MONTARA COMMISSION OF INQUIRY

NORTHERN TERRITORY SUBMISSIONS ON CHAPTER 3 OF THE DRAFT REPORT THE REGULATORY REGIME: WELL INTEGRITY AND SAFETY.

Paragraph 83

1. The finding is couched in prejudicial terms, but those terms are too broad to be properly reflective of any particular shortcoming and it is not clear in what respect the Commission has found the Northern Territory to have fallen short. Whilst that may become apparent in later paragraphs, the reader will not necessarily cross-reference between the unnecessarily broad summary and the later detail.

2. The word "unfortunately" should be deleted.

3. The word "well" should be deleted.

4. The paragraph should be amended to read:

> The evidence received by the Inquiry was that the NT DoR did not require the operator to provide the information referred to in paragraph 82, and so could not properly scrutinise and evaluate the applications for approval for the installation of PCCCs, or the Phase 1B Drilling and Completion Program.

Paragraph 85

5. The word "unfortunately" should be deleted.

Paragraph 89

6. The word "largely" should be inserted after the word "effect". The evidence of Mr Whitfield discloses that there were occasions on which he requested further information from Mr Marozzi. At transcript page 2303:

> 8 Q. If, for example, Mr Marozzi were to give you
> 9 a one-page memorandum which tells you basically nothing in
> terms of what you might need to know in terms of assessing
> 11 an application, you could go back to him and say, "Look,
> 12 Dominic, this is just not sufficient information. Could
> 13 you go away and provide me with a risk assessment or could
> 14 you provide me with some information about the equipment
> that we are dealing with here", something of that kind,
> 16 couldn't you?
> A. Yes.
> 18
> 19 Q. Have you ever done that with respect to provided to you by Mr Marozzi?
> 21 A. Yes, I have.
> 22
> 23 Q. What was that occasion? a memorandum
> 24 A. Let me think. The occasion was, I think, in terms of

a seismic survey and it was to do with consultation with
26 stakeholders and the level of consultation. I wasn't
27 particularly satisfied that there had been sufficient
28 consultation, and I wanted to clarify that point.
29
Q. Is that the only occasion on which you have sought
31 further information from Mr Marozzi or given him feedback
32 about the level of information that he has provided to you
33 to assist you to fulfil your role?
34 A. No, I think there was another example whereby there
was a requirement for a particular company to get approvals
36 under the EPBC, the Commonwealth environmental legislation,
37 and the recommendation document was ambiguous to that
38 extent, so I asked for clarification.
39
Q. But you certainly haven't done that in relation to any
41 of the recommendations from Mr Marozzi in relation to well
42 activity drilling applications; is that right?
43 A. I don't believe it is, no.

7. Additionally, this paragraph should fairly include some reference to the difficulties acknowledged in paragraph 140, where the Inquiry acknowledges that it is conscious that regulation in a small jurisdiction can be problematic. See also the evidence and the comments by the Commissioner at transcript pages 2284-2285.

Paragraph 91

8. The word "unfortunately" should be deleted.

9. The expression "left a lot to be desired" is an idiom lacking in the certainty of meaning that a document of this nature requires. The paragraph should be amended to read:

> Mr Marozzi's assessment of such applications, and Mr Whitfield's approval of his recommendations relating to them, did not satisfy the requirements specified in paragraph 90.

Paragraph 93

10. The words "and disturbing" should be deleted.

Paragraph 96

11. The words "with considerable alarm" should be deleted. They are meaningless in the context, and add nothing to the passages before or after which they occur beyond theatrical effect.

Paragraphs dealing with preliminary/urgent approvals (107 -- 114).

12. These paragraphs combine two propositions. First, that the Victorian regulator requires any request for any urgent approval of any major change to an approved program to be submitted no less than 24 hours in advance. This is not the case. Secondly, that the procedure adopted by the Northern Territory for granting urgent approvals has created a material uncertainty as to when the approval has been granted. Neither proposition can be sustained on the evidence.

Practice of the Victorian regulator

13. The Victorian regulator has provided the Commission with a written statement of its policy with respect to the consideration of urgent approvals. During the course of the hearing, the Commissioner and counsel assisting expressly acknowledged that the written statement disclosed that the Victorian regulator does consider urgent applications on the basis of less than 24 hours notice in advance. See:

    - DPI.0001.0001.0006;
    - transcript page 2059-2060, and comments by the Commissioner and counsel assisting (Mr Berger).

    Q. What the Victorian regulator is saying is that they demand that of operators, Mr Marozzi; do you understand that to be what they are saying? They make it clear to operators such as Esso, "You can't expect approval in less than 24 hours", and Esso have come to understand that that is how they are going to deal with the regulator?
    A. If they are doing that, that's a very rigid approach from a regulator, but that's their call, I guess. I can't see how the operator can always stick to that for particular circumstances. It's just not possible for all cases.
    Q. It means, sometimes, Mr Marozzi, they have to wait before they get approval to do certain things?
    A. Yes, if the regulator hasn't been given enough time to make an informed decision, then the operator would have to wait. But, by the same token, you can't - it is just not practical to insist that the operator, at all times, provide more than 24 hours' notice. That's just not a reflection of the industry - not a fair reflection of how the industry operates.
    Q. Well, Esso is a very major player in the industry, isn't it, Mr Marozzi?
    A. Yes, it is a big player.
    Q. The fact that the Victorian regulator has reached an arrangement with such a major player rather suggests that it might be possible; do you not agree?
    MR GRANT: I object to this. I should have objected earlier, Mr Commissioner. It is misrepresenting the content of this document. First of all, the document says, in the anti-penultimate paragraph of that page that is up there now, just at the very top of the screen:
    The DPI requires a 24 hour turnaround for urgent requests. However, if the request requires immediate response ...
    It then goes on to talk about a process which is in very similar terms to the process that was conducted on 6 March. So the premise underlying all of these questions is that in no circumstances will the Victorian regulator field a request if a 24-hour turnaround time isn't given, and that

> is not borne out by this document, and the questions don't fairly reflect the content of the document.
> So far as the second reference in the document is concerned to which the examiner has taken the witness, Mr Commissioner, you will see that the requirement or the arrangement there is that Esso Australia will submit no less than 24 hours in advance any application for an approval for a major change, rather than any particular application.
> Now, the way in which the examiner has been putting these questions to the witness isn't reflective of the content of this document, and that is the substance of the objection.
> THE COMMISSIONER: Mr Grant, up to this point, you are right in your characterisation of what Mr Berger has been putting to the witness.
> Mr Berger, could you please develop what point you are seeking to establish in a different way.

No material uncertainty

14. As with the Victorian regulator, it is part of the Northern Territory's practice to grant urgent approvals in certain circumstances. An approval so given is referred to as a "preliminary approval", with subsequent documentation issued to confirm that preliminary approval.

15. The evidence disclosed that from the Northern Territory's perspective, this process generates an approval on the date the "preliminary approval" is conveyed to the operator, and it is meant to be understood that the approval operates from that date. In the case of the relevant approval to suspend, preliminary approval was given on 6 March, which was a Friday, with an expectation based on the operator's specific representation that the relevant activity was to occur on the Saturday and Sunday immediately following. Formal confirmation of the preliminary approval was given on the Monday, on the assumption that the activity had in fact already occurred. In context, there can be no doubt that the Northern Territory's approval was intended to take effect on and from 6 March 2010. In circumstances where the operator has undertaken the activity the subject of the "preliminary approval" before receipt of formal confirmation, there can be no doubt that the operator has for all material intents and purposes taken the view that the approval took practical effect from the date of the "preliminary approval".

16. The practice of subsequently confirming preliminary approvals gives rise to nothing but a semantic problem, and the evidence does not suggest otherwise. The operative issue in relation to urgent approvals is whether at the time of application and grant the regulator has sufficient information on which to base a decision, and sufficient time in which to assess the information.

Paragraph 126

17. The Northern Territory does not take issue with the general thrust of this paragraph, but submits a distinction might usefully be made between compliance monitoring in relation to well integrity and that in relation to environmental regulation. The subparagraphs should be amended to read:

a. in relation to well integrity:

    i. a targeted, thorough comparison of daily drilling reports (and/or other such updates) with an operator's WOMP and drilling programs;
    ii. in conjunction with (i) above, requiring operators to include as part of the daily drilling report all off-line activity and internal e-mails relating to significant operational matters;
    iii. attending meetings pertinent to well integrity, including hazard identification study meetings, hazard and operability study meetings, test well on paper meetings and/or operators' pre-spud meetings [footnote 65]; Analysis of a proposed drilling program against the Company Well Control Standards
    iv. periodic review of operators' Well Control System standards;
    v. in appropriate circumstances, the appointment of Petroleum Project Inspectors to conduct inspections of a drilling facility; and/or
    vi. 'audit' type review of well control practices [footnote 66].

b. in relation to environmental regulation:

    i. a targeted, thorough comparison of daily drilling reports (and/or other such updates) with an operator's approved environmental plans;
    ii. attendance at HAZID and other meetings directed to environmental compliance issues;
    iii. review and audit of minutes of “on rig” environmental meetings;
    iv. a targeted campaign of on-site inspections when rigs are at dock to assess the adequacy and efficacy of environmental equipment and the presence on rig of procedural documentation.

18. The Northern Territory would also suggest that the following sentence should be added to existing footnote 66:

> Site visits during drilling may play a useful role in the exchange of operational information between the operator and regulator but should not be seen as a primary compliance activity.

Paragraph 128

19. Replace "although" with "although having regard to the evidence heard by the Inquiry".

20. The last sentence should be amended to read:

> For the reasons discussed above, the Northern Territory did not place itself in a position so that it could properly inform itself.

21. In addition, the observations in relation to the Northern Territory's assessment of PTTEPAA's competence as an operator are rendered so as to make that assessment appear idiosyncratic. The Commission has clearly placed some reliance upon Mr Millar’s various assessments, and that reliance should not properly be selective. At transcript pages 218-219, Mr Millar gave the following evidence:

> Q. And you were also familiar, I take it, from your previous experience operating drills on the rig, with the

types of jobs that the PTTEP personnel would have been doing on the rigs?
A. Having dealt with it - I've never been a client rep, but I've dealt with a number of client reps, that's true.
Q. You were familiar, though, with the people on the rig?
A. I was. I'd made a number of visits to the unit.
Q. So you'd met them and formed a view about their competence as well?
A. I had.
Q. There was nothing that occurred to you that meant that they were anything but competent?
A. I felt we had a strong team on the Atlas.
Q. And the onshore team?
A. I dealt primarily with Mr Duncan and Mr Wilson, and I hold them both in very high regard.
Q. What were the communication channels between yourself and Mr Wilson and Mr Duncan?
A. Every day. We communicated in morning meetings. If there were any issues raised through the day, we had more meetings. It wasn't an unusual event for me to walk down to their office and, indeed, them to walk up to my office and have a conversation about anything that was raised.
Q. So it was a completely open and frank communication channel between you?
A. Completely.
Q. So if something was potentially amiss on the rig, then you would know about it from them?
A. Absolutely, yes.
Q. There would be absolutely no reason for them to not disclose it?
A. No, I had every comfort in the drilling personnel with PTTEP, they were open and honest. I had no reservations whatsoever about them.

22. That evidence must be considered in the following context:

    (a) Mr Millar was a Rig Manager with many years experience in offshore drilling;

    (b) Mr Millar met with PTTEPAA personnel, and received briefings from Atlas personnel in relation to rig activities, on a daily basis;

    (c) Mr Millar had been working with PTTEPAA in that capacity since the *West Atlas* commenced operations in the Montara field; and

    (d) Mr Millar's exposure to PTTEPAA activities and personnel was at a far greater level of engagement and frequency than that of any officer with the Northern Territory regulator.

23. Against that background, Mr Millar had clearly formed a similar view to that of the Northern Territory regulator in relation to PTTEPAA's competence. Whilst that confidence may have been shown to be misplaced having regard to the evidence that fell during the course of the

Inquiry, it is clearly the case that the Northern Territory's assessment in that respect was not isolated, illogical or unfounded in the circumstances.

Paragraph 130

24. This paragraph is both entirely speculative and highly prejudicial, and should be deleted.

Paragraph 131

25. This paragraph is an oversimplification of the evidence heard by the Inquiry in relation to resourcing issues. Mr Marozzi's evidence, both orally and by way of statement, was to the effect that one further person was required in order to properly assess applications. Whilst that evidence is reflected in paragraph 133, the opening paragraph to the section suggests some greater deficiency.

26. The issue of resourcing should properly be put in the following context:-

    (a) At paragraph 61 of his statement, Mr Marozzi states that any resourcing issue in relation to drilling and survey assessments could be redressed by the appointment of another Senior Energy Engineer to share responsibility for those matters. He suggested further that such a position could be in replacement of the current position of Energy Engineer previously occupied by Luke Drever. In other words, the issue could be largely addressed within the existing staffing allocation.

    (b) The two Energy Engineer positions have been vacant since September and November 2009 respectively. Both vacancies post-dated the events in question and had no bearing on the matter. The NT DoR is actively recruiting to fill the vacant positions. However, the significant gap between private and public sector remuneration (led by a world-wide shortage of petroleum engineers), makes it difficult to attract and retain appropriately qualified and experienced staff. Methods of bridging that gap are being considered by the Department.

    (c) Mr Marozzi's evidence to the effect that he didn't have time to properly consider daily drilling reports must be considered in light of the evidence subsequently given by Mr Whitfield (at transcript pages 2252-2253, 2291-2292, 2295-2297; with assumptions confirmed by Mr Trier at 2330), to the effect that certain of the other functions conducted by Mr Marozzi were capable of being undertaken by others within the division, that the West Atlas rig was the only rig operating in the area at the material time, that as a consequence Mr Marozzi was only receiving one daily drilling report per day, and that apart from the applications to suspend there were only two other applications on foot between 6 and 13 March 2009 which did not require a response until the end of March.

    (d) Little weight may properly be attached to be draft Audit Report dated May 2009 because: it is concerned only with environmental assessment; its findings were never discussed with NT DoR management; its content was never tested during the course of the Commission processes; and, for example, so far as it may maintain that Northern Territory staffing levels are significantly lower than those of the Victorian regulator, it is the Northern Territory's understanding that the Victorian regulator also employs only one drilling engineer and one reservoir engineer.

27. The Northern Territory's position is that the present staffing allocation is adequate in terms of human resourcing levels, leaving aside issues in relation to skill levels and maintaining a full complement of staff.

28. It follows that an adequate level of financial resourcing is being applied to support personnel and operational costs, subject to any substantial change to the level of monitoring and compliance activities. So, for example, should it be determined that on rig site visits and regular attendance at pre operational industry planning meetings (which are mostly held interstate in the case of the Northern Territory) are required and appropriate, extra financial resources will be required.

29. As a result of evidence received during the course of the Inquiry, the Northern Territory has come to the view that the skill levels of NT DoR personnel involved in the assessment of legislative requirements were deficient in certain areas. As a result, NT DoR is conducting a staff skills audit in order to identify and remedy deficiencies in that respect. NT DoR has put in place interim arrangements involving the use of interstate personnel to provide independent assessment of permits and authorisations. So far as recruiting difficulties are concerned, NT DoR has instigated a process similar to that adopted by the Western Australian regulator to increase remuneration for specialist officers.

30. Resourcing issues are best addressed in the manner outlined in the exchange between Mr Trier and the Commissioner at transcript pages 2320 and 2327-2328.

Paragraphs 135 -- 139

31. The first sentence in paragraph 135 is based upon a faulty premise. The paragraph (and those following) is clearly directed to financial resourcing. So much is apparent from the reproduction of the table. For the reasons discussed in the preceding section of this submission, there is nothing in the evidence to suggest that the Northern Territory does not apply an adequate level of financial resourcing to the regulation function. The staffing allocation is adequate. As stated, the problem is one of attracting and retaining suitably skilled staff.

Paragraph 164

32. There is some tension between the recommendation that a single regulator responsible for all offshore well integrity and safety could conveniently be located in an different jurisdiction to that where the operation is located, and the recommendation in paragraph 126 encouraging the regulator to attend local meetings in relation to drilling activities in order to monitor the issues affecting local operators.

Paragraph 178

33. In subparagraph (f), the word "well" should be deleted. It should be left to the reader to make some assessment of the extent to which NT DoR's practice fell short of good contemporary regulatory practice having regard to the matters addressed specifically in the body of the report. It is not appropriate to editorialise in a summary of the preceding material.

Paragraph 179

34. So far as subparagraphs (a), (b) and (c) are concerned, the Northern Territory supports the principle of moving to a single national regulator to improve consistency of regulation. That support is qualified by the observation that there is value in using the combined knowledge and experience of current regulators in developing a proposed regulatory regime for the new body.

35. So far as subparagraph (d) is concerned, the Northern Territory submits that no such recommendation should be made. That is a matter for the Minister to determine having considered the content of the report. His consideration should not be pre-empted by recommendation. The Northern Territory submits further that no revocation would be appropriately made in any event, for the following reasons:-

    (a) Although NT DoR's regulatory practice could be improved for reasons outlined in this draft report, NT DoR administered the Act in accordance with its understanding at the time that following the amendments in 2004 the regulatory scheme was intended to be non-prescriptive and objective-based. Whilst it is now accepted that good oilfield practice dictates that NT DoR should have sought further information in relation to PCCCs and pursued the issue of pressure testing of the barriers prior to suspension, and should not have approved the Phase 1B Drilling and Completion Program in circumstances where that program contemplated the well being open to atmosphere with only the primary barrier in place, as indicated in Chapter 1, these were not the proximate cause of the blowout. Since the Inquiry, NT DoR has brought its practice in these respects into step with other regulators.

    (b) The direct and primary causes of the blowout were the the overdisplacement during the course of the 9 ⅝" cementing job and the failure to reinstall the 9 ⅝" PCCC during the course of the tieback operation, neither of which failures could reasonably have been identified by the NT DoR.

    (c) RET has, since at least 2003, been conducting audits of NT DoR's regulatory activity. The general conclusions drawn following those audits have been to the effect that the overall administration of the regulatory regime was reliable and well-documented, and that NT staff were competent and committed. It has never previously been suggested that NT DoR's procedures were not appropriate and consistent with those of other regulators.

    (d) During the course of the hearings of the Commission of Inquiry, the Director of Energy and the Executive Director Minerals and Energy, DoR gave undertakings to the Commissioner to: undertake a thorough process review and gaps analysis for petroleum activity authorisation and monitoring; and to investigate mechanisms to better remunerate technical officers charged with administering petroleum legislation. In accordance with those undertakings, actions presently in train include: an analysis of current procedures of both the WA and Vic regulators; a procedural review (under the auspices of RET) to establish inter-jurisdictional agreement on regulatory processes, including identification of critical points and procedures for approvals, monitoring and compliance; a submission to the Commissioner for Public Employment seeking increased remuneration for specialist positions; and the implementation of short term arrangements for independent assessment of applications for approval.

(e) The recommendation to move to a single regulator is consistent with the current view of the Working Group to the Productivity Commission's report on a review of the regulatory burden on the upstream petroleum sector, and also that of the Commonwealth Minister for Resources. Such a restructure would seem likely. The revocation of the Northern Territory's delegation at this stage would remove the Territory from the transitional processes towards to a single regulator, in which the Northern Territory could play a valuable role.

(f) The revocation of the delegation would require NOPR to step into the regulatory role at short notice. Such a transition is best effected in the context of a national scheme.

[ENDS]