

Additional comments from the Australian Greens

1.1 This inquiry has revealed the significant and unacceptable threat that drilling for oil in the Great Australian Bight represents. Furthermore, this extraordinary committee report reveals the crippling split that exists within the Australian Labor Party when it comes to protecting our natural treasures and defending against the looming impacts on climate change. The fact that some members of the Labor Party are so captured by the oil and gas lobby, to the point of obedient subservience, represents a grave threat to South Australia and our country's natural wonders such as the Great Australian Bight.

1.2 The dubious timing of election donations made by Chevron, a witness of this inquiry, to the South Australian Labor and Liberal parties draws into serious question the ability of Senators from those parties to investigate this issue fairly. It is clear that Labor Senators, and especially those from South Australia, are not capable of reporting on the conduct of this inquiry honestly as they were accepting donations from a witness while it was being conducted.

1.3 The need to protect pristine marine environments against the development of the offshore oil and gas industry has been the subject of fierce public debate for many years.

1.4 Though this inquiry followed the proposal by BP to conduct exploratory drilling in the Great Australian Bight, the concerns and issues raised more broadly addressed the current regulatory regime governing the approval of offshore oil and gas activities in Australia. It was also evident that concerns regarding the potential impact on the pristine marine environment of the Great Australian Bight apply to all oil and gas activities in the area, regardless of the proponent company.

1.5 The Australian Greens note that it is clear that the environmental, economic and social impacts resulting from the 2011 Deepwater Horizon incident in the Gulf of Mexico influenced the view held by many submitters regarding the appropriateness of offshore oil and gas activities being conducted in the Great Australian Bight. The Deepwater Horizon incident also weighed heavily on some submitters' perception of BP as a titleholder in the Great Australian Bight.

Protection of the Great Australian Bight

1.6 The Great Australian Bight is an extraordinary oceanic and coastal environment of global conservation significance. It is a place of unparalleled natural beauty and home to an array of diverse and unique flora and fauna species. Coastal communities have a deep and abiding connection to the Great Australian Bight and rely on it for both industry and recreation. The Great Australian Bight also provides not just local communities, but national and international visitors with an opportunity to experience one of the world's last pristine and unique marine wilderness areas.

1.7 As one of the last remaining intact ocean wilderness areas in the world, it provides critical habitat to a range of threatened and endangered wildlife species. It is extraordinarily rich in biodiversity, and is home to an enormous number of endemic species—some 85 per cent of species found in the region are endemic. Many of these endemic species are also listed as threatened under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

1.8 The waters of the Bight provide the most significant breeding and calving areas in Australia for the southern right whale, one of two such major calving areas in the world. It also supports an essential nursery area for the endangered Australian sea lion. The Bight provides seasonal habitat for a range of rare and endangered cetaceans such as sperm whales, killer whales and orquals (blue, minke and humpback whales).

1.9 The Great Australian Bight also supports an array of businesses from aquaculture and fisheries, to tourism. South Australia's fishing and aquaculture production in 2010–11 was valued at \$425.5 million with the region accounting for 97 per cent of production. The region's tourist industry contributed to the economy a combined \$1.2 billion in 2013–14 and accounts for nearly 10,000 full time equivalent jobs.

1.10 Over the past 20 years, both the Commonwealth and the South Australian governments have worked to recognise the global conservation values of the region through the declaration of extensive protection areas. One mechanism to preserve and protect the Great Australian Bight has been the establishment of Commonwealth marine reserves. The establishment of marine reserves act to protect and maintain an area's biodiversity, including endangered and threatened species such as whales and pinnipeds, and their habitats.

1.11 The Australian Greens believe that the mechanisms currently in place acknowledge the high environmental values of the Great Australian Bight and raise the question as to why oil and gas exploration and production is permitted in such a sensitive area.

1.12 In addition, the Australian Greens note that much remains unknown about the marine environment, biodiversity and geology of the Great Australian Bight. The Australian Greens acknowledge that BP has invested in research activities. However, the Australian Greens consider that this underscores that the full impact of exploration and production, let alone an oil spill, on the Great Australian Bight is unknown.

Impacts of oil and gas exploration and production in the Great Australian Bight

1.13 While BP has withdrawn its plans to undertake exploration activities in the Great Australian Bight, other proposals remain active. In evidence to the committee, industry stakeholders put forward the arguments that the development of oil and gas reserves in the Great Australian Bight would provide a range of economic benefits for both South Australia and Australia generally. However, a range of these supposed

economic benefits were considered to be unrealistic, according to alternative evidence provided to the committee, and heroic employment claims were regularly questioned and challenged throughout the inquiry.

1.14 In relation to fuel security, supporters of the oil and gas industry commented that continued exploration and exploitation of reserves was necessary to ensure that Australia's fuel security was maintained. The Australian Greens consider that oil and gas are not the only means to meet this requirement and that renewables are now a highly viable alternative to oil and gas. In addition, unlike some overseas jurisdictions, Australia does not have a state-owned oil company. Rather, Australia's oil and gas resources are exploited by private industry which acts in response to commercial considerations and exports the vast majority of locally sourced oil and gas into the international market.

1.15 The Australian Greens also note the concern of submitters in relation to employment benefits. Oil and gas production is so highly capital intensive that purported employment benefits may not arise. In addition, many workers would be fly-in-fly-out, thus providing little economic benefit to local economies. However, the Australian Greens note that, should an oil spill accident occur, the impact on employment in South Australia would be devastating: the fishing and aquaculture industries would be severely affected and tourism would suffer.

1.16 Another argument put forward by supporters of the oil and gas industry point to royalties and tax revenues to be gained by the Commonwealth and state government. However as later discussed, evidence provided to the committee appears to counter this argument.

1.17 The committee was also provided with evidence of the environmental impacts arising from exploration and production activities. These ranged from the impact of seismic surveys on cetaceans, particularly whales, to the increased risk of vessel strike from the growth in shipping traffic. There were also concerns with the impact of drilling in the pathway of migrating cetaceans. Some of the cetaceans found in the Great Australian Bight are listed as threatened, for example, the southern right whale, and any adverse impacts on their migration or calving habitat should be minimised.

1.18 The Australian Greens consider that this evidence highlights the harm associated with oil and gas activities. However, what is of greater concern is the devastation that would result from an oil spill in the Great Australian Bight.

Impacts of an oil spill in the Great Australian Bight

1.19 Oil and gas proponents argue that operations in the Great Australian Bight will be conducted with the risk reduced to as low as reasonably practicable as required under the regulatory framework. The Australian Greens are particularly sceptical of such assurances given the industry's history of catastrophic oil spills around the world. The Gulf of Mexico continues to suffer from the effects of the Deepwater Horizon disaster and is likely to continue suffering the effects for many years to come.

1.20 No enterprise is risk free; accidents do occur. Submitters pointed to the attributes of the Great Australian Bight which contributed to concerns that an oil spill was more likely to occur. These attributes included the harsh weather experienced in the Bight; remoteness of drilling sites; and the depth of the oil and gas reserves. Evidence indicated that wells would be drilled at water depths up to 2200 metres and at depths of up to 3000 metres into the sea bed; this drilling was described as 'at the frontiers of technical capacity'.

1.21 Should a blowout occur, BP stated that it could cap a well in the Bight in 35 days. This scenario was seen as optimistic by many submitters. Even if a well was capped within 35 days, many thousands of barrels of oil would be released into the Great Australian Bight.

1.22 While BP undertook modelling of an oil spill, this was not released until September 2016. In the absence of this information, The Wilderness Society commissioned its own modelling. The modelling showed that oil would impact the shores of Western Australia and South Australia and could reach the Tasmanian and Victorian coastline and move through the Bass Strait towards New Zealand. BP's own modelling of 'worst credible case' modelling was based on a 149 day oil release scenario. This modelling largely corroborated The Wilderness Society's modelling and showed the vast extent of coastline where oil could reach.

1.23 Both The Wilderness Society and BP modelling demonstrate the significant impact of an oil spill; hydrocarbons would move unrestricted across the entire area killing and injuring marine fauna and flora, including threatened and protected species, and disrupting the delicate ecosystems which support the region's tremendous biodiversity. Not only would thousands of threatened and endangered wildlife species be killed and injured but also industries important to both the South Australian and Australian economies would be devastated. The aquaculture and fisheries industries may need to be closed and it is likely that many operators would not be able to recover from such an incident. Further, an oil spill would threaten consumer perception of Australian seafood products as 'clean' and significantly impact on producers' ability to access markets.

1.24 The degree of impact of an oil spill will also depend on containment and mitigation efforts. However, the Australian Greens are also mindful that the Great Australian Bight poses particular problems for any clean-up of oil spills. These include the harsh weather conditions, the rugged and isolated coastline, the many islands, the isolation from major population centres and the lack of equipment and personnel to handle a major spill.

1.25 Given all these concerns, the Australian Greens consider that the consequences of an oil spill occurring in a pristine marine environment of the Great Australian Bight outweigh any assurances from oil and gas proponents that such an event is unlikely to occur. The Australian Greens therefore conclude that oil and gas activity occurring in the Great Australian Bight is entirely inconsistent with the need to protect the region's pristine marine environment. The Australian Greens are also of

the view that the risks associated with such oil and gas activity place the future of industries which rely on the region in significant danger.

1.26 The Australian Greens also consider that the Australian Government is out of step with other jurisdictions in protecting unique environments. In this regard, the Australian Greens note that in 2016, President Barack Obama used a 1953 law that allows the President of the United States to block the sale of new offshore drilling and mining rights to permanently ban new oil and gas drilling in most US-owned waters in the Arctic and Atlantic oceans.¹ This coincided with a similar announcement from Canadian Prime Minister Mr Justin Trudeau who declared a moratorium on new oil and gas leases in Canada's Arctic waters, subject to five yearly climate and marine science-based reviews.²

Recommendation 1

1.27 The Australian Greens recommend that no further oil or gas exploration or production be permitted in the Great Australian Bight Marine National Park. Further, the Australian Greens recommend that the Australian Government introduce legislation to prevent future oil and gas activities from occurring in the Great Australian Bight Marine National Park.

Regulatory regime

1.28 The offshore oil and gas industry is technically complex and its regulation requires both specialist knowledge and expertise, and the co-operation of state and Northern Territory, and Commonwealth governments.

1.29 Previously, the Department of the Environment was responsible for the environmental approvals of offshore oil and gas activities which would have an impact on Matters of National Environment Significance (MNES) under the EPBC Act. The National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), was established in 2011 as the independent authority responsible for the regulation of well integrity, health and safety, and environmental management for offshore oil and gas operations in Commonwealth waters. In 2014, NOPSEMA was handed responsibility for assessment and approval under Australia's national environmental law, the EPBC Act.

1.30 The establishment of NOPSEMA as a 'one-stop regulator' responsible for both environmental and safety approvals was heavily criticised by a number of submitters who argued that NOSPEMA provides a lower degree of environmental protection than the ordinary process for EPBC assessments by the Department of the Environment

1 David Smith, 'Barack Obama bans oil and gas drilling in most of Arctic and Atlantic oceans', 21 December 2016, <https://www.theguardian.com/us-news/2016/dec/20/barack-obama-bans-oil-gas-drilling-arctic-atlantic>.

2 FAQs on Actions being taken under the Canada-US Joint Arctic Statement, <http://www.aadnc-aandc.gc.ca/eng/1482262705012/1482262722874>.

and Energy, and the Minister for the Environment. For example, oil and gas proponents are required to prepare and submit an Environment Plan for approval by NOPSEMA prior to undertaking any exploration activity. This environmental approval process requires proponents to demonstrate that impacts and risks associated with oil and gas activities are reduced to As Low as Reasonably Practicable, and that all activities are consistent with relevant Commonwealth Marine Reserve Plans where applicable. However, submitters argued that NOPSEMA staff are not adequately qualified to make environmental assessments.

1.31 The Australian Greens note concerns that NOPSEMA does not have sufficient expertise to make environmental assessments but also notes the evidence it received that staff are required to obtain and maintain relevant competencies prior to undertaking lead regulatory roles, and the cooperation which exists between NOPSEMA and other government departments.

1.32 Criticisms were also made of the lack of ministerial oversight of NOPSEMA's decisions. Without ministerial oversight, NOPSEMA's environmental approvals process lacks critical public accountability and transparency measures. Offshore oil and gas activities which impact on the conservation and management of pristine marine environments are a matter of national interest. The Australian Greens believe that not only should there be a rigorous assessment of environmental and safety standards, but that the interests of the broader community should also be protected.

1.33 While oil and gas proponents may argue that undertaking oil and gas activities is in the national interest, the preservation of Australia's environmental and conservation values is also in the national interest, and should be given appropriate consideration. The Australian Greens believe that while the independence of the regulator is critical to ensuring that all assessments are made without influence or prejudice, ministerial oversight and accountability is required.

1.34 The Australian Greens consider that the approval of Environment Plans by the Minister of the Environment and Energy would improve accountability, and ensure that environmental protection is given an appropriate degree of consideration prior to the commencement of any exploration activity.

Recommendation 2

1.35 The Australian Greens recommend that the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 be amended to include a requirement for approval by the Minister for the Environment of all Environment Plans prior to the commencement of any exploratory activity and that, ultimately, the environmental assessment role of NOPSEMA be handed back to the Department of the Environment and Energy or to a National Environmental Protection Agency, established as an independent statutory authority to assess and make recommendations to the Environment Minister in relation to any environmental applications, including those for offshore oil and gas exploration, before final Ministerial approval or rejection.

1.36 The current regulatory regime was also criticised by a number of submitters for having inadequate community consultation requirements, and a lack of transparency. Criticisms were both general, and specifically directed against BP and its conduct.

1.37 Submitters raised concern that current requirements for proponent-led consultation restrict the public's capacity to engage in stakeholder consultation processes. In developing an Environment Plan, proponents are required to consult with all 'relevant persons', and are required to provide NOPSEMA with evidence that concerns raised by relevant persons have been addressed. However, unless identified as a relevant person, there is little opportunity for the general public to participate in stakeholder engagement, or raise concerns with either the proponent or the regulator. Submitters were also frustrated that access to information on proposed oil and gas activities was limited. Though the regulations require 'sufficient information' be released to stakeholders, there is no requirement for full disclosure of information such as oil spill modelling or oil spill response plans.

1.38 Submitters were particularly frustrated that BP's oil spill modelling and oil spill response plan was not publicly released until after consultation had occurred. It is unlikely that stakeholders would be able to reach an informed view on the level and nature of the impact on the marine environment, local industry and community of proposed activities, without this information. The Australian Greens believe that failure to release these crucial pieces of information highlights BP's lack of commitment to engage openly and transparently with the public, and its identified stakeholders.

1.39 The Australian Greens note that NOPSEMA is currently undertaking to develop and implement mechanisms to enhance the current regulatory framework in relation to stakeholder engagement and transparency. In particular, NOPSEMA is considering the implementation of a mandatory public comment phase at the point where a company has completed its Environment Plan which would allow interested persons to raise concerns directly with the regulator. In addition, NOPSEMA is considering whether Environment Plans could be released up-front, before a decision is made, to the extent that these plans would be released under the Freedom of Information process. The Australian Greens believe that these enhancements are vital to improving the transparency of the approvals process.

Release of information

1.40 The Australian Greens are of the view that oil and gas proponents must be required to release sufficient information to allow for informed community consultation. In order to understand the potential threats to the environment, community, human health, and local businesses and economy from a potential oil spill, the public must firstly understand the extent and reach of such an oil spill and secondly, the mitigation strategies which will be implemented.

1.41 The Australian Greens were shocked that BP did not release its oil spill modelling, and oil spill response planning overview until September 2016, after much of its public consultation had already occurred. The Australian Greens note the efforts of The Wilderness Society in commissioning oil spill modelling from Mr Laurent Lebreton in an attempt to inform its members, and other interested parties. In particular, the Australian Greens recognise the considerable expense associated with such a commissioned project and is of the view that such research should not have to fall to community groups.

1.42 The Australian Greens note that in October 2015, BP stated that it could not publish full oil spill modelling due to the commercial sensitivities of model inputs, but that the conclusions of the modelling are important matters of public consideration. The Australian Greens question why it then took BP until September 2016 to release such conclusions. The Australian Greens further question how BP, or any other proponent, could demonstrate that they had provided 'sufficient information to allow the relevant persons to make an informed decision' as required by the Environment Regulations, without having made public this information.

1.43 The Australian Greens are of the view that oil spill modelling and oil spill response planning must be released prior to public consultation to allow for informed participation. Further, to ensure compliance, this requirement should be included in the relevant legislation.

Recommendation 3

1.44 The Australian Greens recommend that the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 be amended to include a requirement for oil proponents to release oil spill modelling and emergency response plans prior to conducting public consultation during the course of preparing or revising an Environment Plan.

Public comment

1.45 The current regulatory regime relies entirely on proponent-led public consultation with titleholders engaging directly with relevant persons. The Australian Greens are of the view that such a critical aspect of the approvals process should have a direct mechanism for public consultation that does not rely on oil and gas proponents.

1.46 Given the nature of oil and gas activities and the potentially catastrophic impact on the environment, economy, human health, and local industry, it is in the public interest that consultation occurs as widely as possible. The right to raise concern should not be constrained by proponent lead consultation processes. As such, it is the Australian Greens' view that NOPSEMA should invite public comment on proposed exploratory activities during its environmental approvals process.

1.47 The Australian Greens note that offshore petroleum projects³ are subject to a mandatory period of public comment during the Offshore Project Proposal (OPP) approvals process. The community is invited to provide comment to NOPSEMA, and the proponent is also required to publish a notice inviting comment on the OPP on its website and in national, state and regional newspapers. Proponents are required to provide a summary report to NOPSEMA which assesses the merits of each objection or claim about the project, and includes a response or proposed response to each objection or claim.⁴

1.48 The Australian Greens are of the view that the public consultation process for Environment Plans warrants the implementation of a similar mandatory public comment process. Allowing opportunities for public comment provides transparency and an opportunity for all interested members of the public to provide comment.⁵

1.49 The Australian Greens note that the Australian Petroleum Production and Exploration Association (APPEA) has been tasked with developing a best practice framework to promote effective, transparent and consistent community consultation. The Australian Greens consider that it is inappropriate that an industry body has been tasked by a regulator to carry out this critical work.

1.50 The Australian Greens consider that this does not meet community expectations of industry regulators to be both independent and transparent. Developing best practice guidelines for meeting regulatory responsibilities is the role of government rather than industry.

Recommendation 4

1.51 The Australian Greens recommend that the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 be amended to include a mandatory period of public comment during the assessment process for Environment Plans.

3 An offshore petroleum project is a large-scale project where one or more petroleum activities are planned for the recovery of petroleum. An offshore project would not include drilling for exploration or appraisal purposes, or other petroleum exploration activities such as seismic surveys. However, all petroleum activities including those covered by an OPP require an accepted environment plan prior to proceeding. In the early stages of the design phase of an offshore petroleum project, a proponent must submit an offshore project proposal to NOPSEMA for assessment. For more information see: <https://www.nopsema.gov.au/environmental-management/assessment-process/offshore-project-proposals/>.

4 NOPSEMA, Offshore Project Proposal: Public Comment Information Paper, August 2016, p. 1, <https://www.nopsema.gov.au/assets/Information-papers/A473111.pdf>.

5 NOPSEMA, Offshore Project Proposal: Public Comment Information Paper, August 2016, p. 1, <https://www.nopsema.gov.au/assets/Information-papers/A473111.pdf>.

Recommendation 5

1.52 The Australian Greens recommend that NOPSEMA takes responsibility for, and develops new consultation guidelines and methodologies rather than devolving responsibility to an industry representative body.

Royalties and revenue

1.53 As previously noted, the committee received evidence that current taxation arrangements for offshore oil and gas projects may reduce any economic benefits otherwise gained. In particular, exploration drilling is unlikely to yield royalties or tax to either state or federal governments. Further, expenses associated with exploration are eligible to be claimed as deductions from future income.

1.54 The Australian Greens note the comments of The Australia Institute in relation to the Western Australian experience where the state government provided substantial investment in infrastructure and subsidies over a long period before revenues were realised. Royalties also revert to the Commonwealth rather than the states. As a consequence, South Australian taxpayers may face a very long period before revenue is realised. In the meantime, they will be subsidising the oil and gas industry.

1.55 Submitters were particularly critical of arrangements under the *Petroleum Resource Rent Tax Assessment Act 1987* (PRRT Act) which provides substantial subsidies for exploration activity in designated frontier areas, and deductions for exploratory expenditure which includes remediation expenditure.

1.56 The Australian Greens were particularly disturbed to learn that despite the 'polluter pays' principle underpinning the requirement for oil and gas titleholders to demonstrate financial assurance to the regulator, titleholders would be eligible to claim clean-up expenses as exploratory expenditure for the purposes of the PRRT. This is a direct contradiction of the polluter pays principle, and the Australian Greens are of the view that Australian taxpayers should neither be responsible for funding exploratory activity in high risk environments such as the Great Australian Bight, nor for any clean-up activities required in the event of an oil spill.

1.57 In November 2016, the Australian Government announced a review into the operation of the PRRT Act to help better protect Australia's revenue base, and to ensure that oil and gas proponents are paying an appropriate amount of tax. The Australian Greens also note that the PRRT Act is under consideration by the Senate Economics References Committee as part of its inquiry into Corporate Tax Avoidance.

1.58 The Australian Greens support both the much-needed Australian Government review of the PRRT Act, and the Senate Economics References inquiry into corporate tax avoidance.

Recommendation 6

1.59 The Australian Greens recommend that the Australian Government amend the Petroleum Resource Rent Tax Assessment Act 1987 to prevent companies from claiming environmental remediation expenses as carry-forward expenditure for the purposes of assessing their tax liabilities.

Senator Sarah Hanson-Young
Chair

