



Statement by the Minister for Resources and Energy, the Hon
Martin Ferguson AM, MP

The Report of the Montara Commission of Inquiry and the
Australian Government Draft Response

24 November 2010

Introduction

1. On 21 August last year an uncontrolled release of oil and gas into the Timor Sea commenced from the Montara Wellhead Platform.
2. The response to the incident was swift - within 15 minutes of being notified of the incident the Australian Maritime Safety Authority mobilised its resources and immediately commenced aerial surveillance. Soon after aircraft began applying dispersant to accelerate the natural evaporation and weathering of the oil. This was the first step in a coordinated response that was effective in containing and minimising the impact of the spill.

3. As efforts to respond to and halt the spill continued, I moved amendments in this Parliament to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* to give me the power to establish an Inquiry with Royal Commission powers into incidents such as Montara.
4. The purpose of this Inquiry was to investigate the likely causes of the incident and make recommendations to the Government on how to prevent future incidents.
5. The importance of this work was further highlighted by the tragic April 2010 Deepwater Horizon incident at BP's Macondo field in the Gulf of Mexico.
6. At the time of both these incidents, there were calls from some parts of the community for a moratorium on acreage release and industry activities.
7. Our approach must be to ensure our oil and gas exploration and production operations are the best and safest in the world.
8. Shutting down the industry and putting the nation's energy security, jobs and the economy at risk does nothing towards achieving any of these goals.
9. Offshore petroleum activities have been occurring in Australia for over 40 years with approximately 3000 wells safely drilled during this time. The Montara incident was the first well blowout in Australia in over 25 years.

10. The Australian Government is committed to applying the lessons from the Montara and Gulf of Mexico incidents so as to improve the protection of human health and safety and the protection of marine environments.
11. This is essential if Australia is to continue to have a viable offshore oil and gas industry able to contribute to Australia's and our major trading partners' energy security needs.
12. On 18 June 2010, following a comprehensive inquiry process, which consisted of over 180 submissions and 4 weeks of public hearings, the Commissioner for the Montara Commission of Inquiry, Mr David Borthwick AO PSM, presented me with his report. I thank the Commissioner for his report.
13. Upon receiving the Report, I indicated that I was committed to its public release following proper Government consideration of the Report's findings and recommendations. I also indicated I was bound to give consideration to advice from the Australian Government Solicitor to ensure that in handling this report I did nothing to prejudice the conduct of further investigations for possible offences including criminal offences, prejudice other civil actions, or undermine any natural justice considerations.
14. The Inquiry was not about attributing blame – it was, and continues to be, about understanding and applying the lessons from Montara.

Montara Commission of Inquiry Report

15. Having completed this consideration, I am pleased today to present to the Parliament the *Report of the Montara Commission of Inquiry* and the Government's draft response to the Report. The Report contains 100 findings and 105 recommendations, which have implications for governments, regulators, and the offshore petroleum industry.

16. The Inquiry determined that the source of the blowout was the result of the primary well control barrier failing. The Inquiry noted that initial cementing problems were compounded by only 1 of the 2 planned secondary well control barriers – pressure containing anti-corrosion caps – being installed. The Report concluded that PTTEP Australasia (Ashmore Cartier) Pty Ltd (PTTEP AA) did not observe sensible oilfield practices at the Montara oilfield.

17. Other findings include:

- That the 'widespread and systemic' shortcomings in PTTEP AA's procedures were a direct cause of the loss of well control.
- Well control practices approved by the regulator would have been sufficient to prevent the loss of well control however PTTEP AA did not adhere to these practices or its own well construction standards.
- That the Northern Territory Department of Resources was not a diligent regulator and its minimalist approach to its regulatory responsibilities gave it little chance of discovering these poor practices.

- That at a minimum the proposal to establish a single national offshore petroleum regulator should be pursued.
- That the existing legislative regime be adjusted to further reduce the risks of similar incidents occurring.

18.I now inform the House of the Government's progress in responding to these key aspects of the Report.

PTTEP Australasia

19.During the Inquiry concerns regarding the state of the five remaining suspended wells in the Montara field were raised. On my instruction, on 9 April 2010, my Department requested the Northern Territory Department of Resources to seek advice from PTTEP AA on the status and integrity of the other suspended wells and information on what remedial action would be taken if required.

20.PTTEP AA implemented a work program to ensure the integrity of the remaining wells on the Montara Wellhead Platform. AGR, an international company with the requisite expertise, witnessed the satisfactory barrier testing of the wells at the Montara Wellhead Platform. AGR's verification report has been further assessed by Geoscience Australia and the Northern Territory Department of Resources. Geoscience Australia advises that all possible work to ensure the integrity of the suspended wells at the Montara platform has been undertaken and completed and that the AGR verification report provides appropriate assurance that the barriers are competent.

21. The Commissioner has recommended that I undertake a review of PTTEP AA's licence to operate at the Montara oil field. He has further recommended that, as the mechanism for instigating this review, I issue a 'show cause' notice to PTTEP AA, pursuant to the cancellation of titles sections of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

22. I have accepted the Commissioner's recommendation to review PTTEP AA's licence to operate.

23. However, PTTEP through its Australian subsidiaries (of which PTTEP AA is one) 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. 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. I believe 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.

24. After careful consideration, I directed my Department to instigate an independent review of the Action Plan that PTTEP, the parent company of PTTEP AA, submitted to the Commission of Inquiry. This Action Plan was developed to comprehensively address the technical and governance issues identified by the Commissioner and has application across their entire Australian operations. The independent review commenced on 6 September 2010.

25. The independent review process will provide me with advice on whether the Action Plan, once implemented, will ensure that PTTEP's (and its Australian subsidiaries') operational and procedural measures meet industry best practice standards.
26. The outcome of this process will assist me in forming a view as to whether the deficiencies in PTTEP AA's procedures, as identified by the Commissioner, relate only to the Montara oil field or to its, or PTTEP's, general performance as an operator.
27. My Department advises me that the final report of the independent review of PTTEP's Action Plan is due by the end of the year. Upon completion of the independent review my Department will provide me with advice on PTTEP's capacity to implement the Action Plan. I will make the report public within seven days of receiving this advice.
28. The outcome of this independent review of PTTEP's Action Plan will be a central part of my consideration as to whether to issue a 'show cause' notice which might lead to cancellation of PTTEP's petroleum titles.
29. Separate to the Commission of Inquiry process, the National Offshore Petroleum Safety Authority (NOPSA) provided the Commonwealth Director of Public Prosecutions a brief of evidence in June 2010 in relation to whether occupational health and safety laws were contravened. A Montara Investigation Team has also been established within my Department to consider possible

breaches of other provisions of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* and its associated regulations.

Northern Territory Designated Authority

30. In relation to the regulator, the Commissioner found that the Northern Territory Department of Resources was not a sufficiently diligent regulator, adopting a minimalist approach to its regulatory responsibilities. The way in which the regulator conducted its responsibilities gave it little chance of discovering PTTEP AA's poor practices.
31. The Commissioner recommended that I undertake a review of the Commonwealth delegation to the Northern Territory Department of Resources of its functions and powers as the Designated Authority for the offshore area of the External Territory of the Ashmore and Cartier Islands (the location of the Montara oil field).
32. Under the current framework for regulating offshore petroleum activities the Commonwealth jointly, with the relevant state or territory, regulates activities beyond 3 nautical miles of the low water mark or historical boundaries. Under this arrangement the relevant state or territory agency (i.e. the Designated Authority), is responsible for the day-to-day regulation of petroleum activities while the relevant state or territory minister and the Commonwealth Minister acting jointly (i.e. the Joint Authority) is concerned with significant decisions such as the awarding of titles.
33. Under these arrangements, my powers as the Designated Authority for the 42 petroleum titles, including the Montara development,

located in the External Territory of the Ashmore and Cartier Islands, were delegated to officers of the Northern Territory Department of Resources. This delegation made the Northern Territory Department of Resources responsible for overseeing the regulation of well integrity matters at the Montara Wellhead Platform.

34. While the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* does provide me with the ability to revoke the Northern Territory Department of Resources' existing delegation for this external territory, I consider that doing so 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's own principal offshore area, which includes a further 23 titles, these systemic failings must be addressed. I cannot revoke the Northern Territory's responsibility for the Northern Territory's principal offshore area without an amendment to the Act to rescind their powers.

35. To address the seriousness of these findings and recommendations I met the NT Chief Minister, Paul Henderson MLA, and my ministerial counterpart, the Hon Kon Vatskalis MLA, the Minister for Primary Industry, Fisheries and Resources and asked them to demonstrate how the Northern Territory would fulfil its obligations as the Designated Authority.

36. I also instructed my Department and Geoscience Australia to provide ongoing assistance to the Northern Territory in fulfilling its regulatory responsibilities more generally. This assistance will

continue until a single national offshore petroleum regulator is in place.

37.I advise that the Northern Territory has cooperated fully. Key actions that will lead to a fully effective approvals assessment process have been agreed and significant work has already been undertaken in this regard, including:

- more robust approval assessment processes to ensure integrity and consistency of decisions relating to well activity with co-assessment by the WA Department of Mines and Petroleum;
- A review of the delegation process and procedures has been completed; and
- A recruitment process has been completed to find people appropriately skilled in offshore petroleum exploration and development to address the immediate need for additional technical expertise.

38.On my instruction, my Department also requested all other Designated Authorities to:

- review the integrity of wells, in particular the status of all wells completed and suspended since 2005; and
- ensure that their assessment, approvals and monitoring of offshore petroleum activities were in accordance with the *Offshore Petroleum and Greenhouse Gas Storage Act*.

Single national offshore petroleum regulator

39. A further key finding of the Report is that the existing “objective-based” regulatory regime is largely sufficient 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 regime.
40. However the Commissioner recommended that the proposal of the Productivity Commission’s *Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector* to establish a single national offshore petroleum regulator should be pursued. Such an independent regulatory body should have responsibility for well integrity, safety and environmental regulation.
41. The Government is acting on this recommendation. It is determined to restore the Australian community’s confidence in the regulation of the offshore petroleum industry by ensuring that our operating standards are the best and safest in the world.
42. The Government will extend the functions of 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 regulate safety, integrity and environment plans for minerals extraction and greenhouse gas storage activities in Commonwealth waters.

43. The Government will maintain the Joint Authority concept in relation to titles matters, so ensuring that the states and territories have, appropriately, 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.

44. The Government is confident that the scheme I have outlined will more effectively and efficiently harness the highly-skilled resources required to properly regulate Australia's rapidly expanding offshore petroleum industry than is possible under the current fragmented administrative arrangements.

45. I commit to work with my state and territory ministerial counterparts to implement these arrangements by 1 January 2012.

Environmental response to the incident

46. Turning to the environmental response to Montara, the offshore petroleum industry is required to comply with the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) where matters of National Environmental Significance may be impacted, in addition to obligations under the *Offshore Petroleum and Greenhouse Gas Storage Act*.

47. Since the Montara incident, the Commonwealth Department of Sustainability, Environment, Water, Population and Communities, as the environmental regulator under the EPBC Act, has adopted a more rigorous process for the assessment of offshore petroleum activities and for the conditions on approvals of offshore petroleum developments to incorporate the learnings from the incident.
48. The Commissioner recommended amending the EPBC and Offshore Petroleum and Greenhouse Gas Storage Acts to enshrine in law the “polluter pays” principle. Under these proposed arrangements companies involved in an incident would be obligated to meet the full costs of monitoring and remediation and penalties should be payable for pollution on a no fault basis.
49. The Commissioner further recommends that this should apply to both prospective and existing operations in Commonwealth waters.
50. The Government intends to accept and implement both recommendations and undertake a review of Commonwealth legislation as it applies to the offshore petroleum sector and the marine environment.
51. I am advised by PTTEP AA that the costs of clean up, on-going environmental management, drilling of the relief well and repairs and replacement to the Montara Wellhead Platform is in the order of US\$319 million.

52. The Government will establish a taskforce of relevant portfolios to develop the legislative amendments required to address the specific findings and recommendations of the Report.

National response arrangements

53. With regard to the response more generally, the Commissioner found that roles and responsibilities under the *National Plan to Combat Pollution of the Sea by Oil and other Noxious and Hazardous Substances*, need further clarification and recommended improvements to the National Plan.

54. Critical to the success of responding to incidents is the effective implementation of the Response Strategy.

55. In parallel to the Inquiry process an Incident Analysis Team (IAT) was established by AMSA to undertake an independent review of the *Response to the Montara Wellhead Platform Incident*. The IAT report provided eight recommendations aimed at strengthening the National Plan. The recommendations from the IAT report have been taken into consideration as part of the draft Government response to the Montara Report.

Indonesia

56. From an international perspective, I note that evidence was presented to the Inquiry that some weathered oil had crossed into Indonesia's EEZ.

57. This was consistent with AMSA's observations and was reflected in the Government's formal advice to the Indonesian Government nine days after the spill commenced.

58. Throughout the response AMSA was in direct contact with Indonesia's Directorate General of Sea Transport and provided updates in relation to the type, amount and nature of the oil present in Indonesia's EEZ and Australia's clean-up response effort.

59. The Government has continued to keep the Indonesian Government informed of further developments.

60. I am aware that the Indonesian Government is seeking compensation from the operator of the Montara oil field, PTTEP AA. This is a matter between the Indonesian Government and PTTEP AA.

International Engagement

61. The Australian Government has also focused on the international events taking place that impact upon the offshore petroleum industry.

62. Following events in the Gulf of Mexico, we have been sharing information and learnings regarding our respective incidents with our United States counterparts. We will continue to do so. The Deepwater Horizon incident posed new challenges in response coordination, international engagement, deepwater technology and the application of science which were not contemplated at the time of the Montara Inquiry.

63. The US President established a National Commission on 21 May 2010 to fully inquire into the *Deepwater Horizon*. The commission's findings are due to be provided on 12 January 2011. The outcomes from this report will also be considered for any implications for Australia's offshore petroleum regulatory regime.

64. International collaboration including through the G20 to identify best practice arrangements will also strengthen existing offshore petroleum regulatory frameworks around the world.

65. The Australian Government will 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, to be held during 2011, are underway.

Draft Response to the Report of the Montara Commission of Inquiry

66. Of the 105 recommendations in the Report of the Montara Commission of Inquiry the Government in its draft response proposes accepting 92 recommendations, noting 10, and not accepting three. The three recommendations that are proposed not to be accepted are technically inappropriate. The recommendations proposed to be noted generally relate to aspects already addressed within the regulatory regime or issues which are primarily operational matters for the offshore petroleum industry to address.

67. 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.

Conclusion

68. The Government is committed to doing everything possible to avoid incidents like Montara in the future and is working to ensure we achieve the best and safest offshore petroleum industry in the world. Industry, government and regulators must be absolutely committed to a culture of high safety standards and environmental protection within a framework of continuous improvement. We must work and learn together. Applying the lessons from these incidents is vital for the effective regulation of the offshore petroleum industry and its ongoing licence to operate.

69. The jobs and prosperity that flow from Australia's offshore petroleum industry are vital for our economy and energy security but this can not come at the expense of the protection of human health and safety or the marine environment.

70. Action to implement recommendations on urgent issues identified in the Commissioner's report has already commenced by Government with industry also undertaking their own actions to increase safety. The remaining actions to address accepted recommendations will commence following the finalisation of the Government response. Implementation will take significant and sustained efforts by government, industry and regulators over several years.

71.I table the Report of the Montara Commission of Inquiry and the Government's draft response.