and environment plans for minerals extraction and greenhouse gas storage activities in Commonwealth waters. The expansion of NOPSA to NOPSEMA will be completed by 1 January 2012.

Petroleum titles will be administered separately in DRET through the establishment of the National Offshore Petroleum Titles Administrator by 1 January 2012. A separate regulator and titles administrator will avoid potential or perceived conflicts of objectives or priorities between these functions. The move to a single national offshore petroleum regulator and separate titles administrator delivers on the recommendations of the Report and builds upon the earlier recommendations of the Productivity Commission *Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector* in 2009.

It is the Government's intention to work closely with State and Northern Territory governments to deliver a single, robust and efficient national offshore petroleum regime that ensures the safety of people, the integrity of facilities and the protection of the environment.

In the interim, the *Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Bill 2010* which was passed by the Parliament of Australia on 28 October 2010 strengthened the role of the NOPSA in relation to structural integrity. The amendment bill also imposed on offshore petroleum titleholders an occupational health and safety duty of care in relation to wells and well-related equipment, and improved NOPSA's inspection and investigation powers in relation to suspected breaches.

ii. *Legislative review and engagement between the regulator and industry*

The incident also highlighted the need for more active engagement between the operator and the regulator in responding to offshore petroleum incidents. The Government notes that such engagement needs to be balanced to ensure both operator responsibility and regulator independence is not compromised.

In addition to addressing a number of the recommendations arising within the Report, the Government proposes to undertake a broader consideration of all Commonwealth legislation applicable to the marine environment. The assessment will be coordinated by DRET with advice and assistance from the Attorney General's Department and input from relevant stakeholders. It will address gaps or outstanding issues in the offshore petroleum legislative regime as identified through the Report of the Montara Commission of Inquiry and other relevant reports as appropriate. This process will also have regard to the OPGGS Act and associated regulations; the EPBC Act and associated Acts; the Protection of the Sea Acts, the *Navigation Act 1912* and relevant international treaties.

Following the finalisation of the Government's response, the Government proposes to establish a taskforce led by DRET to implement the legislative amendments required to address the specific findings and recommendations of the Report. These will include amendments to the OPGGS Act to provide for increased civil penalties to in relation to breaches by operators and titleholders.

Furthermore, an element of NOPSA's 2011 Operational Review will consider its engagement with offshore petroleum operators in respect of the development, implementation and compliance with the safety aspects of petroleum operations.

iii. *Objective vs Prescriptive Legislation*

The Report is generally supportive of the Government's objective-based legislative regime for offshore petroleum regulation. In implementing the recommendations of the Report and other relevant reviews, the Government is working to strengthen the objective-based regulatory model without compromising this regime through excessive moves towards a prescriptive regime. Australia's objective-based regulatory regime for well control and integrity had been in place since 2004 and during that time more than 700 wells have been drilled without incident. A more prescriptive regime would not have prevented the Montara incident from occurring as the incident occurred because the operator failed to carry out their operations in accordance with the approved plan or to meet their own internal well construction standards.

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'. 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. The objective-based 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 continuous improvement rather than a compliance mentality. It is essential that a regulatory system encourage the creator of the risk to move beyond minimum standards in a continuous effort for improvement and not just accept the minimum standard. The

risk of specific standards is that they can shift the burden of responsibility from the operator to the government and stifle innovation. The Australian objective-based regime 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'. Prescriptive based regulation focuses on minimum compliance, requires frequent amendment and relies heavily on the ability of legislative drafters to understand and anticipate the risks and operational environment of the industry.

iv. Environmental Response

In considering the response undertaken in relation to environmental matters, the Report identifies the need for a strengthening of the existing environmental protection regime for Commonwealth waters and the need for immediate implementation of scientific monitoring following an oil spill incident. The Report identifies that critical to both these findings is the requirement for effective legislative arrangements.

To identify and address any gaps or issues, the Government is undertaking a review of Commonwealth legislation as it applies to the offshore marine environment, with appropriate linkages to the draft Government response to the Montara Inquiry and other reviews including the review of the EPBC Act undertaken by Dr Allan Hawke.

v. Roles and responsibilities during the response effort

The Government agrees with the need for greater clarification of the roles and responsibilities for incident response under the National Plan. This will be considered through the examination and enhancement of the National Plan, which is being coordinated by AMSA in consultation with the National Plan stakeholders and is scheduled to be finalised by the end of 2011.

The assessment will determine if current arrangements are adequate to provide an effective response to marine casualties and pollution of the sea by oil and hazardous or noxious substances, and where deficiencies are identified, provide recommendations to rectify them. In addition, location-based risk assessments will be undertaken as part of the review in respect of the current level of risk of pollution of the sea, coastline and ports of Australia's Exclusive Economic Zone and offshore territories by oil from ships, offshore installations (fixed and floating) and exploration rigs. The outcomes of these risk assessments will inform future contingency planning for emergency response efforts specifically on the type, location and quantity of emergency equipment held in stockpiles around Australia, and arrangements for mobilisation of expertise and operational capacity in future emergency response situations.

Furthermore, the Government will be implementing 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. While the OPGGS Act contains requirements for petroleum titleholders to have adequate insurance cover (refer s571) to meet the costs of remediation of environmental damage and Part 6.4 of the OPGGS Act provides the authority for the regulator to give remedial directions to titleholders in relation to the restoration of the environment these requirements do not address the issue of equitable cost sharing arrangements for preparedness for responding to any incidents.

vi. Transparent communication strategy

The Government agrees with the Report's recommendation for a more transparent communication strategy which clearly outlines the process for incident management and co-ordination, including the responsibility for informing the community about the volume and extent of an oil spill. To this end, 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*. The framework will also include a clearly defined, transparent communication strategy for incident response. The incident and management and coordination framework will underpin the operations of a central coordination body which will be activated for responding to any future offshore petroleum incident. The activation of a coordination body will be informed by the specific incident.

The development of the framework will be led by DRET in conjunction with NOPSA and relevant stakeholders, and will be finalised during the first half of 2011.

Summary of key actions and responses by the Australian Government

The actions that the Government is taking in response to the Report can be summarised as follows:

- The Minister for Resources and Energy has reaffirmed in his Ministerial Statement to the House of Representatives on 24 November 2010 the Government's commitment to the establishment of NOPSEMA by 1 January 2012. NOPSEMA will be responsible for the day-to-day administration and regulation of occupational health and safety, well integrity, environment plans and day-to-day operations in the Commonwealth offshore area.
- An assessment of the National Plan, which is being led by AMSA and is to be completed by the end of 2011, will address the adequacy and appropriateness of funding mechanisms and the efficiency of cost recovery arrangements in the delivery of the National Plan.
- Amendments to the OPGGS Act to provide for increased civil penalties in relation to breaches by operators and titleholders, led by DRET, will be completed during the first half of 2011.
- An assessment of the Action Plan provided by PTTEP AA by way of independent expert scrutiny as to its completeness, as well as the organisational and cultural capability of PTTEP AA to sustain its implementation. The outcome will be central to the decision by the Minister for Resources and Energy as to whether to issue a 'show cause' notice relating to its production licence for the Montara oil field.
- Finalisation of the investigations of potential breaches by PTTEP AA under the OPGGS Act and associated regulations on non-OH&S matters with the potential for the provision of a brief of evidence to the Commonwealth Director of Public Prosecutions.
- Support for the Northern Territory Government to ensure the integrity of all wells in Northern Territory administered offshore areas and a consistent approach to approval, assessment and compliance monitoring of all offshore petroleum activities by the NT DoR.
- A review of NOPSA's operations and activities in 2011, including its engagement policy with operators.
- Development of an incident management and coordination framework which will provide a more transparent communication strategy and will clearly outline the responsibilities of all agencies involved in any future offshore petroleum incident.
- Broader consideration of all Commonwealth legislation applicable to the marine environment will be undertaken in 2011. This will be coordinated by DRET with advice and assistance from the Attorney General's Department and input from other stakeholders.

Compliance Investigations by the Australian Government

- OPGGS Act

Following the Montara incident, NOPSA initiated an investigation into potential breaches of occupational health and safety matters by PTTEP AA under the OPGGS Act. On 15 June 2010, NOPSA submitted a brief of evidence to the Commonwealth Director of Public Prosecutions (CDPP).

DRET has commenced an investigation into potential non-OHS breaches of the OPGGS Act by PTTEP AA. The investigation is being progressed by the Montara Investigation Team comprising two Petroleum Project Inspectors appointed under the OPGGS Act.

- EPBC Act

DSEWPaC conducts regular monitoring and audits of projects approved under the EPBC Act. In January 2009 (prior to the incident), PTTEP AA was advised that the Montara project was on a list of potential audits. On 16 October 2009, DSEWPaC confirmed with PTTEP AA that due to the Montara incident, DSEWPaC would be conducting an audit of PTTEP AA's compliance with the EPBC Act regarding approval conditions for the Montara project and the EPBC Act more broadly. The formal audit process has been completed, and the audit report is being prepared.

International Engagement

The Montara incident raised trans-boundary issues due to small patches of weathered oil crossing into Indonesian and Timor-Leste waters. The Australian Government is aware that the Indonesian Government is seeking compensation from the operator of the Montara oil field, PTTEP AA. The claim for compensation is a matter between the Indonesian Government and PTTEP AA.

Australia will continue to act consistently with international law, and consistent with our strong bilateral relationship, Australia will seek to provide additional briefing on the Report and the draft Government response to the Indonesian and Timor-Leste Governments on these matters.

The scale and severity of the 20 April 2010 Deepwater Horizon incident at BP's Macondo field in the Gulf of Mexico posed new challenges in respect of coordination, international engagement, deepwater technology and the application of science, which were not contemplated at the time of the Montara Inquiry.

On 21 May 2010, United States of America (US) President Barack Obama established a National Commission to examine the facts and circumstances concerning the root causes of the Deepwater Horizon incident and to develop options to mitigate against the impact of any oil spills in the future. The National Commission is due to present its final Report on 12 January 2011. The Government will also give consideration to the findings of the National Commission, with respect to implications for the regulatory regime and future operating environment for Australia's offshore petroleum industry. Australia has, and will continue to, work closely with its counterparts in the United States to share information and learnings from the respective incidents.

In addition to direct engagement with the US Government, the Australian Government is applying its learnings from the Montara incident through other international fora including the G20 Leaders Group, through its involvement as a member of the Global Marine Environment Protection (GMEP) initiative, the International Maritime Organization (IMO) and the International Regulator's Forum. These efforts will ensure that Australia's experience with Montara can be shared to the benefit of other nations, regulators, and the global offshore petroleum industry.

In 2011, the Australian Government will also host an international conference in Australia of legislators, regulators and industry to review our collective learnings from both the Montara and Gulf of Mexico incidents. Preparations for this conference are underway.

Draft Government Response

The following chapters provide the Report of the Montara Commission of Inquiry recommendations and the Australian Government's draft response to these.

Chapter 3 of the Montara Report

The Circumstances and Likely Cause(s) of the Blowout

Chapter 3 of the Report – The Circumstances and Likely Cause(s) of the Blowout focuses on the circumstances and technical causes of the Montara incident. The chapter contains 65 of 105 recommendations.

Chapter 3 – The Circumstances and Likely Cause(s) of the Blowout

Recommendations

Report Recommendations	Government Response	Implementation
<p>1 The Minister should appoint a senior policy adviser to investigate and report on the best means to implement the recommendations contained in this Chapter.</p>	<p><i>Accepted.</i></p>	<p><i>Action to Date</i></p> <p>On 15 July 2010 the Minister for Resources and Energy tasked the Secretary of DRET with the responsibility for commissioning the preparation of a whole of Government response to the Report.</p> <p>The Secretary established the Montara Response Team in the Resources Division of DRET to progress the whole of Government response to the Report and give effect to the Report's recommendations as appropriate.</p>
<p>2 WOMPs submitted by licensees to the regulator(s) should continue to be the primary framework document for achieving well integrity.</p>	<p><i>Accepted.</i></p> <p>This recommendation is consistent with existing practice. In accordance with the existing regime under the <i>Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004</i>, the Well Operations Management Plan (WOMP) is the key approval document for the management of well operations and integrity. The activities approved by the WOMP are supported by several other key documents including the drilling and operating manuals.</p> <p>The requirement for a WOMP was introduced under the Government's policy of establishing an objective-based petroleum regulatory regime.</p> <p>An objective-based regime allows for processes and procedures to be changed in response to technology development and provides flexibility for industry to implement continuous improvement while adhering to legislative principles.</p>	<p><i>Action to Date</i></p> <p>DRET is working with the DAs to ensure the integrity and status of all completed and suspended wells since 2005. This analysis will determine whether the assessment, approval and monitoring of offshore petroleum activities in this time has been done in accordance with the OPGGS Act.</p> <p>DRET is also working with the DAs to ensure that best practice regulation is applied in the areas of well operations, environment and integrity.</p> <p><i>Future Action</i></p> <p>The implementation of this recommendation will be informed by a broader consideration of all Commonwealth legislation applicable to the marine environment and petroleum legislation. This will be coordinated by DRET with advice and assistance from AGD and input from relevant stakeholders. It will address gaps or outstanding issues in the offshore petroleum legislative regime as identified through the Montara Commission of Inquiry and other relevant reports as appropriate.</p>

This process will also have regard to the OPGGS Act and associated regulations; the EPBC Act and associated Acts; the Protection of the Sea Acts, the *Navigation Act 1912* and relevant international treaties.

The Government will also consider if elements of the previously legislated *Schedule of Specific Requirements as to Offshore Petroleum Exploration and Production* should be incorporated into the *Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004*.

3 WOMPs should be comprehensive and freestanding, rather than an overarching document cross-referencing many other documents (although the Inquiry also recommends a freestanding well control manual; this should be a guide to rig and onshore personnel on good oilfield practice).

Noted.

In accordance with the regime under the *Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004*, the WOMP is the key approval document for the management of well operations and integrity. The activities approved by the WOMP are supported by several other key documents including the drilling and operating manuals.

It is accepted industry practice to have a drilling operations manual covering all aspects of drilling, completion and well control operations on the rig.

4 The concept of 'good oilfield practice' should be supplemented by the requirement to incorporate into WOMPs non-exhaustive minimum compliance standards in relation to well control: for example, stipulations as to when BOPs and/or well control systems must be in place and when they can be removed and minimum barrier requirements (a number of other factors that should be stipulated are outlined in other recommendations below).

Accepted.

While this is primarily a matter for industry and the Regulator, the Government considers that it would be appropriate for industry and the Regulator to apply this recommendation in appropriate circumstances.

The Government considers that an objective-based regime allows for processes and procedures to be changed in response to technological development and provides flexibility for industry to implement continuous improvement while adhering to legislative principles.

Report Recommendations	Government Response	Implementation
<p>5 Well construction and management plans should include provision(s) for reviewing the integrity of barriers at safety-critical times or milestones, such as (i) prior to suspension involving departure of the rig from the platform; (ii) prior to re-entry of a well after suspension; (iii) prior to removal of any barrier.</p> <p>6 Well construction and management plans, and drilling programs, should include provision for testing and verifying the integrity of all barriers as soon as practicable after installation.</p>	<p><i>Accepted.</i></p> <p>The Government notes that these matters are addressed in WOMPs pursuant to Part 2, Regulation 6 of the <i>Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004</i>. While this is primarily a matter for industry and the Regulator, the Government considers that it would be appropriate for industry and the Regulator to carefully consider adopting these recommendations.</p>	<p><i>Action to Date</i></p> <p>DRET is working with the DAs to ensure the integrity and status of all completed and suspended wells since 2005. This analysis will determine whether the assessment, approval and monitoring of offshore petroleum activities in this time has been done in accordance with the OPGGS Act.</p> <p>Furthermore, DRET is working with all DAs to ensure that best practice regulation is applied in the areas of well operations, environment and integrity.</p>
<p>7 Well construction and management plans should include provision for an independent compliance review of well integrity (i) in the event of stipulated triggers; and (ii) at least once in the period between perceived achievement of well integrity and production. The independent compliance review should be undertaken by an expert who is not involved in the day-to-day drilling operations. Reviews should be completed in sufficient time to enable results to be implemented in a meaningful manner.</p>	<p><i>Accepted.</i></p> <p>While this is primarily a matter for industry and the Regulator, the Government considers that it would be appropriate for industry to carefully consider adopting these recommendations in appropriate circumstances.</p>	
<p>8 Wellbore gas bubbling should be regarded as a trigger for independent review of well integrity. Industry and regulators should identify and document other triggers.</p>	<p><i>Not Accepted.</i></p> <p>As immediate well control action is required in the case of 'gas bubbling', the Government believes undertaking an independent review of well integrity would compromise safety by delaying an appropriate response.</p>	
<p>9 If a risk assessment or compliance review is triggered by the happening of a pre-determined event, specific consideration should be given to whether a 'hold point' should be introduced such that work must cease until the problem is resolved (and the subject of appropriate certification).</p>	<p><i>Accepted.</i></p> <p>While this is primarily a matter for industry and the Regulator, the Government considers that it would be appropriate for industry to carefully consider adopting these recommendations in appropriate circumstances.</p>	

10 A separate, identifiable barrier manual should be agreed upon and used by licensees, rig operators, and cementing contractors. These manuals should set out best industry practice in relation to achieving and maintaining well integrity. They should describe barrier types, barrier standards, general principles of well integrity, testing and verification methods and technologies, standard operating procedures (including procedures for the capture and communication of relevant information within and between relevant stakeholder entities). Barrier manuals should address blowout control during drilling, completion, re-entry, tie-back of casing strings and so on. Barrier manuals should be the subject of expert external review, and should be regularly updated.

Noted.

The Government notes that numerous industry-accepted procedures, standards and operating manuals apply to petroleum operations.

The Government also notes that the facility safety case addresses safety at or near a facility in relation to:

- Identification of hazards and assessment of risks;
- The implementation of measures to eliminate the hazards or otherwise control the risks;
- A comprehensive and integrated system for management of the hazards and risks; and
- Monitoring, audit and review.

The Government notes the Montara incident was caused by a lack of adherence by the operator to the accepted industry practices.

11 Memoranda of Agreement should be entered into between operators in relation to provision of emergency assistance in the event of blowouts.

Accepted.

While this is primarily an industry operating matter the Government considers that it would be appropriate for industry to formalise assistance arrangements.

12 Pre-drilling assessments should include a risk assessment of the worst-case blowout scenario.

Accepted.

The Government notes that this recommendation is consistent with accepted industry practice in which contingency planning is based on risk assessments that take into account probability and consequence.

Action to Date

Although the likelihood of such events remains low, the Government now requires that offshore petroleum drilling proposals (both exploration and production) assess a 'worst case scenario' loss of well control and describe the measures in place to prevent and respond to such an incident.

Report Recommendations	Government Response	Implementation
<p>13 Problems which arise in the course of installing barriers must be the subject of consultation between licensees, rig operators, and contractors (if used). A proper risk assessment should then be carried out and remedial steps (including further testing/verification) should be agreed upon, and documented in writing before the performance of remedial work whenever practicable. Joint written certification as to resolution of the problem should take place before resumption of drilling operations. Senior onshore representatives of stakeholder entities should be involved in that certification process.</p>	<p><i>Accepted.</i></p> <p>While this is primarily an industry operational matter the Government considers that it would be appropriate for industry to carefully consider adopting these recommendations in appropriate circumstances.</p>	<p><i>Action to Date</i></p> <p>Following the Montara and Gulf of Mexico incidents, the offshore petroleum industry has performed its own safety checks. A number of companies have implemented further actions including reviews of well plans, drilling processes, blow-out contingency plans, testing frequencies and training of personnel.</p>
<p>14 Licensees should be subject to an express obligation to inform regulators of problems which arise in the course of installing barriers, even if they consider that well integrity is not thereby compromised. The information should be provided by way of special report, rather than included in a standard reporting document (such as a DDR). The information provided should include risk assessment details.</p>	<p><i>Accepted in part.</i></p> <p>The Government notes that this recommendation is consistent with current regulatory practice and that, pursuant to Part 2, Regulation 6 of the <i>Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004</i>, an obligation exists for operators to inform the Regulator of well activity operations and well integrity hazards, including problems encountered during barrier installation.</p> <p>This information is provided to the Regulator through the daily drilling report. The Government considers that this method of reporting is sufficient.</p>	

Report Recommendations

Government Response

Implementation

15 As soon as a risk of barrier failure arises, no other activities should take place in the well other than those directed to removal of the risk.

Accepted.

The Government notes that this is accepted industry practice.

Action to Date

Following the Montara and Gulf of Mexico incidents, the offshore petroleum industry has performed its own safety checks. A number of companies have implemented further actions including reviews of well plans, drilling processes, blow-out contingency plans, testing frequencies and training of personnel.

In relation to occupational health and safety considerations, NOPSA has increased its focus on safety case assessments and through its inspection of drilling rigs, regarding:

- *Command and control arrangements:* specifically including communication between the titleholder's and operator's representatives onboard drilling rigs.
- *Simultaneous operations:* specifically including safety-related interface arrangements between titleholders and operators of separate facilities conducting co-located simultaneous operations.

In addition NOPSA has increased its planned inspection frequency for manned drilling and production facilities from once to twice per year. A recruitment programme has been instigated to resource this higher frequency.

Report Recommendations	Government Response	Implementation
<p>16 The use/type of barriers (including any change requests relating thereto) must be the subject of consultation between licensees and rig operators prior to installation. A proper risk assessment should be carried out, agreed upon, and documented in writing before installation. Joint written certification as to the appropriateness of the use of particular barriers should take place before installation. Senior onshore representatives of stakeholder entities should be involved in that certification process.</p>	<p><i>Accepted.</i></p> <p>While this is primarily an industry operational matter the Government considers that it would be appropriate for industry to carefully consider adopting these recommendations..</p> <p>In addition, the Government considers that this recommendation is consistent with current regulatory practice and requirements. Pursuant to Part 2, Regulation 6 of the <i>Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004</i>, operators are required to inform the Regulator of well activity as a requirement of the WOMP. This information is provided to the Regulator through the daily drilling report.</p> <p>Furthermore, the Government notes that the use of barriers and associated risks must be approved by the Regulator through the WOMP.</p>	<p><i>Action to Date</i></p> <p>Following the Montara and Gulf of Mexico incidents, the offshore petroleum industry has performed its own safety checks. A number of companies have implemented further actions including reviews of well plans, drilling processes, blow-out contingency plans, testing frequencies and training of personnel.</p>
<p>17 The successful installation of every barrier should be the subject of written verification within and between licensees and rig operators; and should be the subject of explicit reporting to the relevant regulator(s).</p>	<p><i>Accepted in part.</i></p> <p>This recommendation is consistent with current regulatory practice and requirements. Pursuant to Part 2, Regulation 6 of the <i>Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004</i>, all activities relating to the installation, removal or change of barriers must be approved by the Regulator through the WOMP.</p> <p>The Government notes the daily drilling report is sufficient to address these matters.</p>	
<p>18 Removal of a barrier must be the subject of consultation between licensees and rig operators prior to removal. A proper risk assessment should be carried out and agreed upon, and documented in writing before removal. Joint written certification as to the appropriateness of removal should take place before removal. Senior onshore representatives of stakeholder entities should be involved in that certification process.</p>		
<p>19 Licensees should be subject to an express obligation to inform regulators of the proposed removal of a barrier, even if they consider that well integrity is not thereby compromised. The information should be provided by way of special report, rather than included in a standard reporting document (such as a DDR). The information provided should include risk assessment details. Removal of a barrier should not take place without prior written approval of the relevant regulator(s).</p>		

20 If a dispute arises between a licensee and a rig operator in relation to a well control issue, and is not resolved between them, the matter must be raised with the relevant regulator before discretionary operations proceed.

Not accepted.

The Government considers that Australia's objective-based regime imposes responsibility on operators for maintaining well control and well integrity. Well control issues need to be resolved quickly by the operator so the issue does not escalate further and any delays in seeking the Regulator to arbitrate disputes may result in additional complications. Such action would also in effect transfer the risk to the Regulator rather than the operator who is best placed to assess and understand the risks.

Any well control issues should be reported to the Regulator in the daily drilling report.

Section 569 of the OPGGS Act requires petroleum titleholders to carry out their petroleum recovery operations in accordance with good oilfield practice.

21 Perceived time and cost savings relating to any matters impacting upon well control should be subjected to rigorous safety assessment.

Accepted.

22 Wells drilled into hydrocarbon zones should be treated as live wells, with the potential to blowout unless a documented risk assessment establishes otherwise.

Accepted.

The Government agrees that wells drilled into hydrocarbon zones should be treated as live wells, and notes that all well activity should be reported to the Regulator in the daily drilling report.

In this regard the Government notes that this recommendation is consistent with current regulatory practice and requirements. The requirement to report well activity is legislated in Part 2, Regulation 6 of the *Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004*.

Report Recommendations	Government Response	Implementation
<p>23 Use of single strings of intermediate casing to penetrate hydrocarbon bearing zones should be carefully risk assessed. Multiple strings of intermediate casing have the advantage of isolating lost circulation zones and sealing off anomalous pressure zones. If intermediate casing is set in a hydrocarbon zone it should be treated as production casing.</p>	<p><i>Accepted.</i></p> <p>The Government accepts that the use of single casing strings should be risk assessed and notes that all well activities must be approved by the Regulator through the WOMP.</p> <p>The Government further notes that casing design and placement is addressed in Clause 503 of the <i>Schedule of Specific Requirements as to Offshore Petroleum Exploration and Production</i>, which has been adopted by the industry as accepted industry practice.</p>	<p><i>Action to Date</i></p> <p>Following the Montara and Gulf of Mexico incidents, the offshore petroleum industry has performed its own safety checks. A number of companies have implemented further actions including reviews of well plans, drilling processes, blow-out contingency plans, testing frequencies and training of personnel.</p> <p><i>Future Action</i></p> <p>The implementation of this recommendation will be informed by a broader consideration of all Commonwealth legislation applicable to the marine environment and petroleum legislation. This will be coordinated by DRET with advice and assistance from AGD and input from relevant stakeholders. It will address gaps or outstanding issues in the offshore petroleum legislative regime as identified through the Montara Commission of Inquiry and other relevant reports as appropriate. This process will also have regard to the OPGGS Act and associated regulations; the EPBC Act and associated Acts; the Protection of the Sea Acts, the Navigation Act and relevant international treaties.</p> <p>The Government will also consider if elements of the previously legislated <i>Schedule of Specific Requirements as to Offshore Petroleum Exploration and Production</i> should be incorporated into the <i>Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004</i>.</p>

- 24 A *minimum* of two barriers should be in place at all times (including during batched operations) whenever it is reasonably practicable to do so.
- 25 Reliance upon one barrier against a blowout must not take place except with the prior written approval of the relevant regulator and then only in a true emergency situation (see below).
- 26 Regulatory approval to rely on only one barrier should not be given unless (i) a proper risk assessment is carried out; (ii) exceptional circumstances exist; and (iii) risks involved are reduced to 'as low as reasonably practicable'. The default position must be that well integrity must be assured.

Accepted.

While this is primarily a matter for industry and the Regulator, the Government considers that it would be appropriate for industry and the Regulator to carefully consider adopting these recommendations in appropriate circumstances.

The Government understands that the accepted industry practice is for two well barriers to be available during all well activities and operations, including suspended and abandoned wells, where a pressure differential exists that may cause uncontrolled outflow from the borehead/wellhead to the external environment.

Furthermore, the Government notes that this recommendation is consistent with current regulatory practice. The use of barriers and associated risks must be approved by the Regulator through the WOMP, and the Regulator has the power to request additional barriers should it be considered necessary.

Action to Date

Following the Montara and Gulf of Mexico incidents, the offshore petroleum industry has performed its own safety checks. A number of companies have implemented further actions including reviews of well plans, drilling processes, blow-out contingency plans, testing frequencies and training of personnel.

Future Action

The implementation of this recommendation will be informed by a broader consideration of all Commonwealth legislation applicable to the marine environment and petroleum legislation. This will be coordinated by DRET with advice and assistance from AGD and input from relevant stakeholders. It will address gaps or outstanding issues in the offshore petroleum legislative regime as identified through the Montara Commission of Inquiry and other relevant reports as appropriate. This process will also have regard to the OPGGS Act and associated regulations; the EPBC Act and associated Acts; the Protection of the Sea Acts, the Navigation Act and relevant international treaties.

The Government will also consider if elements of the previously legislated *Schedule of Specific Requirements as to Offshore Petroleum Exploration and Production* should be incorporated into the *Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004*.

Report Recommendations

Government Response

Implementation

27 Licensees and rig operators should install an additional barrier whenever (i) there is any real doubt as to the integrity of any barrier; (ii) whenever the risk of flow from a reservoir increases materially in the course of operations; and (iii) where the consequences of a blowout are grave (for example, for reef systems or shorelines).

Accepted.

While this is primarily an industry operational matter, the Government considers that it would be appropriate for industry and the Regulator to carefully consider adopting these recommendations.

Pursuant to Part 2, Regulation 6 of the *Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004*, operators are required to inform the Regulator of well activity as a requirement of the WOMP. This information is by accepted industry practice provided to the Regulator through the daily drilling report.

Furthermore, the Government notes that the use of barriers and associated risks must be approved by the Regulator through the WOMP, and that the Regulator can request additional barriers if appropriate prior to any activity being undertaken.

Action to Date

Following the Montara and Gulf of Mexico incidents, the offshore petroleum industry has performed its own safety checks. A number of companies have implemented further actions including reviews of well plans, drilling processes, blow-out contingency plans, testing frequencies and training of personnel.

28 The industry standard of two barriers should be replaced with the concept of 'two or more barriers' as a minimum standard. A *minimum* standard when operations proceed normally should never be regarded as a *sufficient* standard in other circumstances.

Accepted.

The Government accepts that two barriers should be available during all well activities and operations and further notes that this is an existing, accepted industry practice.

The Government also notes that this recommendation is consistent with current regulatory practice, where the regulator has the power to request additional barriers as a part of the approval of the WOMP.

Action to Date

Following the Montara and Gulf of Mexico incidents, the offshore petroleum industry has performed its own safety checks. A number of companies have implemented further actions including reviews of well plans, drilling processes, blow-out contingency plans, testing frequencies and training of personnel.

Future Action

The implementation of this recommendation will be informed by a broader consideration of all Commonwealth legislation applicable to the marine environment and petroleum legislation. This will be coordinated by DRET with advice and assistance from AGD and input from relevant stakeholders. It will address gaps or outstanding issues in the offshore petroleum legislative regime as identified through the Montara Commission of Inquiry and other relevant reports as appropriate. This process will also have regard to the OPGGS Act and associated regulations; the EPBC Act and associated Acts; the Protection of the Sea Acts, the Navigation Act and relevant international treaties.

The Government will also consider if elements of the previously legislated *Schedule of Specific Requirements as to Offshore Petroleum Exploration and Production* should be incorporated into the *Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004*.

Report Recommendations

Government Response

Implementation

29 Industry, regulators, and training/research institutions should develop standards that address best practices for cementing operations (including liaising, as appropriate, with overseas regulators) with a view to overcoming problems which can effect the integrity of cemented casing shoes, annulus and cement plugs.

Accepted.

The Government considers that it would be appropriate for industry and the Regulator to carefully consider adopting these recommendations. The Government notes that industry has implemented accepted industry practices for cementing operations, which are reviewed and updated where appropriate.

Action to Date

Following the Montara and Gulf of Mexico incidents, the offshore petroleum industry has performed its own safety checks. A number of companies have implemented further actions including reviews of well plans, drilling processes, blow-out contingency plans, testing frequencies and training of personnel.

30 Tracking and analysis of cementing problems/failures should occur to assess industry trends, principal causes, remedial techniques and so on.

In relation to occupational health and safety considerations, NOPSA has increased its focus on safety case assessments and through its inspection of drilling rigs, regarding:

31 It is recommended that industry, regulators, and training/research institutions liaise with one another with a view to developing better techniques for testing and verifying the integrity of cemented casing shoes as barriers (particularly in atypical situations such as where the casing shoe is located within a reservoir in a horizontal or high angle position at great depth).

- *Command and control arrangements:* specifically including communication between the titleholder's and operator's representatives onboard drilling rigs.

32 Cement integrity should be evaluated wherever practicable by way of cement evaluation tests, rather than relying on pre-operational calculations of cement and displacement fluid volumes.

- *Simultaneous operations:* specifically including safety-related interface arrangements between titleholders and operators of separate facilities conducting co-located simultaneous operations.

33 It should be standard industry practice to re-test a cemented casing shoe (that is, after WOC) whenever the plugs do not bump or the float valves apparently fail. Standard industry practice should require consideration of other tests in addition to a repeat pressure test.

In addition NOPSA has increased its planned inspection frequency for manned drilling and production facilities from once to twice per year. A recruitment programme has been instigated to resource this higher frequency.

34 Any indication of a compromised cemented shoe which cannot be resolved with a high measure of confidence should result in the installation of additional well control barrier(s).

- 35 Volumes of cement used in connection with barrier installation should be calculated with the assistance of a pro-forma which records all relevant base-line data, which should be verified by onshore personnel.
- 36 If performance of barrier installation is outsourced by a licensee, the contractor (for example, the cementing company) should be engaged on terms which clearly require the provision of expert advisory services by the contractor with respect to barrier integrity.
- 37 Consideration should be given to ways to ensure that contractors who are involved in barrier installation (such as cementing companies) have a direct interest in the performance of works to a proper standard. In particular, consideration should be given to (i) preventing contractors from avoiding the economic consequences of negligent installation of barriers; and/or (ii) imposing specific legislative standards of workmanship on contractors with respect to well control (similar to those which presently apply to licensees).

Accepted in part.

The Government notes that this recommendation is consistent with accepted industry practice. Preliminary cement volume calculations are included in the WOMIP, which is approved by the Regulator before activity commences. As such, an additional requirement for a pro-forma is not required.

The Government notes that according to accepted industry practice, cement volume calculations should be verified by the on-rig technical specialist once the actual measured depths and hole and casing sizes are finalised, and reported to the Regulator in the daily drilling report.

Accepted.

Noting this is an industry operational matter, the Government considers that it would be appropriate for industry to carefully consider adopting these recommendations in appropriate circumstances.

Action to Date

Following the Montara and Gulf of Mexico incidents, the offshore petroleum industry has performed its own safety checks. A number of companies have implemented further actions including reviews of well plans, drilling processes, blow-out contingency plans, testing frequencies and training of personnel. Operators are also working to clarify company operational practices and methods of communication onshore and offshore to prevent misunderstandings and miscommunications from occurring.

Accepted in principle.

This recommendation, if progressed, may have significant commercial and contractual impacts for the operations of the offshore petroleum industry. The Government would welcome the views of stakeholders.

Action to Date

Following the Montara and Gulf of Mexico incidents, the offshore petroleum industry has performed its own safety checks. A number of companies have implemented further actions including reviews of well plans, drilling processes, blow-out contingency plans, testing frequencies and training of personnel. Operators are also working to clarify company operational practices and methods of communication onshore and offshore to prevent misunderstandings and miscommunications from occurring.

Report Recommendations	Government Response	Implementation
<p>38 Horizontal or high angle penetration of a reservoir should be avoided <i>wherever practicable</i> until such time as the apparent problems associated with the cementing of a casing shoe in these situations are satisfactorily overcome. If a casing string does penetrate a well horizontally or at a high angle, standard practice should be to install two secondary barriers in addition to the cemented casing shoe.</p>	<p><i>Not accepted.</i></p> <p>The Government notes the Commissioner's views but does not agree that horizontal, multi-lateral and high-angle drilling methods should be avoided. Horizontal, multi-lateral and high-angle production wells are commonly drilled worldwide and are essential technology for efficient reservoir drainage.</p> <p>The Montara incident was caused by operator complacency and a lack of adherence to standard operating procedures, not the extension of casing in the horizontal well section.</p>	
<p>39 The BOP and rig should not move from a well until barrier integrity has been verified.</p>	<p><i>Accepted.</i></p> <p>The Government agrees that the BOP and rig should not be moved from a well until the integrity of all barriers has been verified.</p>	<p><i>Action to Date</i></p> <p>Following the Montara and Gulf of Mexico incidents, the offshore petroleum industry has performed its own safety checks. A number of companies have implemented further actions including reviews of well plans, drilling processes, blow-out contingency plans, testing frequencies and training of personnel.</p>
<p>40 Barriers should not be installed or removed off-line. The derrick should be located over a well at the time of removal and installation of any barrier. This will enable more decisive action to be taken in the event a problem arises.</p>	<p><i>Accepted.</i></p> <p>The Government accepts that the derrick should be over the well during installation or removal of a barrier to allow for timely action in the event of a problem arising.</p> <p>The Government also notes that there are a number of well operations that are performed during the well production life and do not require a derrick above the well, such as wireline, slick line, coil tubing, hydraulic snubbing unit and tree removal operations.</p>	

41 Secondary barriers (including PCCCs) should only be installed, tested, and removed with a BOP in place unless a documented risk assessment indicates that well control can be maintained at all times.

Accepted.

The Government accepts the Commissioner's view. In the case of Montara, the BOP could not be installed on the H1 well prior to removal of the PCCC. A BOP is not applicable in every possible well operation as a well control measure.

42 PCCCs should be installed in a timely manner (for example, to prevent corrosion in the MLS apparatus). Non-installation in order to park a BOP is not acceptable.

Accepted.

The Government accepts that this recommendation is consistent with current regulatory requirements and practices. Pursuant to Part 2, Regulation 6 of the *Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004*, operators are required to inform the Regulator of well activity as a requirement of the WOMP, including installation of PCCCs.

Action to Date

Following the Montara and Gulf of Mexico incidents, the offshore petroleum industry has performed its own safety checks. A number of companies have implemented further actions including reviews of well plans, drilling processes, blow-out contingency plans, testing frequencies and training of personnel.

Operators are also working to clarify company operational practices and methods of communication onshore and offshore to prevent misunderstandings and miscommunications from occurring.

43 Wells should be re-entered with a BOP in place unless a documented risk assessment indicates that well control can be maintained at all times.

Accepted.

The Government accepts the Commissioner's view but notes that a BOP is not applicable in every possible well operation as a well control measure.

This recommendation is consistent with current regulatory requirements and accepted industry practices. Activities relating to the installation, removal or change to barriers must be approved by the Regulator through the WOMP.

The Government also notes that the daily drilling report is sufficient to address these matters.

Report Recommendations

Government Response

Implementation

44 Any equipment (including PCCGs) used as, or to install, a barrier should be manufactured for that purpose and be generally recognised as fit for purpose. If equipment is designed in-house by a licensee or rig operator it should not be approved for use unless and until it is subjected to expert external analysis.

Accepted in principle.

While this is primarily a matter for industry, the Government considers that it would be appropriate for industry to carefully consider adopting these recommendations..

The Government notes the Commissioner's view and suggests that industry consider carefully if all barrier equipment needs to be subject to specific expert external analysis.

Materials and equipment used in drilling operations are assessed in the WOMP, and were also considered in Clause 502 of the *Schedule of Specific Requirements as to Offshore Petroleum Exploration and Production*, which has been adopted by the industry in general as part of accepted industry practices.

Action to Date

Following the Montara and Gulf of Mexico incidents, the offshore petroleum industry has performed its own safety checks. A number of companies have implemented further actions including reviews of well plans, drilling processes, blow-out contingency plans, testing frequencies and training of personnel.

Future Action

The implementation of this recommendation will be informed by a broader consideration of all Commonwealth legislation applicable to the marine environment and petroleum legislation. This will be coordinated by DRET with advice and assistance from AGD and input from relevant stakeholders. It will address gaps or outstanding issues in the offshore petroleum legislative regime as identified through the Montara Commission of Inquiry and other relevant reports as appropriate. This process will also have regard to the OPGGS Act and associated regulations; the EPBC Act and associated Acts; the Protection of the Sea Acts; the Navigation Act and relevant international treaties.

The Government will also consider if elements of the previously legislated *Schedule of Specific Requirements as to Offshore Petroleum Exploration and Production* should be incorporated into the *Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004*.

Report Recommendations	Government Response	Implementation
<p>45 Manufacturers should be consulted about how to address non-routine operational problems affecting their well control equipment.</p>	<p><i>Accepted.</i> While this is primarily an industry operational matter, the Government considers that it would be appropriate for industry to carefully consider adopting this recommendations.</p>	<p><i>Action to Date</i> Following the Montara and Gulf of Mexico incidents, the offshore petroleum industry has performed its own safety checks. A number of companies have implemented further actions including reviews of well plans, drilling processes, blow-out contingency plans, testing frequencies and training of personnel.</p>
<p>46 Drilling programs dealing with barrier installation should incorporate relevant aspects of manufacturer's instructions.</p>	<p><i>Accepted.</i> The Government notes the Commissioner's views and considers that as part of any drilling program that detailed manufacturer's operating manual and service procedures for equipment used should be available onsite.</p>	
<p>47 Any pro-formas used by licensees, rig operators and contractors for recording information about installation of barriers should explicitly provide for 'exception reporting', that is, the form should include provision for recording any unforeseen or untoward events which occur in the course of installation.</p>	<p><i>Accepted.</i> While this is primarily an industry operational matter, the Government considers that it would be appropriate for industry to carefully consider adopting these recommendations.</p>	<p><i>Action to Date</i> Operators are working to clarify company operational practices and methods of communication onshore and offshore to prevent misunderstandings and miscommunications from occurring</p>

48 Careful consideration must be given to equipment compatibility as part of well construction design.

Accepted.

The Government accepts that equipment compatibility should be considered in the well construction design phase.

Materials and equipment used in drilling operations are considered by the Regulator in the WOMP, and were also considered in Clause 502 of the *Schedule of Specific Requirements as to Offshore Petroleum Exploration and Production*, which has been adopted by the industry in general as part of accepted industry practices.

Action to Date

Following the Montara and Gulf of Mexico incidents, the offshore petroleum industry has performed its own safety checks. A number of companies have implemented further actions including reviews of well plans, drilling processes, blow-out contingency plans, testing frequencies and training of personnel.

In relation to occupational health and safety considerations, NOPSA has increased its focus on safety case assessments and through its inspection of drilling rigs, regarding:

- *Command and control arrangements*: specifically including communication between the titleholder's and operator's representatives onboard drilling rigs.
- *Simultaneous operations*: specifically including safety-related interface arrangements between titleholders and operators of separate facilities conducting co-located simultaneous operations.

In addition NOPSA has increased its planned inspection frequency for manned drilling and production facilities from once to twice per year. A recruitment programme has been instigated to resource this higher frequency.

Future Action

The implementation of this recommendation will be informed by a broader consideration of all Commonwealth legislation applicable to the marine environment and petroleum legislation. This will be coordinated by DRET with advice and assistance from AGD and input from relevant stakeholders. It will address gaps or outstanding issues in the offshore petroleum legislative regime as identified through the Montara Commission of Inquiry and other relevant reports as appropriate. This process will also have regard to the OPGGS Act and associated regulations; the EPBC Act and associated Acts; the Protection of the Sea Acts, the Navigation Act and relevant international treaties.

49 Batched drilling operations should only be undertaken after careful assessment of the special risks which such operations give rise to; well control must be maintained during the course of batched drilling operations.

50 Where multiple wells are drilled, operations and occurrences at one well must be carefully assessed for any implications with respect to well control at other wells.

Accepted.

The Government accepts the Commissioner's view but considers that these recommendations are essentially the same as 'batched drilling operations' which occur when multiple wells are drilled. Operators are responsible under the OPGGS Act for maintaining well control and well integrity.

This recommendation is consistent with current regulatory requirements and accepted industry practices. Pursuant to Part 2, Regulation 6 of the *Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004*, drilling activities and associated risks are assessed by the Regulator through the WOMP.

Section 569 of the OPGGS Act also requires petroleum titleholders to carry out their petroleum recovery operations in accordance with good oilfield practice.

51 The mere fact that the rig is over the platform should not be regarded by licensees or regulators as sufficient justification for reliance on only one barrier. The default position should be that producible wells are shut-in when a rig is moved on and off a platform, or when a drilling unit is moved between wells on a platform.

Accepted.

The Government accepts that the placement of the rig over the platform should not justify reliance on one barrier.

Under Australia's objective-based regime, responsibility for maintaining well control and well integrity is placed on operators.

Accepted industry practice is for two well barriers to be available during all well activities and operations, including suspended and abandoned wells, where a pressure differential exists that may cause uncontrolled outflow from the borehead/wellhead to the external environment.

Action to Date

Following the Montara and Gulf of Mexico incidents, the offshore petroleum industry has performed its own safety checks. A number of companies have implemented further actions including reviews of well plans, drilling processes, blow-out contingency plans, testing frequencies and training of personnel.

In relation to occupational health and safety considerations, NOPSA has increased its focus on safety case assessments and through its inspection of drilling rigs, regarding:

- *Command and control arrangements:* specifically including communication between the titleholder's and operator's representatives onboard drilling rigs.
- *Simultaneous operations:* specifically including safety-related interface arrangements between titleholders and operators of separate facilities conducting co-located simultaneous operations.

In addition NOPSA has increased its planned inspection frequency for manned drilling and production facilities from once to twice per year. A recruitment programme has been instigated to resource this higher frequency.

	Government Response	Implementation
52	<p>Relevant personnel from licensees and rig operators should meet face to face to agree on, and document, well control issues/arrangements prior to commencement of drilling operations. Well control should be regarded as a so-called SIMOP to signify its critical importance to both licensees and rig operators, and to ensure that they each take responsibility for achievement and maintenance of well control.</p>	<p><i>Action to Date</i></p> <p>Following the Montara and Gulf of Mexico incidents, the offshore petroleum industry has performed its own safety checks. A number of companies have implemented further actions including reviews of well plans, drilling processes, blow-out contingency plans, testing frequencies and training of personnel. Operators are also working to clarify company operational practices and methods of communication onshore and offshore to prevent misunderstandings and miscommunications from occurring.</p> <p>In relation to occupational health and safety considerations, NOPSA has increased its focus on safety case assessments and through its inspection of drilling rigs, regarding:</p> <ul style="list-style-type: none"> • <i>Command and control arrangements</i>: specifically including communication between the titleholder's and operator's representatives onboard drilling rigs. • <i>Simultaneous operations</i>: specifically including safety-related interface arrangements between titleholders and operators of separate facilities conducting co-located simultaneous operations. <p>In addition NOPSA has increased its planned inspection frequency for manned drilling and production facilities from once to twice per year. A recruitment programme has been instigated to resource this higher frequency.</p>
53	<p>Prior to commencement of drilling operations, senior representatives of the licensee and rig operator should exchange certificates to the effect that their respective key personnel and contractors have been informed in writing of agreed well control arrangements.</p>	<p><i>Accepted.</i></p> <p>While this is primarily an industry operational matter, the Government considers that it would be appropriate for industry to carefully consider adopting these recommendations.</p> <p>The Government also notes that operators already have well control and operating standards in place.</p>
54	<p>Information relevant to well control must be captured and communicated <i>within</i> and <i>between</i> licensees and rig operators (and relevant third party contractors), in a manner which ensures it comes to the attention of relevant personnel. In particular, protocols should be developed to ensure that changes in shift and hitch do not operate as communication barriers.</p>	
55	<p>All communications between on-rig and onshore personnel relating to well control should be documented in a timely manner.</p>	
56	<p>Logistics management of well control equipment should be conducted in such a way as to operate as a check against deficient well control practices, for example, use of serial numbers to track availability, testing, and deployment of well control equipment.</p>	

- 57 Decision-making about well control issues should be professionalised. Industry participants must recognise that decision-makers owe independent duties to the public, not just their employer or principal, in relation to well control. Risk management in the context of well control needs to be understood as an ethical/professional duty. Self-regulation contemplates self-regulation by the industry, not just by individual licensees and operators.
- 58 Existing well control training programs should be reviewed by the industry, regulators and training providers, with a focus on well control accidents that have occurred (in Australia and overseas).
- 59 A specific focus on well control training should be mandatory for key personnel involved in well control operations (including both on-rig personnel and onshore personnel in supervisory capacities).
- 60 Licensees and rig operators (and third party contractors involved in well control operations) should specifically assess, and document, the nature and extent of knowledge/skills of relevant personnel in relation to well control (including familiarity of personnel with agency-specific requirements and procedures). Training needs and opportunities should be identified. This process should take place on engagement and at appropriate intervals.

Accepted.

While this is primarily an industry operational matter, the Government considers that it would be appropriate for industry to carefully consider adopting these recommendations.

The Government also notes that operators already have well control and operating standards in place.

Action to Date

Following the Montara and Gulf of Mexico incidents, the offshore petroleum industry has performed its own safety checks. A number of companies have implemented further actions including reviews of well plans, drilling processes, blow-out contingency plans, testing frequencies and training of personnel. Operators are also working to clarify company operational practices and methods of communication onshore and offshore to prevent misunderstandings and miscommunications from occurring.

In relation to occupational health and safety considerations, NOPSA has increased its focus on safety case assessments and through its inspection of drilling rigs, regarding:

- *Command and control arrangements*: specifically including communication between the titleholder's and operator's representatives onboard drilling rigs.
- *Simultaneous operations*: specifically including safety-related interface arrangements between titleholders and operators of separate facilities conducting co-located simultaneous operations.

In addition NOPSA has increased its planned inspection frequency for manned drilling and production facilities from once to twice per year. A recruitment programme has been instigated to resource this higher frequency

- 61 Licensees, rig operators, and relevant third party contractors should develop well control competency standards for their key personnel. Wherever possible, the competencies of key personnel should be benchmarked against their roles and responsibilities.
- 62 Licensees, rig operators and relevant third party contractors should develop well control competency standards for key personnel in other entities involved in well control operations.

Accepted.

While this is primarily an industry operational matter, the Government considers that it would be appropriate for industry to carefully consider adopting these recommendations.

The Government notes that operators already have well control and operating standards in place.

Action to Date

Following the Montara and Gulf of Mexico incidents, the offshore petroleum industry has performed its own safety checks. A number of companies have implemented further actions including reviews of well plans, drilling processes, blow-out contingency plans, testing frequencies and training of personnel.

Operators are also working to clarify company operational practices and methods of communication onshore and offshore to prevent misunderstandings and miscommunications from occurring.

In relation to occupational health and safety considerations, NOPSA has increased its focus on safety case assessments and through its inspection of drilling rigs, regarding:

- *Command and control arrangements:* specifically including communication between the titleholder's and operator's representatives onboard drilling rigs.
- *Simultaneous operations:* specifically including safety-related interface arrangements between titleholders and operators of separate facilities conducting co-located simultaneous operations.

In addition NOPSA has increased its planned inspection frequency for manned drilling and production facilities from once to twice per year. A recruitment programme has been instigated to resource this higher frequency.

- 63 Achievement and maintenance of well control should be written into the job responsibilities of key personnel, at every level up to and including CEOs. That is, a functional line of accountability for well control must exist up to, and including, CEOs.

Accepted.

The achievement and maintenance of well control is fundamental to the petroleum industry maintaining its licence to operate.

The Government notes the Commissioner's view and suggests that industry consider implementing this recommendation.

64 Supervision/oversight of well control operations (within licensees, rig operators and by regulators) must occur without assuming adherence to good oilfield practice. The opposite assumption should prevail: namely adherence to good oilfield practice may well be compromised by the pursuit of time and cost savings.

Noted.

The Government notes the Commissioner's view.

65 Licensees and rig operators should be astute in ensuring that corporate systems and culture encourage rather than discourage raising of well control issues. For instance, do performance bonuses or rewards actually encourage or discourage reporting of issues? Is there a system in place to enable anonymous reporting of well control concerns? What whistleblower protections are in place?

Accepted in principle.

The Government notes the questions raised by the Commissioner, which are appropriate for industry to respond to.

Chapter 4 of the Montara Report

The Regulatory Regime: Well Integrity and Safety

Chapter 4 of the Report – The Regulatory Regime considers the adequacy of the existing regulatory regime as it applies to offshore petroleum activities, including compliance and enforcement. The chapter contains 12 of 105 recommendations.

Chapter 4 – The Regulatory Regime: Well Integrity and Safety

Recommendations

Report Recommendations	Government Response	Implementation
<p>66 The Inquiry supports the objective (rather than prescriptive) approach to regulation now followed in Australia. However, the pendulum has swung too far away from prescriptive standards. In some areas relating to well integrity there needs to be minimum standards.</p>	<p><i>Accepted in part.</i></p> <p>The Government supports the objective-based regime for the regulation of offshore petroleum activities and notes that this regime will be further enhanced by the establishment of a single national regulator for offshore petroleum, mineral and greenhouse gas storage activities.</p> <p>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'. 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. The objective based 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.</p> <p>An important feature of objective based regulation is that it encourages an improvement rather than a compliance mentality. It is essential that a regulatory system encourage the creator of the risk to move beyond minimum standards in a continuous effort for improvement and not just accept the minimum standard. The risk of specific standards is that they can shift the burden of responsibility from the operator to the government and stifle innovation.</p>	<p><i>Action to Date</i></p> <p>The Minister for Resources and Energy in his speech to the South East Asia Australia Offshore Conference on 23 September 2010 reaffirmed the Government's commitment to the establishment of a single national regulator for offshore petroleum activities by 1 January 2012.</p> <p>The <i>Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Bill 2010</i> strengthened the role of the National Offshore Petroleum Safety Authority (NOPSA) in relation to structural integrity. The amendments imposed on offshore petroleum titleholders an occupational health and safety duty of care in relation to wells and well related equipment, and improved NOPSA's inspection and investigation powers in relation to suspected breaches.</p> <p>In regards to the function of NOPSA, these legislative changes augment its existing functions to include non-occupational health and safety aspects of structural integrity for facilities, wells and well-related equipment in Commonwealth waters. NOPSA will also have responsibility for the oversight of occupational health and safety in relation to all wells - not just those which form part of a facility and therefore captured by that definition.</p>

The Australian objective-based regime 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'. Prescriptive based regulation focuses on minimum compliance, requires frequent amendment and relies heavily on the ability of legislative drafters to understand and anticipate the risks and operational environment of the industry.

Future Action

The Government will consider if elements of the previously legislated *Schedule of Specific Requirements as to Offshore Petroleum Exploration and Production* should be incorporated into the *Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004*.

67 To better ensure that 'risks' are identified and managed in accordance with sound engineering principles and good oilfield practice, it is recommended that regulation 25(1)(a)(i) and (2)(a)(i) of the Management of Well Operations Regulations, be reworded as follows: 'A titleholder must not commence/continue a well activity if...a well integrity hazard exists in relation to the well.'

Accepted.

The Government is considering the proposed amendments to the regulations of the *Management of Well Operations Regulations*.

Future Action

This process will be completed during the first half of 2011, with any regulatory amendments required to the *Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004* completed as soon as they can be accommodated within the Executive Council timetable.

68 The definition of 'good oilfield practice' in the OPGGS Act is unduly narrow. The current definition is incapable of application except where things 'are generally accepted as good and safe'. The definition should be amended such that 'good oilfield practice includes...'

Accepted.

The Government agrees that amendments to the definition of 'good oilfield' practice are required.

This amendment would be consistent with Australia's current non-prescriptive (objective-based) petroleum regulatory regime. Such a regime allows for the introduction of new and improved operator processes and procedures in response to technologies and other circumstances while adhering to the key legislative principles.

Future Action

As the Department with policy responsibility for the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (and its associated regulations), consideration of this recommendation will be led by DRET.

This process will be completed during the first half of 2011, with any legislative amendments required introduced as soon as they can be accommodated within the legislative timetable.

Report Recommendations

Government Response

Implementation

69 Written (rather than verbal) approval from the DA (or new regulator) should be obtained before the commencement of well activities that lead to a physical change of a wellbore, other than in a true emergency situation (requiring amendment to regulation 17 of the Management of Well Operations Regulations).

Accepted.

The Government notes this recommendation is consistent with existing practices where written approval from the relevant Regulator is required for all permissioning documents including WOMPs, safety cases and environmental plans prior to the commencement of any offshore petroleum activity.

Written approval from the Regulator is required prior to any well activity occurring. The granting of verbal approval in relation to well activities is not standard practice.

The Government agrees that in an emergency situation where a well control issue needs to be resolved quickly, an operator cannot wait for a written response from the Regulator and that verbal approval would be appropriate in this circumstance.

The Montara incident identified the need for more active emergency response engagement by regulators and industry. Such engagement needs to be balanced to ensure both operator and regulator independence is not compromised.

Action to Date

In collaboration with the DRET, the Northern Territory DoR has strengthened its approvals processes and clarified that all approvals must be made in writing.

70 The OPGGS Act should be amended to allow for a power to suspend a petroleum production licence (in addition to the current power to cancel a licence or suspend its conditions).

Noted.

The Government notes the Commissioner's view on this matter.

The omission of a power to suspend a production licence was deliberate. The Government in preparing the legislation (Section 266 Suspension of rights – petroleum exploration permit or petroleum retention lease) determined this power to suspend should not apply to rights conferred under production licences, infrastructure licences or pipeline licences. The distinction was made on the basis of the higher capital investment and the smaller total areas of the seabed that operations under these licences involve.

The Government notes that the OPGGS Act and its associated regulations provide a number of mechanisms that allow for the withdrawal of a production licensee's right to operate. These mechanisms include the withdrawal of approvals by the Regulator for Well Operations Management Plans; the Environment Plan; and Safety Case.

An operator can only undertake an offshore petroleum activity if all approvals have been granted.

71 There should be a review to determine whether it is appropriate to introduce a rigorous civil penalty regime and/or substantially increase some or all of the penalties that can be imposed for breaches of legislative requirements relating to well integrity and safety.

Accepted.

The Government is considering amending the OPGGS Act to provide the power to impose a civil penalty regime. This process will also consider increasing some or all of the existing penalties.

Future Action

As the Department with policy responsibility for the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (and its associated regulations), consideration of this recommendation will be led by DRET.

This process will be completed during the first half of 2011, with any legislative amendments required introduced as soon as they can be accommodated within the legislative timetable.

Report Recommendations

Government Response

Implementation

72 NOPSA's prohibition powers should be extended such that a prohibition notice can be issued where a NOPSA Occupational Health and Safety Inspector believes, on reasonable grounds, that an activity is occurring or may occur at a facility involving an immediate threat to the health or safety of a person.

Accepted.

The Government supports amendment to the prohibition notice powers under the OPGGS Act.

This recommendation is consistent with existing practices. NOPSA's submission to the Montara Commission of Inquiry highlighted the need for the broadening of NOPSA's occupational health and safety inspector's powers in the event that an operator is not willing to comply, or if the circumstances are such that an inspector was prevented from issuing a notice due to the current narrowness of the prohibition powers.

This amendment would enable inspectors to intervene and issue notices prohibiting entry to facilities where the inspector considers an immediate risk to health or safety of a person *is occurring or may occur* at a facility.

The Government further notes that the proposed amendment is consistent with other Commonwealth and State based safety legislative frameworks.

Future Action

As the Department with policy responsibility for the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (and its associated regulations), consideration of this recommendation will be led by DRET.

This process will be completed during the first half of 2011, with any legislative amendments required introduced as soon as they can be accommodated within the legislative timetable.

Report Recommendations

Government Response

Implementation

73 A single, independent regulatory body should be created, looking after safety as a primary objective, well integrity and environmental approvals. Industry policy and resource development and promotion activities should reside in government departments and not with the regulatory agency. The regulatory agency should be empowered (if that is necessary) to pass relevant petroleum information to government departments to assist them to perform the policy roles.

Accepted.

The Australian Government supports reform of the current offshore petroleum regulatory arrangements. Noting the fundamental relationship between the integrity of facilities and the safety of people and operations, the Government supports the expansion of NOPSA's responsibilities beyond occupational health and safety issues to also include responsibility for the structural integrity of pipelines, wells and well-related equipment including the environmental aspects of petroleum development.

The Government further supports the establishment of a single government department or agency to advise on title decisions and administration, and major questions of resource management and development.

Action to Date

The Minister for Resources and Energy in his speech to the South East Asia Australia Offshore Conference on 23 September 2010 reaffirmed the Government's commitment to the establishment of a single national regulator for offshore petroleum activities by 1 January 2012.

The *Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Bill 2010* strengthened the role of the National Offshore Petroleum Safety Authority (NOPSA) in relation to structural integrity. The amendments imposed on offshore petroleum titleholders an occupational health and safety duty of care in relation to wells and well related equipment, and improved NOPSA's inspection and investigation powers in relation to suspected breaches.

In regards to the function of NOPSA, these legislative changes will augment its existing functions to include non-occupational health and safety aspects of structural integrity for facilities, wells and well-related equipment in Commonwealth waters. NOPSA will also have responsibility for the oversight of occupational health and safety in relation to all wells – not just those which form part of a facility and therefore captured by that definition.

A National Offshore Petroleum Titles Administrator (NOPTA) will be established within the DRET to advise the Joint authority on title decisions and administer titles and data relating to offshore petroleum, minerals and greenhouse gas storage activities in Commonwealth waters.

Refer recommendation 73.

74 The proposal of the Productivity Commission's Research Report (*Review of Regulatory Burden on the Upstream Petroleum (oil and Gas) Sector*, April 2009) to establish a NOPR should be pursued at a minimum.

Accepted.

Refer recommendation 73.

75 Responsibility for well integrity should be moved to NOPSA (as also proposed by the Productivity Commission).

Refer recommendation 73.

76 In the meantime, the Minister should:

- a. consider revoking the existing delegation to the Director of Energy, NT DoR providing the functions and powers of the DA under the OPGGS Act and Regulations specified in item 1 of the Schedule to that instrument (the Minister's DA powers and functions) and transferring this delegation to either NOPSA, the Commonwealth Department of Resources, Energy and Tourism (RET), or a DA from another state;
- b. enquire into whether the other DAs to whom he has delegated his functions and powers relating to well integrity are adequately fulfilling their roles; and
- c. consider amendments to the OPGGS Act to enable DAs to be given direction as to the performance of their regulatory roles.

Accepted in part

Section 72 (3) of the OPGGS Act provides for the ability to revoke an existing delegation of functions and powers of the Designated Authority for the Territory of Ashmore and Cartier Islands. The delegation of the Commonwealth's Designated Authority powers and functions to the Territory of Ashmore and Cartier Islands has historically been viewed as an extension to the principal Northern Territory offshore area.

However the power to revoke a delegation under section 72 (3) of the OPGGS Act does not extend to the functions and powers of the Northern Territory Designated Authority in relation to the Northern Territory offshore area, or any other Designated principal offshore area.

The Government therefore considers that the withdrawal of the delegation for the Ashmore and Cartier Islands would not address the full range of systemic issues identified by the Inquiry given the Northern Territory's ongoing responsibility as the Designated Authority for the Northern Territory principal offshore area.

b. Accepted.

DRET has requested all Designated Authorities (Tasmania, Western Australia, Northern Territory, Victoria, South Australia, New South Wales and Queensland) undertake a number of reviews to ensure the integrity of wells and their assessment, approvals and monitoring of offshore petroleum activities were in accord with the OPGGS Act.

a. Action to Date

To address the inadequacies identified by the Montara Commission of Inquiry in the NT DA's administration of offshore petroleum activity, both for the Territory of Ashmore Cartier Islands and the NT principal offshore area, the Government implemented a number of steps immediately following the conclusion of the Commission of Inquiry.

The Minister for Resources and Energy met with the Northern Territory Chief Minister and the NT DoR to discuss actions to be taken to address the deficiencies identified.

Following the meeting, the Northern Territory Department of Resources developed an action plan indicating detailed actions and milestones to be undertaken to address the deficiencies identified.

These actions include:

- Co-assessment of approval decisions by interstate regulators, primarily Western Australia and Victoria;
- Clarification of approvals and compliance responsibilities;
- Review of delegation processes and procedures; and
- Closer liaison with DRET and Geoscience Australia.

c. *Accepted*

Should the deficiencies identified by the Montara Commission of Inquiry not be satisfactorily addressed through the current offshore petroleum regulatory reform, consideration may be given to introducing amendments to the OPGGS Act to provide the responsible Commonwealth Minister with a new or extended 'general power of direction', as part of the Government's broader review of marine environment and petroleum legislation.

The Government notes, however, that such an amendment may erode the 'co-operative' relationship model upon which the offshore petroleum regulatory regime is based and lead to other constitutional issues such as Commonwealth Minister directing a State Government agency which would erode State Government Ministerial accountability.

77 The recommendations of the Inquiry in relation to suitable ways of achieving well integrity contained in Chapter 3 be included in a guidance manual that is issued for the assistance of industry and regulators.

Noted.

The Government notes that the cause of the Montara incident was not a lack of industry-accepted procedures, standards and operating manuals, but failure to follow them. As such, an additional guidance manual is unnecessary.

The Government notes that this recommendation is consistent with existing practice. The existing regime requires the written approval from the relevant Regulator for all permissioning documents including WOMP, safety case and environmental plans prior to the commencement of any offshore petroleum activity. These documents set out the processes, practices and actions that must be met by operators to ensure they meet their safety, integrity and environmental obligations.

Furthermore, it is common industry practice to have a drilling operations manual covering all aspects of drilling, completion and well control operations on the rig.

b. *Future Action*

The DRET is working with the DAs to undertake a number of reviews to ensure the integrity of wells, in particular the status of all completed and suspended wells since 2005, and that their assessment, approvals and monitoring of offshore petroleum activities were in accord with the OPGGS Act.

Furthermore, DRET is working with the DAs to ensure that best practice regulation is applied in the areas of well operations, environment and integrity.

c. *Refer recommendation 73.*

Chapter 5 of the Montara Report

Arresting the Blowout

Chapter 5 of the Report – Arresting the Blowout considers the initial response to the incident at the Montara Wellhead Platform and the steps taken by the operator and responsible Government agencies in arresting the blowout. The chapter contains 8 of 105 recommendations.

Chapter 5 – Arresting the Blowout

Recommendations

Report Recommendations	Government Response	Implementation
<p>78 In the future, and in the interests of ensuring that all possible well control options are comprehensively pursued to exhaustion, decisions as to well control response options should be the result of collaboration between the regulator and the operator rather than leaving one party to make unilateral judgements as to the appropriateness of various well control operations. The regulator should provide transparent and contemporaneous explanations to the public of all well control options under consideration at any particular time.</p>	<p><i>Noted.</i></p> <p>Refer recommendation 84.</p> <p>The Government notes that the Montara incident identified the need for more active emergency response engagement by regulators and industry. Such engagement needs to be balanced to ensure both operator and regulator independence is not compromised.</p> <p>In responding to the Montara incident, the Government did not rely only on the operator's decision regarding well control options. The Government received independent advice on all options for controlling the well from GA and NOPSA (who also sought advice from its international peers).</p> <p>The Government recognises the need for a more transparent communication strategy to inform stakeholders and the public and is developing an incident management and coordination framework based on proven frameworks such as the <i>National Counter-Terrorism Plan</i>. This framework will be coordinated by the central body to be established pursuant to recommendation 84 and will include a clearly defined, transparent communication strategy for incident response.</p>	<p><i>Action to Date</i></p> <p>The Government (through DRET and NOPSA) is progressing the Terms of Reference for the 2011 review of NOPSA's operations. An element of this review will be the consideration of NOPSA's engagement with operators.</p> <p><i>Future Action</i></p> <p>The development of an incident management and coordination framework for dealing with incidents involving the offshore petroleum industry will be led by DRET in conjunction with NOPSA and relevant stakeholders, and will be finalised by the end of 2011.</p>

79 The regulator, rather than the responsible Minister, should be given the power to direct an operator to use a particular rig for the purpose of well control operations, if appropriate in the circumstances, and the power should be used in the future if that rig is the best option available. This would necessarily involve the operator fully compensating for the use of the rig and any other associated costs. The Inquiry suggests that this power could be invoked and given effect as a condition of an operator's licence.

Noted.

The Government notes that the OPGGS Act provides the DA, as the appropriate regulator, with the power to issue directions (refer Part 6.2 OPGGS Act). In relation to the Montara incident, the Commonwealth Minister for Resources and Energy is the DA for the Territory of Ashmore Cartier Islands offshore area and was therefore the appropriate decision-maker.

In respect of compensation and associated costs, the Government does not intervene in commercial negotiations between operators.

Future Action

The Government is seeking further advice on the utility of such directions powers for use in these circumstances. This advice will be taken into consideration in the development of the Government's broader incident management and coordination framework which will be completed by the end of 2011.

80 The regulatory regime should also impose an obligation on an operator to ascertain the availability, and provide details to the regulator, of any potential relief well rigs, prior to the commencement of drilling operations (including prior to each phase of a drilling operation where applicable).

Noted.

The identification of a relief well rig is an operational matter and one that the Government considers should form part of an operator's risk management strategy, which is part of the process for seeking approval to undertake an offshore petroleum activity.

The Government considers that the risk management strategy should be identified and considered as part of the process for seeking approval to undertake an offshore petroleum activity. However, the Government does not consider that this requirement needs to be formalised in the regulatory regime.

Action to Date

The offshore petroleum industry has performed its own safety checks and reviews of its processes and procedures including the consideration of well plans, drilling processes, blow-out contingency plans, testing frequencies, training regimes for personnel and emergency response capabilities. The petroleum industry through AMOSC has also reviewed its equipment stockpile and capacity to respond to an incident.

DAs have been requested to provide clarification to all operators that the risk management strategy in force during an approved drilling program must include identification by the operator of suitable rigs within the area that could be utilised in the event of an emergency.

Report Recommendations	Government Response	Implementation
<p>81 NOPSAs develop a policy of engagement with operators so as to enable experts (including safety experts) to canvas all available options for well control in the event of a blowout.</p>	<p><i>Accepted.</i></p> <p>The Government notes that the Montara incident identified the need for more active emergency response engagement by regulators and industry. Such engagement needs to be balanced to ensure both operator responsibility and regulator independence is not compromised.</p>	<p><i>Action to Date</i></p> <p>The Government (through DRET and NOPSAs) is progressing the Terms of Reference for the 2011 review of NOPSAs's operations. An element of this review will be the consideration of NOPSAs's engagement with operators.</p> <p><i>Future Action</i></p> <p>The development of an incident management and coordination framework for dealing with incidents involving the offshore petroleum industry will be led by DRET in conjunction with NOPSAs and relevant stakeholders, and will be finalised by the end of 2011.</p>
<p>82 The Inquiry also supports Bills and Agostini's recommendation:</p> <p>'...in relation to safety case development and compliance overall, that NOPSAs revise its approach to interacting with operators prior to the safety case assessment process and subsequently direct more resources into its advisory functions. We further recommend that NOPSAs develop and implement a formal plan for supporting and guiding each operator prior to safety case acceptance, as well as for ongoing compliance with that safety case, recognising the unique experience, capabilities and assessed risk of that operator. Each plan needs to include advice, education and liaison meetings with the operators. The plan needs to be continuously reviewed and reassessed based on the latest information, including the interaction with the operator.'</p>	<p><i>Accepted.</i></p> <p>The Government considers that this recommendation is consistent with recommendation 3 of the Offshore Petroleum Safety Regulatory Inquiry (NOPSAs Report). Consistent with the Government's response to recommendation 3 of the NOPSAs Report, the Government notes that NOPSAs has commenced work to address these issues and will continue to be responsible for improving interaction and consultation with stakeholders on this.</p> <p>The Government proposes that, as part of the 2011 NOPSAs review, a review of policy matters around the safety case framework (including development, content requirements and implementation) be included.</p>	<p><i>Action to Date</i></p> <p>The Government (through DRET and NOPSAs) is progressing the Terms of Reference for the 2011 review of NOPSAs's operations. An element of this review will be the consideration of NOPSAs's engagement with operators.</p> <p><i>Future Action</i></p> <p>The CEO of NOPSAs will be responsible for improving the interaction between NOPSAs and its stakeholders. The Government will work with the CEO to determine the process for the 2011 review and will consult with stakeholders to determine the most appropriate means of ensuring improvements in the development, implementation and compliance with the safety case requirement.</p>

83

The regulator should pre-assess and review in a generic sense, and in conjunction with the offshore petroleum industry, available options for well control in the event of a blowout. Being 'match fit' in this sense will enable a quicker and more effective response in terms of safety assessment, and will ensure that expectations of both operator and regulator are more readily aligned.

Accepted in principle.

The Government agrees that the Montara incident identified the need for more active emergency response engagement by regulators and industry. Such engagement needs to be balanced to ensure both operator responsibility and regulator independence is not compromised.

Action to Date

The Government (through DRET and NOPSA) is progressing the Terms of Reference for the 2011 review of NOPSA's operations. An element of this review will be the consideration of NOPSA's engagement with operators.

Future Action

The implementation of this recommendation will be informed by a broader consideration of all Commonwealth legislation applicable to the marine environment and petroleum legislation. This will be coordinated by DRET with advice and assistance from AGD and input from relevant stakeholders. It will address gaps or outstanding issues in the offshore petroleum legislative regime as identified through the Montara Commission of Inquiry and other relevant reports as appropriate. This process will also have regard to the OPGGS Act and associated regulations; the EPBC Act and associated Acts; the Protection of the Sea Acts, the Navigation Act and relevant international treaties.

As part of this process, legal consideration will be given to the level and type of engagement between regulators and operators in responding to a well control incident.

84 In any future similar blowout or offshore emergency situation, the Minister appoint (through either a NOPR or the relevant Department) a senior public servant to establish and oversight a central coordinating body that will facilitate interaction between regulators, industry, AMSA and the owner/operator. Primary responsibility for stopping a blowout should remain with the owner/operator but should be subject to direction from the central coordinating body in consultation with stakeholders (including the owner/operator).

Accepted.

Refer recommendation 94.

The Government accepts the recommendation for the establishment of a central coordinating body in responding to a future offshore petroleum incident. This role will be fulfilled by DRET. The incident response will be supported by a framework for incident management and coordination. This framework will clearly define the responsibilities of each agency, including procedures and accountabilities for the management of future oil spill incidents.

The Government notes that the purpose of the central coordinating body in responding to a future offshore petroleum incident will be to facilitate interaction and communication between stakeholders and with the public. This body will not assume any aspect of the Combat Agency role as designated under the National Plan.

Australia's offshore legislative and regulatory regime places legal obligations on operators for well control, including arresting a well blowout.

Action to Date

The Government (through DRET and NOPSA) is progressing the Terms of Reference for the 2011 review of NOPSA's operations. An element of this review will be the consideration of NOPSA's engagement with operators.

Future Action

The development of an incident management and coordination framework for dealing with incidents involving the offshore petroleum industry will be led by DRET in conjunction with NOPSA and relevant stakeholders, and will be finalised by the end of 2011.

85 The body established to undertake a central coordination and facilitation role in the event of any future blowout in Commonwealth waters should undertake to make all relevant information publically available from one, authoritative and easy to access source.

Accepted.

Refer recommendations 84 and 94.

The Government agrees that the purpose of the central coordinating body will be to facilitate interaction and communication between stakeholders and with the public. This role will be fulfilled by DRET. In this regard, it will also have responsibility for communicating to the public on all elements of the incident.

In fulfilling this function, DRET will be able to request, and have access to, specialised capability from other agencies to provide it with the necessary resources, such as satellite imagery, during the course of an incident response. This will also ensure that that adequate and relevant information is disseminated to the public throughout the course of the incident response.

In advancing the incident management and coordination framework, which will be a key element of the operating platform for the central coordinating body, the Government will work to develop the capacity where gaps are identified in respect of specialised infrastructure or training.

Future Action

The development of an incident management and coordination framework for dealing with incidents involving the offshore petroleum industry will be led by DRET in conjunction with NOPSA and relevant stakeholders, and will be finalised by the end of 2011.

Chapter 6 of the Montara Report

Environmental Response

Chapter 6 of the Report – Environmental Response considers the protection and management of the marine environment and remediation of the area both during and post the Montara incident. The chapter contains 15 of 105 recommendations.

Chapter 6 – Environmental Response

Recommendations

	Report Recommendations	Government Response	Implementation
86	<p>The National Plan should be reviewed to clarify the arrangements to apply in Commonwealth waters regarding key roles and responsibilities, including in relation to the ESC, in the event of an oil spill. This should also address any necessary training required.</p>	<p><i>Accepted.</i></p> <p>The Government agrees that the responsibilities of stakeholders under the National Plan need to be clarified, noting that the National Plan is not a legally enforceable instrument.</p> <p>The comprehensive assessment of the National Plan currently being conducted by AMSA in consultation with the National Plan stakeholders will define the roles and responsibilities specific to Australian Government agencies within the National Plan.</p> <p>The Government is progressing the development of a response plan for the Commonwealth marine area as a subset of the National Plan. Such a plan would specify responsibilities of each Australian Government department and agency in relation to the oil spill response and specifically address the matter of the ESC.</p> <p>There are currently arrangements in place with states and territories that provide for the utilisation of operational capability from these jurisdictions in responding to incidents in Commonwealth waters.</p> <p>All appropriate training in respect of the National Plan is and will continue be provided by AMSA and the relevant National Plan stakeholders. Training for offshore petroleum personnel is to be provided on a cost recovery basis.</p>	<p><i>Action to Date</i></p> <p>Consistent with arrangements under the National Plan AMSA established an IAT to review the response to the Montara Wellhead Platform. The purpose of the review was to provide strategic recommendations for improvements to the National Plan arrangements and identify lessons learned to improve future major incident responses. The March 2010 Report of the IAT identified eight recommendations which are being progressed.</p> <p><i>Future Action</i></p> <p>A comprehensive assessment of the National Plan is being coordinated by AMSA in consultation with the National Plan stakeholders and will be finalised by the end of 2011. The purpose of this assessment is to determine if current arrangements are adequate to provide an effective response to marine casualties and pollution of the sea by oil and hazardous noxious substances and, where deficiencies are identified, make recommendations to rectify them.</p> <p>The assessment will provide analysis on any gaps in response preparedness and capabilities and provide recommendations for improvement to the current regime, and will also consider succession planning and training arrangements under the National Plan.</p>

Report Recommendations	Government Response	Implementation
<p>87 DEWHA should participate in training programs and exercises relevant to an oil spill in the marine environment.</p>	<p><i>Accepted.</i></p>	<p><i>Action to Date</i></p> <p>The Government notes that, since the Montara incident, in advance of a decision regarding responsibilities under the National Plan, DSEWPaC has undertaken to develop staff capability through appropriate training and participation in courses.</p> <p><i>Future Action</i></p> <p>The implementation of this recommendation will be informed by the outcomes of the comprehensive assessment of the National Plan which is being coordinated by AMSA and the National Plan stakeholders and will be finalised by the end of the first half of 2011.</p>

88

The National Plan should be revised to ensure that it fully comprehends environmental matters and that it recognises the importance of the prompt implementation of Scientific Monitoring to facilitate the assessment of the environmental impacts of an incident.

Accepted.

The Government is progressing National Contingency Plans as a part of the comprehensive assessment of the *National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances* that is being undertaken by AMSA in consultation with National Plan stakeholders.

The assessment of National Contingency Plans will develop a clear plan and delivery mechanism for the provision of environmental advice, preparation and maintenance of Net Environmental Benefit Analysis, wildlife response and monitoring for a spill where the Commonwealth is the lead agency (refer recommendation 3 of the IAT Report). It will also include a clear statement on sourcing Commonwealth environmental and scientific advice.

Action to Date

Consistent with arrangements under the National Plan AMSA established an IAT to review the response to the Montara Wellhead Platform. The purpose of the review was to provide strategic recommendations for improvements to the National Plan arrangements and identify lessons learned to improve future major incident responses. The March 2010 Report of the IAT identified eight recommendations which are being progressed.

The comprehensive assessment of the National Plan is being coordinated by AMSA in consultation with the National Plan stakeholders and will be finalised by the end of 2011. The purpose of this assessment is to determine if current arrangements are adequate to provide an effective response to marine casualties and pollution of the sea by oil and hazardous noxious substances and, where deficiencies are identified, make recommendations to rectify them.

Future Action

DRET will lead a review of Commonwealth legislation to identify the appropriate legislation and/or regulations which could most effectively be amended to take account of the Inquiry's recommendations and findings regarding legislative gaps.

Subsequently a taskforce of portfolio agencies with relevant legislation will be established to implement the legislative amendments required to address the specific findings and recommendations of the Inquiry. The taskforce will seek the advice and assistance of AGD and will have appropriate regard to other review processes underway, including the Attorney General's Department work on a Single Maritime Enforcement Law and the EPBC Act review led by Dr Allan Hawke, to ensure consistency and prevent duplication.

The Government will implement changes through appropriate legislative instruments to ensure the prompt implementation of Scientific Monitoring following an incident.

89 Procedures for the approval of development projects should ensure that conditions of approval are comprehensive and clearly set out the obligations of their proponents in relation to environmental matters (including expected monitoring and remediation obligations).

Accepted.

The Government agrees that the requirements for Scientific Monitoring and environmental remediation in the event of an incident should be included as a condition of approval under the EPBC Act for future petroleum activities. Such a condition will reaffirm the “polluter pays” principle in that the operator will be responsible for covering the costs of Scientific Monitoring and/or environmental remediation in the event of an incident.

Mechanisms for requiring Scientific Monitoring and remediation under the OPGGS Act will also be investigated. The Government notes that Part 6.4 of the OPGGS Act (Restoration of the Environment) provides the Designated Authority with the authority to issue a direction to an operator in respect of environmental remediation.

Action to Date

Under the EPBC Act, all new approved offshore production facilities will include requirements to obtain sufficient baseline information to enable an assessment of any impacts and implement an agreed monitoring program in the event of a spill.

Future Action

The Government will implement changes through appropriate legislative instruments to ensure the prompt implementation of Scientific Monitoring during an incident.

The implementation of this recommendation as it applies to approvals under the OPGGS Act and the EPBC Act will be led by DRET and the DSEWPaC respectively, on an ongoing basis.

The Long Term Scientific Monitoring Programme, as agreed by PITTEP AA, will continue to be managed by the DSEWPaC. Lessons learned from the implementation of this plan will inform the future development of “off the shelf” monitoring plans

Report Recommendations

Government Response

Implementation

90 DEWHA, in concert with AMSA and with expert input, should develop 'off the shelf' monitoring programs that can be speedily implemented following incidents in Commonwealth waters. In this context, the utility of the current Scientific Monitoring program should be peer reviewed to inform future policy.

Accepted.

Refer recommendation 97.

The Government agrees that a suite of "off the shelf" monitoring programs to cater for the different environments in which an oil spill could occur, for example, the Bass Strait or in proximity to sensitive marine environments such as the Ningaloo Reef or the Ashmore Reef and Cartier Islands area, is required and is developing such programs.

A requirement to implement these monitoring programs in the event of a spill will be reflected in the conditions of approval for petroleum activity.

The review of the PTTEP AA Long Term Scientific Monitoring Program will inform the development of the "off the shelf" monitoring programs.

Action to Date

Under the EPBC Act, all new approved offshore production facilities will include requirements to obtain sufficient baseline information to enable an assessment of any impacts and implement an agreed monitoring program in the event of a spill resulting from offshore petroleum activity(ies).

Future Action

The development of the "off the shelf" monitoring programs will be led by the primary regulator of the operation of offshore production facilities, in consultation with the DSEWPaC on matters of National Environmental Significance as defined under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

A review of the Montara Long Term Scientific Monitoring Program will be undertaken for the specific purpose of informing the development of "off the shelf" monitoring programs for use in future incidents.

91

The funding arrangements that support the National Plan should be reviewed to ensure that the costs associated with both preparedness and response capability are equitably shared between the shipping and offshore petroleum industries.

Accepted.

The Government accepts that the Montara incident highlighted the need to address the funding arrangements supporting the National Plan.

The Government supports the 'polluter pays' principle and in accepting this recommendation the Government will establish a framework that provides equitable cost sharing arrangements between the shipping and the offshore petroleum industry as it relates to preparedness and response capability to a future offshore petroleum incident. As a part of its broader legislative review of the marine environment and petroleum legislation, the Government will identify and implement an ability to enforce the 'polluter pays' principle in the offshore petroleum industry.

Action to Date

A comprehensive assessment of the National Plan is currently being undertaken by AMSA in consultation with the National Plan stakeholders. The assessment will be finalised by the end of 2011.

The assessment will specifically consider the adequacy and appropriateness of funding mechanisms and the efficiency of cost recovery arrangements in the delivery of the required outcomes of the National Plan.

Future Action

The Government, in consultation with the offshore petroleum industry, is undertaking a detailed analysis of cost recovery arrangements in regards to oil spill preparedness and response capability. This will inform future changes to the funding arrangements under the National Plan, specifically for the offshore petroleum industry.

DRET will lead a review of Commonwealth legislation to identify the appropriate legislation and/or regulations which could most effectively be amended to take account of the Inquiry's recommendations and findings regarding legislative gaps.

Subsequently a taskforce of portfolio agencies with relevant legislation will be established to implement the legislative amendments required to address the specific findings and recommendations of the Inquiry. The taskforce will seek the advice and assistance of AGD and will have appropriate regard to other review processes underway, including AGD's work on a Single Maritime Enforcement Law and the EPBC Act review led by Dr Allan Hawke, to ensure consistency and prevent duplication.

92

The National Plan should specify 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. This would be consistent with the Inquiry's recommendation for legislative changes to the regulatory framework concerning owner/operators meeting the cost of monitoring and remediation of environmental damage.

Accepted.

Refer recommendation 88.

The Government supports the 'polluter pays' principle and in accepting this recommendation the Government will establish a framework that provides equitable cost sharing arrangements between the shipping and the offshore petroleum industry as it relates to responding to a future offshore petroleum incident.

The Government notes that currently there is no legislative requirement to recover costs incurred from an offshore petroleum activity incident response under the National Plan.

The Government also notes that the OPGGS Act contains requirements for petroleum titleholders to have adequate insurance cover (refer s571) to meet the costs of remediation of environmental damage. Further, Part 6.4 of the OPGGS Act provides the authority to give remediation directions to titleholders in relation to the restoration of the environment.

Future Action

DRET will lead a review of Commonwealth legislation to identify the appropriate legislation and/or regulations which could most effectively be amended to take account of the Inquiry's recommendations and findings regarding legislative gaps.

Subsequently a taskforce of portfolio agencies with relevant legislation will be established to implement the legislative amendments required to address the specific findings and recommendations of the Inquiry. The taskforce will seek the advice and assistance of AGD and will have appropriate regard to other review processes underway, including AGD's work on a Single Maritime Enforcement Law and the EPBC Act review led by Dr Allan Hawke, to ensure consistency and prevent duplication.

Through this process the Government will identify and implement an ability to legislatively enforce the 'polluter pays' principle for the offshore petroleum industry, including prompt implementation of Scientific Monitoring following an offshore petroleum incident.

93 The National Plan should be reviewed:

- a. to ensure that it adequately addresses the risks associated with offshore oil and gas exploration;
- b. to revisit the underlying risk assessment undertaken to inform capacity and preparedness under the National Plan;
- c. to ensure that response operations can be coordinated effectively with state and territory arrangements where a response requires operations across Commonwealth and state or territory borders; and
- d. to explore the state of readiness of equipment and resources in the context of the future expansion of the petroleum industry. This should be undertaken by AMSA in consultation with AMOSC.

Accepted.

The Government is undertaking a comprehensive assessment of the National Plan. It will address items (a), (b), (c) and (d) and that it will define the roles and responsibilities specific to Australian Government agencies within the National Plan.

The Government agrees that contingency planning needs to be based on risk assessments that take into account probability and consequence. The Government notes that Australia has arrangements in place to obtain international assistance in the event of larger scale incidents than Montara.

A risk assessment addressing issues such as the current level of risk of pollution of the sea, coastline and ports of EEZ and offshore territories by oil from ships, offshore installations (fixed and floating) and drilling rigs, with regard to the location, is being undertaken as part of the review of the National Plan.

The risk assessment will inform future contingency planning in regard to the capacity both in the nine AMSA tier two/three stockpiles around the Australian coastline and the AMOSC stockpile in Geelong. Resourcing implications arising from this risk assessment will be identified and addressed accordingly. This may also include a minimum requirement for response capacity and capability to be identified in contingency plans and implemented and resourced by the offshore petroleum industry in the event of an incident.

Action to Date

The comprehensive assessment of the National Plan is being coordinated by AMSA in consultation with the National Plan stakeholders and will be finalised by the end of 2011.

The purpose of this assessment is to determine if current arrangements are adequate to provide an effective response to marine casualties and pollution of the sea by oil and hazardous noxious substances and, where deficiencies are identified, make recommendations to rectify them.

The comprehensive assessment of the National Plan will consider the adequacy of the Inter-Governmental Agreements and the existing domestic legal, regulatory, governance and procedural regime that applies to the National Plan. It will also consider the effectiveness of current functions and resourcing levels to deliver on National Plan outputs and services; and the appropriateness of current hardware and equipment holdings and locations.

- 94 | Procedures and accountabilities should be established to ensure, in the event of a future incident, that:
- a. there is adequate monitoring of the volume of oil spilt and the spread of the oil (both surface and sub-surface dispersed oil); and
 - b. information about the volume and spread of the oil is made available to the public through regular updates.

Accepted.

Refer recommendation 84.

The Government is progressing the incident management and coordination that will provide clearly defined responsibilities for agencies, including procedures and accountabilities for the management of future oil spill incidents.

In responding to a future offshore petroleum incident, the Government has identified DRET as the central coordinating body. In fulfilling this function, DRET should be able to request, and have access to, specialised capability from other agencies to provide it with the necessary resources, such as satellite imagery, during the course of the response. This will assist in ensuring there is adequate monitoring of and information dissemination about the oil spill. Where gaps are identified in respect of specialised infrastructure or training, the Government will work to develop this capacity.

a. Accepted

The provision of adequate sub-surface monitoring for oil spill response is specialised and requires infrastructure (including fluorometry and sampling equipment) and trained personnel in readiness for an incident.

In respect of the Montara incident, there was never sufficient information to estimate the oil flow rate with a high degree of accuracy. This issue was also identified during the Gulf of Mexico incident where five different methodologies were being used at any one time, and it was impossible for the oil flow rate to be accurately determined.

b. Accepted

Refer recommendation 84.

The Government proposes that the purpose of the central coordinating body will be to facilitate interaction and communication between stakeholders and with the public. In this regard, it will have responsibility for informing the public about the volume and extent of an oil spill.

Future Action

The development of the offshore petroleum incident management and coordination framework for dealing with incidents involving the offshore petroleum industry will be led DRET, in conjunction with NOPSA and relevant stakeholders, and will be finalised by the end of 2011.

The framework will clearly define the role of the central coordinating body, in having responsibility for the management and communication of incident responses, and the role of the Combat Agency, as having operational responsibility under the National Plan for the incident response.

The development of an improved sub-surface monitoring capability for oil spill responses will be coordinated by AMSA on an ongoing basis.

The outcomes of the comprehensive assessment of the National Plan in relation to the adequacy and appropriateness of funding mechanisms and the efficiency of cost recovery arrangements in the delivery of the National Plan will be considered in the implementation of this recommendation.

95

The regulatory framework should provide that in respect of all activities in Commonwealth waters: there are powers to require companies involved in an incident causing significant environmental damage to undertake actions to remediate the damage to a standard determined by the regulatory authorities; the nature of the Scientific Monitoring and the remediation required should be determined by environmental regulatory agencies rather than the companies involved; the costs of all Scientific Monitoring and remediation should be fully borne by the companies involved, whether the remediation is undertaken by the companies or another party to the standard determined by the regulatory authorities; and penalties should be payable for pollution on a no fault basis.

The EPBC Act should be amended to include the powers in a, b, c and d above. These powers should be applicable to both prospective and existing operations in Commonwealth waters.

Accepted.

The Government supports the 'polluter pays' principle and in accepting this recommendation the Government will establish a framework that provides equitable cost sharing arrangements between the shipping and the offshore petroleum industry as it relates to responding to a future offshore petroleum incident

Under the OPGGS Act there are existing powers, including the authority in Part 6.4 of the OPGGS Act (Restoration of the Environment), which allows the regulator give remedial directions to titleholders in relation to the restoration of the environment.

The Government supports the need for overarching penalty provisions to be applied to the offshore petroleum industry. The Government's review of the legislative framework will consider the appropriate mechanisms for implementing these penalty provisions for the offshore marine environment, including a broader range of compliance tools such as the ability to impose a civil fine or prohibition notice as well as a general contravention offence following the causing of serious or material harm to a protected matter or a breach of approval conditions.

Penalty provisions in respect of the OHS legislative regime for the offshore petroleum industry are also being considered.

This recommendation is consistent with recommendations arising from the *Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, undertaken by Dr Allan Hawke in 2009.

In approving future offshore petroleum activities under the EPBC Act, the Government will impose conditions consistent with the legislative framework in relation to environmental matters such as monitoring and remediation. The conditions will clearly articulate the obligations of the proponent consistent with the 'polluter pays' principle.

Future Action

The Government is considering amending the OPGGS Act to provide the power to impose a civil penalty regime. This process will also consider increasing some or all of the existing penalties. This process will be completed during the first half of 2011, with any legislative amendments required introduced as soon as they can be accommodated within the legislative timetable.

DRET will lead a review of Commonwealth legislation to identify the appropriate legislation and/or regulations which could most effectively be amended to take account of the Inquiry's recommendations and findings regarding legislative gaps.

Subsequently a taskforce of portfolio agencies with relevant legislation will be established to implement the legislative amendments required to address the specific findings and recommendations of the Inquiry. The taskforce will seek the advice and assistance of AGD and will have appropriate regard to other review processes underway, including AGD's work on a Single Maritime Enforcement Law and the EPBC Act review led by Dr Allan Hawke, to ensure consistency and prevent duplication.

Through this process the Government will identify and implement an ability to legislatively enforce the 'polluter pays' principle for the offshore petroleum industry, including prompt implementation of Scientific Monitoring following an offshore petroleum incident.

96 The obligation of companies involved in an incident to meet the full costs of monitoring and remediation should be made a condition of approval of proposals under the EPBC Act and OPGGS Act. Suitable arrangements (insurance or otherwise) need to be in place to ensure that companies have this capacity.

Accepted.

Refer recommendation 89.

The Government supports the 'polluter pays' principle and in accepting this recommendation the Government will establish a framework that provides equitable cost sharing arrangements between the shipping and the offshore petroleum industry as it relates to responding to a future offshore petroleum incident.

The Government agrees that the requirements for Scientific Monitoring and environmental remediation in the event of an incident should be included as a condition of approval under the EPBC Act for future petroleum activities. Such a condition will reaffirm the 'polluter pays' principle in that the operator will be responsible for covering the costs of Scientific Monitoring and/or environmental remediation in the event of an incident.

Mechanisms for requiring Scientific Monitoring and remediation under the OPGGS Act will also be investigated through the legislative review being undertaken by the Attorney General's Department, as not all petroleum developments are regulated by the EPBC Act. The Government notes that Part 6.4 of the OPGGS Act (Restoration of the Environment) provides the DA with the authority to issue a direction to an operator in respect of environmental remediation. The Government also notes that insurance is a requirement under the OPGGS Act.

Future Action

DRET will lead a review of Commonwealth legislation to identify the appropriate legislation and/or regulations which could most effectively be amended to take account of the Inquiry's recommendations and findings regarding legislative gaps.

Subsequently a taskforce of portfolio agencies with relevant legislation will be established to implement the legislative amendments required to address the specific findings and recommendations of the Inquiry. The taskforce will seek the advice and assistance of AGD and will have appropriate regard to other review processes underway, including AGD's work on a Single Maritime Enforcement Law and the EPBC Act review led by Dr Allan Hawke, to ensure consistency and prevent duplication.

Through this process the Government will identify and implement an ability to legislatively enforce the 'polluter pays' principle for the offshore petroleum industry, including prompt implementation of Scientific Monitoring following an offshore petroleum incident.

The Government, in conjunction with the offshore petroleum industry, will examine the legislative arrangements concerning insurance to ensure cost recovery arrangements following oil spills are effective. This review will recommend any necessary improvements.

Report Recommendations

Government Response

Implementation

97 Environment plans and OSCPs should be made publicly available as a condition of approval of proposals under the OPGGS Act, and should clearly set out Scientific Monitoring requirements in the event of an oil spill.

Accepted.

Refer recommendation 90.

The Government, in consultation with the offshore petroleum industry, is considering whether OSCPs can be provided to the public without commercial prejudice to the operator. The Government notes that environmental plans are very detailed. Under the OPGGS (Environment) Regulations 2009, a summary of an operator's environmental plan is made publicly available.

The Government agrees that, as a condition of approval for a petroleum activity, an operator should be required to undertake Scientific Monitoring in the event of an incident.

Any conditions on approval relating to Scientific Monitoring in the event of a spill will need to be informed by the existing level and type of monitoring that is undertaken by the offshore petroleum industry in the course of their petroleum operations.

The "off the shelf" Scientific Monitoring programs that are to be developed for specific environments will form part of the approval requirements for offshore petroleum activities in those areas.

Legislative amendments will be considered as part of the Government's broader review of the marine environment and petroleum legislation.

98 The Government should examine the scope for a single environment plan to meet the regulatory requirements of both the OPGGS Act and the EPBC Act. This could possibly be achieved by way of bilateral agreements and accreditation arrangements and/or legislative amendment.

Accepted.

The Government considers that this recommendation is consistent with the *Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, undertaken by Dr Allan Hawke in 2010.

Action to Date

Since the Montara incident, under the EPBC Act, it has become a standard requirement of approval for offshore oil and gas developments to publish all management or scientific plans required in conditions of approval and publication of performance reporting against those plans.

Future Action

In respect of the publication of OSCPs, the implementation of this recommendation will be led by DRET and will be completed within the first half of 2011. The imposition of conditions on petroleum activity will be coordinated by DRET on an ongoing basis.

Future Action

The implementation of this recommendation will be determined by the Government response to the Hawke Review.

99 OSCPs should be endorsed by AMSA prior to regulatory approval to ensure that they align with the National Plan. Once field operations commence, the capability of operators should be assessed against their plans, and exercises conducted to ensure the plans remain effective.

Accepted.

The Government agrees that an opportunity exists for AMSA to be consulted as part of the assessment of an environmental plan under the OPGGS Act. Through this process of consultation, AMSA will have regard to the adequacy of resources available to mitigate pollution and ensure consistency with the National Plan.

The Government will strengthen current procedures for consultation in relation to approvals for offshore petroleum activity to ensure comprehensive consultation on OSCPs are being implemented between DRET, AMSA and DSEWPaC.

The Government recognises that the establishment of a more comprehensive consultation and assessment process in relation to OSCPs may result in additional resourcing costs for Australian Government agencies, and that such costs will need to be recovered from the offshore petroleum industry. The cost recovery arrangements will be considered as part of the Government's broader review of the marine environment and petroleum legislation.

In relation to the assessment of operator capability, the Government notes that Australia's offshore petroleum legislative framework places obligations on operators to demonstrate to the regulator how they intend to effectively acquit their responsibilities under the OPGGS Act, which includes environmental requirements.

The Government is working to strengthen the effectiveness of the compliance and monitoring framework through mechanisms such as the proposed penalty provisions identified in recommendation 95(d) and through the development of consistent and best practice approaches to the administration of offshore petroleum regulation.

This framework will be further enhanced by the establishment of a single national regulator for offshore petroleum, mineral and greenhouse gas storage activities. The Government has announced its intention to have the single national regulator in place by January 2012.

Action to Date

The Minister for Resources and Energy in his speech to the South East Asia Australia Offshore Conference on 23 September 2010 reaffirmed the Government's commitment to the establishment of a single national regulator for offshore petroleum activities by 1 January 2012.

Future Action

In respect of OSCP consultations procedures, the implementation of this recommendation will be led by DRET, in consultation with AMSA and DSEWPaC and will be finalised by the first half of 2011.

Report Recommendations

Government Response

Implementation

100 Arrangements should be developed to minimise duplication between the EPBC Act and the OPGSS Act Environment Regulation.

Accepted.

The Government considers that this recommendation is consistent with the *Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, undertaken by Dr Allan Hawke in 2010 and the Productivity Commission Review of *Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector*, undertaken in 2009.

The Hawke Review noted that streamlining should maximise regulatory efficiency while maintaining strong environmental safeguards. The Productivity Commission Review noted the merit in retaining an independent decision maker of last resort, particularly in relation to matters of potential national environmental significance.

Future Action

The implementation of this recommendation will be determined by the Government response to the Hawke Review.

Chapter 7 of the Montara Report

Review of PTTEP AA's Permit and Licence at Montara and Other Matters

Chapter 7 of the Report – Review of PTTEP AA's Permit and Licence at Montara and Other Matters considers the oil field practices of PTTEP AA, as the operator of the Montara Wellhead Platform, and provides views in respect of its interaction with the regulators and the Montara Commission of Inquiry. The chapter contains 5 of 105 recommendations.

Chapter 7 – Review of PTTEP AA's Permit and Licence at Montara and Other Matters

Recommendations

Report Recommendations	Government Response	Implementation
<p>101 The Minister should, as the JA for the offshore area of the Territory of Ashmore and Cartier Islands, undertake a review of PTTEPAA's permit and licence to operate at the Montara Oilfield.</p>	<p><i>Accepted.</i></p>	<p><i>Action to Date</i></p> <p>The Government has commissioned an independent assessment through two separate, complementary, consultancies: an assessment of the technical adequacy of the Plan as against industry/leading practice standards; and a governance review of PTTEP AA's organisational structures, policies and procedures to ensure the effective implementation of the Action Plan and continuous improvement by PTTEP AA in respect of operational and corporate functions. These consultancies will also identify leading practice actions that will be shared with the offshore petroleum industry more generally. The independent review will be completed by the end of November.</p>
<p>102 For the purposes of that review, the Minister should issue a 'show cause' notice to PTTEPAA under s 276 of the OPGGS Act.</p>	<p><i>Noted.</i></p> <p>The Commissioner noted (page 11 of his Report) that shortly prior to the finalisation of his Report PTTEP AA provided him with an Action Plan which was comprehensive and impressive, and effectively addressed the shortcomings in PTTEP AA's operations identified by the Commissioner.</p> <p>The Minister has moved to address the Commissioner's findings through ongoing interaction with PTTEP AA and by directing that an independent assessment of that Action Plan be undertaken. The Independent Assessment will provide advice to the Minister on whether the Action Plan, once implemented, will ensure that PTTEP AA's operational and procedural measures meet industry best practice standards. It will also identify whether PTTEP AA has the organisational culture and capability to properly implement the Action Plan. Evidence that PTTEP AA's Action Plan is implementing industry best practice and its ongoing commitment to operational improvement will be central to the consideration of whether a show cause notice is issued, as it demonstrates measures to remove or prevent recurrence of the grounds for cancellation.</p> <p>The Independent Assessment of the Action Plan does not prevent the Minister from taking further action.</p>	<p>To date, the Minister has not issued a 'show cause' notice. PTTEP's Australian subsidiaries are the operator of seven exploration permits, five production licences and seven retention leases and has interests in a further five exploration permits where it is not the operator. The Minister for Resources and Energy considers that before a 'show cause' notice relating specifically to the Montara Field could be issued, regard must be had to whether the deficiencies in PTTEP AA's procedures as identified by the Commissioner relate only to the Montara Field or to PTTEP AA's general performance as an operator. The Independent Assessment of the Action Plan does not prevent the Minister from taking further action.</p>

103

In carrying out a review of PTEPAA's permit and licence, the Minister should have regard to this Report, particularly (i) the adverse findings set out in this Chapter; and (ii) the extent to which PTEPAA has implemented the Action Plan submitted to the Inquiry, or otherwise addressed the matters canvassed in this Report.

Accepted

Refer to Recommendation 102

104

The Minister consider legislative amendments to the OPGGS Act which make clear that (i) the Minister can direct a titleholder to obtain an independent report into the circumstances and likely causes of a blowout; and (ii) the Minister can direct that such a report be provided to him (and such direction overrides any legal professional privilege which otherwise attaches to the report).

Noted.

Report Recommendations

Government Response

Implementation

105	<p>In view of the numerous well integrity problems in all of the Montara Oilfield wells, the Minister should commission a detailed audit of all the other offshore wells operated by PTTEPAA to determine whether they too may suffer from well integrity problems.</p>	<p><i>Accepted.</i></p> <p>The Government agrees that an audit of the other suspended wells at the Montara Wellhead Platform was required to ascertain the integrity of the suspended wells.</p>	<p><i>Action to Date</i></p> <p>On 9 April 2010, the Government requested the NT DoR to seek advice from PTTEP AA on the status and integrity of the other suspended wells at the Montara Wellhead Platform (H2, H3, H4 and G1).</p> <p>A direction was subsequently issued to PTTEP AA under the OPGGS Act that states no well or other activity that may adversely impact on the integrity of the other suspended wells at the Montara Wellhead Platform could occur without approval from the Designated Authority.</p>
			<p>PTTEP AA's work program for the testing of the Montara well barriers was approved by the NT DoR in late June 2010.</p> <p>PTTEP AA implemented a work program to test the integrity of the remaining wells suspended at the Montara Wellhead Platform. The verification report produced by AGR drilling services on behalf of PTTEP has been assessed by GA and the NT DoR.</p>
			<p>This rigorous process of verification provides confidence in the integrity of all wells at the Montara Wellhead Platform.</p> <p>In addition to the wells at the Montara Wellhead Platform, the Government has requested the NT DoR to direct PTTEP AA to audit the integrity of all of their remaining wells (suspended or otherwise). This work is ongoing.</p>
			<p>In addition to work undertaken with the NT DoR, on 31 May 2010, the Government requested all other Designated Authorities to undertake a number of reviews to ensure the integrity of wells, in particular the status of all completed and suspended wells since 2005, and their assessment, approvals and monitoring of offshore petroleum activities were in accord with the OPGGS Act. The work is ongoing.</p>

Call for Submissions in Response to the Montara Report

On 24 November 2010, the Australian Government released the Report of the Montara Commission of Inquiry and the draft Government response to the Report.

The Government is seeking submissions from interested parties on the draft Government response to the Report.

Interested parties seeking to make a submission should ensure that they have first read the "Disclaimer and Intellectual Property Notices for Montara Report Call for Submissions" (the Disclaimer), which outlines the terms for making a submission.

By providing a submission, interested parties are taken to have accepted the terms of the Disclaimer.

Submissions that are made on a confidential basis will not be made publicly available. Interested parties seeking confidentiality should make it clear that a submission is to be made on a confidential basis at the time of making the submission.

Submissions should be lodged no later than **5pm Friday 25 February 2011**.

Information about the call for submissions is available at:

Internet: www.ret.gov.au/montarainquiryresponse

email: montarainquiryresponse@ret.gov.au

Telephone: (02) 6243 7398

Postal Address: Montara Inquiry Response GPO Box 1564 CANBERRA ACT 2600

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