REPORT ON PROCEEDINGS BEFORE

LEGISLATIVE ASSEMBLY COMMITTEE ON ENVIRONMENT AND PLANNING

MINERALS LEGISLATION AMENDMENT (OFFSHORE DRILLING AND ASSOCIATED INFRASTRUCTURE PROHIBITION) BILL 2023

At Macquarie Room, Parliament House, Sydney, on Monday 9 October 2023

The Committee met at 10:00.

PRESENT

Mr Clayton Barr (Chair)

Mrs Judy Hannan
Mrs Sally Quinnell (Deputy Chair)
Ms Kellie Sloane
Ms Maryanne Stuart

The CHAIR: Good morning, everyone. Before we start the public hearing today, I would like to acknowledge the Gadigal people who are the traditional custodians of the land on which we meet, here at Parliament House. I also acknowledge the traditional custodians of the various lands on which our virtual witnesses are appearing at this hearing and I pay my respects to the Elders of the Eora nation, past and present, and extend that respect to any Aboriginal or Torres Strait Islander people who are present or who are viewing the proceedings through the public broadcast today.

On 29 June 2023, the Legislative Assembly referred the Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023 to this Committee for inquiry. The Committee must report back to the House on the bill by Tuesday 21 November. Today we are conducting a public hearing for this inquiry. We thank the witnesses who are appearing before the Committee today and the many stakeholders who have made written submissions. We appreciate your input into this inquiry, which touches on a number of complex issues. My name is Clayton Barr and I am the Committee Chair. With me here today at Parliament House are the Committee members: Mrs Sally Quinnell, the member for Camden and Deputy Chair; Ms Maryanne Stuart, the member for Heathcote; Mrs Judy Hannan, the member for Wollondilly; and Ms Kellie Sloane, shadow Minister for Environment and the member for Vaucluse.

Mr KEVIN MORRISON, Energy Finance Analyst, LNG/Gas Sector, Institute for Energy Economics and Financial Analysis, affirmed and examined

Ms LOUISE MORRIS, Oil and Gas Campaign Manager, Australian Marine Conservation Society, before the Committee via videoconference, affirmed and examined

Dr BARRY TRAILL, AM, Director, Solutions for Climate Australia, before the Committee via videoconference, affirmed and examined

The CHAIR: We will begin with our first panel of witnesses. You get the chance to make a short opening statement before we begin questions, if you would like. Ms Morris, would you like to make an opening statement?

LOUISE MORRIS: Yes, I would, thank you. I would like to thank the Committee for this opportunity. The Australian Marine Conservation Society, AMCS, is Australia's peak conservation organisation focused on our marine and coastal environment. For 58 years we've worked through scientific research, policy advocacy, communications and on-ground work with communities and stakeholders to achieve our mission of protecting Australia's oceans. We work on behalf of the Australian public and our 300,000-plus supporters around the country.

AMCS supports the intent of the Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill, which from here on I will refer to as the bill, to prohibit petroleum and mineral exploration and recovery in New South Wales State waters. We commend the efforts to prohibit development in New South Wales State waters that would support the offshore petroleum industry in Federal waters off the New South Wales coast. As outlined in our submission, AMCS considers that the bill could be strengthened in a couple of key areas, which I will address briefly.

We support the initial aims of the bill and encourage the scope of consideration to include the emerging threat of carbon capture and storage and the associated seismic blasting surveys used in exploration for this deeply problematic technology and the associated infrastructure. Carbon capture and storage under our oceans is an unsafe, unviable and unaffordable boondoggle for the fossil fuel industry as it attempts to prolong depleted world production and capitalise on the promise of carbon offsets. Carbon capture and storage poses significant risk to the marine environment and coastal communities, including through seismic blasting surveys, the construction of CCS infrastructure and the threats of transportation accidents and leaks, which could be as damaging as the oil and gas infrastructure and mining that this bill seeks to ban. By safeguarding the State waters and marine parks from any further oil and gas exploration and infrastructure, including seismic blasting and carbon capture and storage, the New South Wales Parliament will be showing leadership in protecting coastal communities and the marine environment from the direct impacts of fossil fuel industrialisation.

In our written submission, AMCS made the point that we do not consider the bill to be the legislative solution to stopping Petroleum Exploration Permit 11, commonly referred to as PEP 11. The proposed amendments would have the effect of prohibiting any development in New South Wales State waters, as you know, that would support offshore petroleum activities in Federal waters, which we absolutely support. However, some petroleum activities in Federal waters do not require any ancillary development to proceed. This includes seismic blasting surveys and exploration drilling which don't require any connection to the onshore environment through New South Wales State waters.

There have been some media comments and references in the second reading speech that the bill will stop seismic blasting for and the development of PEP 11. We don't agree with these statements, based on working examples of offshore gas projects in Western Australia that require no links to land via connecting infrastructure in State waters, as well as multiple seismic blasting and test drilling proposals for gas in the Otway Basin between Victoria and Tasmania that AMCS is actively campaigning on to ensure they do not proceed. In short, we look forward to seeing the New South Wales and Australian Federal governments using the joint authority powers available to stop PEP 11. In closing, AMCS commends the intent of this bill to ensure that State waters are protected from new oil and gas infrastructure and mining. We look forward to seeing amendments that could provide a strengthened bill that ensures seismic blasting and carbon capture and storage are also overtly included in the activities that our marine life, oceans and coastal communities will be protected from. Such a move will really show New South Wales as leaders in taking action to protect our oceans and all who depend on them. Thank you.

The CHAIR: We now have Dr Traill with us. Before we proceed, do you have any questions about this hearing process?

BARRY TRAILL: No, it's all very clear.

The CHAIR: Mr Morrison, do you have a short opening statement that you would like to make?

KEVIN MORRISON: Certainly. IEEFA is a non-profit independent think tank, whose interest is to accelerate the energy transition that we face. IEEFA is of the view that the energy sector is undergoing a technological change that seems to occur every 50 years or so, whereby prices of new technologies fall below the prevailing energy sources. This has now occurred with wind and solar combined with batteries—are cheaper than the prevailing fossil fuel prices such as gas and coal. We also see that the New South Wales Government should be actually accelerating the deployment of energy technologies that are cheaper and have a lower emissions footprint than methane gas. In its time it did offer a good solution for heating and cooking in Australian homes on a mass scale when it first emerged in the 1970s, but it's no longer suitable for Australia in the 2020s.

New South Wales, I must say, has never met its own gas needs and for a good reason: geology. When you look at any map that's provided by Geoscience Australia, it never shows there's a gas-bearing basin off the New South Wales coast. That's why there's been no exploration by any of the majors, whereas they have gone to other jurisdictions offshore: Victoria, Western Australia, South Australia and the Northern Territory. So we're not looking to shut down an industry because this industry does not exist, whereby there are other industries that are emerging in the Hunter Valley, whether it's a renewable energy zone that's going to be created there. There's a hydrogen hub that's proposed, plus offshore winds. In this energy transition there are plenty of jobs the coalminers will be transitioning to in the renewable sectors. Despite what the claims of the oil and gas sector say about gas, gas is not a transition fuel. It just increases the greenhouses gases and methane emissions from production.

It's also under-reported. There's been evidence from the IEA and data showing that the methane emissions in Australia are far higher than what's actually recorded by the national inventory. There's an issue there. It's not as clean as what the industry says. Furthermore, I see in another submission by the proponents of this fuel—they're saying that there's increase in gas demand but, when we actually look at the figures and the facts, we see that there's actually going to be more gas-fired power stations closing over the next 10 years than opening. The industry is already moving. They're not looking for new sources of gas. When I talk about the power stations that are going to be closing, I'm talking about Torrens Island in South Australia, Osborne Power Station and later the Hallett gas turbine station in South Australia, whereas in New South Wales they are building in Kurri Kurri, but that project is highly controversial and was done without any sort of commercial merit.

Furthermore, the proponents of this project also like to talk about gas shortfalls. But in the last two reports by AEMO they've both projected surpluses. Furthermore, there's very little focus on gas at the demand source. We've done very little on energy efficiency. We've also seen the Victorian Government and the ACT Government, plus many jurisdictions in New South Wales—Waverley Council, Sydney city council, Canada Bay council, Parramatta council. They're all looking to stop new gas connections in homes. Because many studies have shown that all electric homes lead to lower energy costs for households than those households with gas.

Furthermore, I must also contest the view about the use of CCS, because the proponents would also like to say that this is actually reducing emissions, when it's really just a fig leaf to allow gas projects to go ahead and pump more methane and CO2 into the atmosphere. Because all CCS really does is it captures scope 1 emissions, which is less than 10 per cent of the total emissions of the project. Any gas project, most of the emissions are done when the gas is burnt and there's no CCS for any of that. I will leave it there. I've got plenty more to add but I need to answer questions.

BARRY TRAILL: Thank you very much to the Committee. I greatly appreciate the opportunity to give evidence. I head up work with Solutions for Climate, which is a project focused on achieving decisive bipartisan support for good climate policy in Australia. I would like to make two points, which are detailed in our submission, emphasising particulars. There are two grave, potential impacts if oil and gas developments proceed in New South Wales. One is, first and foremost, ecological impacts, both in exploration and in production. As we detail, simply seismic activity alone is a gross threat to marine life particularly, but not only cetaceans—whales and dolphins. In the production phase there are always risks of spillages, large and small. What we didn't detail in our submission, but we perhaps should have in hindsight, was the most recent major Australian spill, Montara, in 2009 off the Kimberley coast. Fortunately for Australia, the very large spill went towards Indonesia, where it had grave impacts on subsistence fishers there and most of the spill didn't go towards Australia. But any notion that this is some completely safe technology is really nonsense, given the repeated history of spills, large and small, in production over time.

Second, gas and oil are fossil fuels and it's worth emphasising the very obvious is Australia is committed, as we need to be, to achieve net zero. We absolutely cannot achieve that if we keep producing new gas and oil. It's a nonsense to indicate in any way that we can. CCS is unproven and even if delivered—as a previous witness just said—can only deliver on scope 1 emissions, not where it's actually burnt. Currently in Australia and worldwide, we are on a trajectory for average warming of over two degrees. I cannot emphasise how catastrophic

it will be ecologically and for humanity, without exaggeration, on keeping to the current trajectory of achieving a settled average warming of over two degrees. We are already seeing indications of that, which have personally affected me and probably everyone in the room in terms of fires, floods and droughts in Australia. That's just the forecast of what's to come. We absolutely must, set out in international protocols, do everything possible to settle on an absolute maximum of, at most, 1.5 degrees average warming. Bringing in new gas and oil is completely antithetical to achieving that.

Lastly, the point I make is political. Even if some future government of the day had a notion to support offshore oil and gas in New South Wales, there would absolutely be strong local, regional and probably Statewide opposition to that occurring. This would cause legal and political delays, no matter how intent some hypothetical future government was. The notion that a gas or oil field—which usually takes five to 10 years, even without political or legal delays— would somehow get in place in the current environment, where there'll be local opposition, increasing national and global constraints on gas and oil production, it is a very hypothetical notion that anybody should have, that any gas or oil could proceed in New South Wales. We strongly commend the bill. We urge all Committee members to pursue it with vigour to get in place the necessary bans on offshore oil and gas in New South Wales. Thank you.

The CHAIR: Thank you very much. Dr Traill, do you have that in writing that you could email across, or were you more freestyling?

BARRY TRAILL: I was freestyling, just in dot points.

The CHAIR: Okay. We'll do our best. I'm going to throw to the Committee to start asking some questions of any and all of the three representatives we have in front of us. I'll go across first to my colleague here from Wollondilly, Ms Hannan.

Mrs JUDY HANNAN: Barry, you were talking about the spill on the Kimberley coast, and you said you didn't get an opportunity to put it in your submission. Could you just give us a little bit of a briefing of that?

BARRY TRAILL: Yes. Very happy to and happy to provide further follow-up written evidence. In 2009 the Montara oil rig, considerably offshore of the Kimberley coast, had a blowout, and a large slick immediately started to form. The attempts to block the oil coming out consistently initially failed, and ultimately it was 75 days—more than two months—until the flow was blocked. Also, a rig was burnt out during that time. It was an absolute catastrophe. Fortunately, as I recall, no-one was killed. But the impacts were severe. A major slick, with prevailing winds, fortunately for Australia, went towards Indonesia, where there were consistent reports that subsistence fishers in East Timor and Indonesia were affected. It led to ongoing legal cases, some of which, I understand, have still not been resolved. Again, in the subsequent inquiry, there were a number of deficiencies recognised, both from the production facility but also, importantly, from the regulator.

Mrs JUDY HANNAN: Just going back, you were talking about the effect on the fishing. The effect upon the marine life there is what I was after.

BARRY TRAILL: The fishers in East Timor and Indonesia—this actually included seaweed farmers, I should say, but also subsistence fishers said that the spill directly impacted them. The prized, targeted fish—such as snapper—population catastrophically declined. They made a direct inference between that and the oil spill. It became, perhaps unsurprisingly, highly contested between the company and the fishers, who, of course, had little recourse and few resources and little legal recourse to put pressure on the company.

Mrs JUDY HANNAN: I've got one more question, to Louise. Is there any additions that you think should be made to the bill to make it more effective in the marine conservation?

LOUISE MORRIS: In our written submission I've also put reference to examining the ability to make sure that infrastructure for carbon capture and storage is not allowed under New South Wales marine parks. I know AMCS is working very hard across the community and with some members of the House as well to strengthen our marine park protections. That would be another element, which I've put more briefly in our written submission, but happy to provide more information of looking at that overlap between marine park protection and State waters, this bill, and looking at the future potential of carbon capture and storage.

Ms KELLIE SLOANE: Firstly, Barry, congratulations on your AM, and thank you for all the important work you have done for the environment, especially in the bush. We really appreciate that. In your expert opinion, Barry, do we need any offshore gas projects to meet New South Wales' energy transition?

BARRY TRAILL: I don't believe so. We don't have a shortage of gas in Australia. For reasons that I think have been very poor past policy, domestic reservation allocations haven't been made to export gas facilities. We export three or four times as much gas as we use domestically. There is not a shortage of gas. All the reputable assessments that I've seen indicate—as you would expect—declining gas use over time, not increased gas use

over time. The industry makes a song and dance, frankly, about its value and influence as a transition fuel, implying that gas use will increase. I think the figures speak for themselves that gas use continues to decline. I see no case to be made to increase gas production. We have abundant resources in Australia. There is certainly no case to be made that in the foreseeable scenarios and in the transition, gas use will increase over time.

Cheap renewables will move very rapidly and are moving very rapidly, as we've all seen, taking up the great bulk of production on the grid. There is need for firming of electricity supplies. That is necessary. That can be done in the long term through increasing transmission, through batteries and pumped hydro. In the interim, yes, gas is needed for firming. There is no indication we need additional supplies. I'd also add that even if there was the case in the next five years that we needed more supply—which is not the case in the next five years because we have abundant supplies for the next five to 10 years—I cannot see how offshore production in New South Wales is going to do anything to deliver that. Offshore drilling is very complex; it is very expensive. The average lead time as far as I can see is five to 10 years, even if there are not political or legal hurdles. It's a hypothetical industry for a space where the world will be moving out of gas.

Ms KELLIE SLOANE: Kevin, I wonder if you concur with that opinion, because Advent Energy says there is an urgent need for gas to meet our short-term energy demands. What is your opinion and what are IEEFA's projections?

KEVIN MORRISON: I completely concur with what Barry has said. There is absolutely no need for the gas because, as Barry said, we export about 80 per cent of the gas that we produce. That's not just physically what we send but it's also the gas that is used in order to liquify the gas so it can be frozen and loaded on ships. That also consumes a lot of energy. In fact, it consumes more energy than what gas we use for burning electricity. The trends we've seen in the electricity market—we've seen more and more batteries. The life span of these batteries are getting longer; they are getting bigger.

If we look at the demand profile for gas use in electricity, it's just going down. The last financial year, that is 2022-23 to June 30, it was the lowest on record. This is data that is collected by the Australian Energy Regulator, and so that dataset goes back to 2008-09. During that period it is the lowest. So that is where the trend—it will fall even further, as I outlined. There are two major power plants that are closing down in South Australia—Torrens Island, which has been around for a very long time. That is probably the biggest gas-fired power station. It's over 800 megawatts. Once that goes we'll see a very sharp decline. As I said, we've got the renewable energy zones, and that's where the wall of money that is going to renewables—that's where the market is shifting.

Ms KELLIE SLOANE: I think there is a real and present fear in the community that the lights are about to go off and gas is very much needed. Even the latest AEMO report talks about supply not being able to keep up with demand. That seems in contrast to other reports I'm reading. Can you make sense of that for me?

KEVIN MORRISON: It's interesting the conclusions that AEMO often gives, because it's at odds with the analysis and data that they provide inside. With some of them, if you just look at the demand side and managing demand through energy efficiency measures, for instance, or electrifying the home, which is what Victoria and the ACT is about to embark on, that is far cheaper than bringing on new gas supplies. The cost to the consumer is far lower projected over five- to 10-year periods.

Ms KELLIE SLOANE: I've got a quick question for Louise, but I'm happy to wait until others have had an opportunity.

The CHAIR: We'll see if we have got time for that at the end.

Mrs SALLY QUINNELL: I wanted to ask all three of you—it should be quite a brief answer, maybe—does NOPSEMA's role in overseeing the environmental management of all offshore energy operations change your concerns or opinions about the potential environmental impacts? I'll start with Kevin because he is in the room.

KEVIN MORRISON: It was funny; NOPSEMA was formed straight after Montara. Up until Montara, it was all State-based. So it was the first time we had a national regulator. In my personal opinion, I think it's much better that we have consistent rules and one regulator that oversees all of the offshore activity in oil and gas. As far as the safety records, I think it all depends on a matter of funding. I think it's as good as any. As I said, I'm more supportive of a national regulator as opposed to State-based regulators. I think they should be able to do a better job.

LOUISE MORRIS: Carrying on from what Mr Morrison said, I absolutely support the fact that we have a national regulator post-Montara. The working experience we have at the moment with NOPSEMA on three significant seismic and offshore gas proposals in the Otway Basin is showing some systemic issues with the fact

that NOPSEMA's baseline is about as low as reasonably practicable. That is their assessment of what is mitigation, which allows some deeply problematic projects to still get sign-off and go through to NOPTA, the National Offshore Petroleum Titles Administrator. NOPSEMA is undergoing a review at the moment. We've obviously seen some significant court cases recently around their consultation processes—Ms Raelene Cooper and Woodside being the most immediate example.

It's a national regulator that I would like to see with a lot more strength and rigour, and that the ALARP rule, as it is known, is significantly raised so that "as low as reasonably practicable" does not basically mean that you can allow seismic blasting in biologically important areas for blue whales over significant fisheries when you know that the technology, whether it's seismic drilling and the potential spills, are going to pose big threats to coastal communities, industries that are in the area and, of course, matters of national environment significance. I support a national regulator. I'd like to see a stronger national regulator that regulates for environmental impact, community impact and industries that have to function in the area, which, for the oceans, is a lot of fishing.

BARRY TRAILL: I concur very much with what Louise said just then. I simply add that, of course, no regulator can remove risk of catastrophic accidents. Better regulation is good. A national regulator is better than what we had previously, but not all risk can be removed. It's not a matter of regulating the climate impacts. You produce gas, you produce methane and you produce CO2. That gets emitted. That will be impactful. NOPSEMA is not regulating that.

Mrs SALLY QUINNELL: Considering the jurisdiction of New South Wales waters, do you feel this bill will be effective in stopping further offshore exploration? That is to everyone. I will go in reverse this time. Barry, you can go first.

BARRY TRAILL: Yes, for two reasons. One, it actually, of course, directly removes acreage for potential exploration and production and therefore risk. Secondly, it sends a very powerful, I think, political and to some extent legal signal for anyone pursuing offshore, even in Commonwealth waters.

LOUISE MORRIS: I second Barry's point about the signal and the precedent it sets, and that we absolutely support the intent of this bill in that New South Wales shows leadership, as one of the most important political States in Australia, of inoculating your State waters from any further exploration and production of, we'll say, State waters. In terms of offshore into the Commonwealth waters, referring back to our submission that it reduces but doesn't thoroughly stop—because, as we've seen in the Otway Basin and other projects, vessels don't need to come through State waters. But I think this is a commendable first step in reducing the threat. As IEEFA's submission also pointed out, you've got an offshore basin off New South Wales which is not particularly gassy. You've got a great opportunity here of making sure that those Commonwealth waters never look appealing to PEP 11s of the future. It doesn't completely do it, but that's just the reality of life. This is an excellent first step in sealing the deal, shall we say.

KEVIN MORRISON: I agree with what Louise and Barry both said. Furthermore, just to re-emphasise, it comes down to geology. That is why we don't have Woodside or we don't have Santos looking at offshore New South Wales, because simply the gas is not there. And the gas that Advent claim—it is highly speculative. There's all sorts of measurements for resources and reserves and there's a big difference between the two. Resources are something speculative and reserve is actually commercial that you could take to a bank and get finance, neither of which Advent have. It's controlled by pretty much what you could describe as penny dreadful stock. It is highly speculative stock. It's got no means of financing a project like this.

Therefore, I wouldn't sort of take what they say—the amount of gas that's there, I would sort of take that with a pinch of salt, really, because it is really just a speculative number. Just one more point. What I also stated in my submission, in terms of the amount of money spent on offshore exploration, it again is at a long-time low. There is less money going into it because finance is shifting elsewhere. They can see this energy transition taking place. There is absolutely no need to look to New South Wales for offshore—for gas.

Ms MARYANNE STUART: First of all, to all of your organisations, thank you so much for your submissions and thank you for appearing here today. Dr Traill, in your submission you referred to offshore oil extraction being high risk and that oil spills have occurred from blowouts. Could you explain what blowouts are, please?

BARRY TRAILL: Yes. I guess again refer to Montara—the blowout of the rig and the subsequent spill. This is in relatively recent history in Australia. Yes, there has been improved regulation—the national regulator since then—but in a whole range of highly regulated environments in the US and Australia there have been blowouts and major spills.

Ms MARYANNE STUART: The Deepwater Horizon incident, was that a blowout? How would you describe the Deepwater Horizon incident?

BARRY TRAILL: As a major catastrophic spill. Perhaps your point is is that how I'm describing a blowout? Is that perhaps your point?

Ms MARYANNE STUART: Yes, correct.

BARRY TRAILL: Okay. Perhaps I'm using lay language, but for a whole range of—in recent history, in past decades, in highly regulated environments, there have been major spills from production facilities. Whether you describe that as a blowout—forgive me if I'm using informal language—or some other type of accident, the outcome is the same: major spills.

Ms MARYANNE STUART: Just a question for Mr Morrison. You've made a comment here, "Further exploration would only increase the economic impact on Australia and the world." Could you explain that further?

KEVIN MORRISON: I think probably there the point I'm trying to make is if we're spending more money on a fuel that is really—we shouldn't be using much more. We've got plenty of gas, as Barry said, and if we just manage the demand correctly, we really don't need to be spending more money on exploration. What we should be doing with that money is spending it on the energy transition and we've got lots and lots of options there, everything from retrofitting homes to building green hydrogen hubs in the Hunter Valley, for instance, the five renewable energy zones, building the wind farms, the solar farms, the batteries. There's a whole load of investment opportunities. This is money that will eventually be wasted.

Ms KELLIE SLOANE: Louise, you talked about improving the bill potentially by expanding to seismic testing and carbon capture and storage. If though we are effectively banning the exploration of minerals and gas and oil in New South Wales waters, do we need to include CCS and seismic testing?

LOUISE MORRIS: It's a really good question and one that I grappled with and did seek advice. The thinking was by overtly including it, it really gives you that extra level of clarity that, because carbon capture and storage is not considered in the same way—you're not looking for new oil and gas; you're actually looking for holes where you can pump the carbon dioxide. Thinking about the fact that we are talking about New South Wales waters as linking to the Commonwealth, which is where, should in the next round of acreage release for CCS the Federal Government decide that while there's no real great gas deposits out there for extracting, there is potentially some empty wells for pumping—it's just a way of really solidifying this legislation to make sure no infrastructure, not for new oil and gas but for carbon capture and storage, can come about as well. It's really just that sealing the deal—I think I've said that twice now.

Ms KELLIE SLOANE: It's good.

LOUISE MORRIS: It's just really adding that extra security for it as well. So it's really a recommendation to legislative experts of how would you do that to ensure that CCS—I've used the word "boondoggle" before as well—is ruled out for both your State waters and the waters that you have joint authority over as well.

The CHAIR: Can I just, as a bit of a statement, say I continue to be a little bit confused about gas supply, with all due respect to everyone, because AEMO, the Australian Energy Regulator—you've got some fantastic tables here. We had, I think, the Federal Minister over the weekend sort of making some different comments. None of us are gas experts. Can I just flag it's still very confusing. Is there any way we can cut through all of that? Is there a single source of truth that you would say, "That's the deal breaker"? Do any of the three of you have advice on—

KEVIN MORRISON: I don't mind going first on that. With AEMO, they've got lots of different scenarios, so you can have a different outcome, you can have a different level of a gas demand or supply under each scenario. If we're going to keep to the science, and that's keeping global temperatures below 1.5 degrees centigrade rise, then you would see that the gas demand would be dropping off. I can understand your confusion because actually some of the AEMO reports actually do contradict one another. The most latest is the ESOO, which is the Electricity Statement of Opportunities report, and what it's showing there is to transition, say, following the Victorian Government's announcement, that they're seeing much more the transition from gas to electric, so increases of electricity demand sees a drop-off in gas. Whereas the GSOO, the Gas Statement of Opportunities report, which was written six months earlier—that was released in March—actually shows demand increasing.

The increase in demand is coming from more firming. So it does change a lot and we'll probably see a different scenario because they're continually refining. Information changes every day, so there's no one set thing. But what you do have, what is consistent, is there always seems to be this gas shortfall, and then this shortfall never occurs. We've never actually run out of gas because there is plenty of gas around. We've also got to bear in mind what some big gas users are doing. If we look at Rio Tinto and what they have stated they want to do with

their aluminium, they want to make their aluminium as clean as possible because they feel they would attract a premium by doing that. That is where we could see some of the demand drop off.

The CHAIR: I saw some head nodding on the screen, so I'm going to assume that you tend to agree with much of what Mr Morrison said. We are out of time, as much as there are probably a thousand more questions we'd all like to ask. Thank you all so much for appearing and taking our questions. Nobody took anything on notice during the course of the inquiry in terms of other information. You will be each be provided with a copy of the transcript of today's proceedings for corrections. If you feel like you've been misquoted, you can write back to us and ask us to correct that.

The Committee staff will also email to you any questions that might come as supplementary questions from the Committee as a consequence of today's hearing. We kindly ask you to return those answers within seven days, if you don't mind. We apologise in advance for that short turnaround, but we're under the pump in terms of timing at this end as well. Anything that you could provide in terms of extra information would be greatly supported.

(The witnesses withdrew.)

Mr BRENDAN DONOHOE, President, Northern Beaches, Surfrider Foundation, sworn and examined

Ms ROWAN HANLEY, Branch Secretary, Northern Beaches, Surfrider Foundation, sworn and examined

Mr PETER MORRIS, Director, Community and Environmental Group, Save Our Coast, affirmed and examined

Mr JOSHUA KIRKMAN, Chief Executive Officer, Surfers for Climate, affirmed and examined

Ms BELINDA BAGGS, Co-founder and Director, Surfers for Climate, affirmed and examined

Ms HANNAH MARSHALL, Partner, Marque Lawyers, affirmed and examined

The CHAIR: Thank you all so much. I am going to go in reverse order and offer the opportunity for each organisation to make a short opening statement. Would Surfers for Climate like to make a short opening statement?

JOSHUA KIRKMAN: Yes. Thank you all for the opportunity to be here today. Everyone in this room and beyond these walls wants a clean and thriving ocean, and 98 per cent of our survey respondents strongly support this bill. The climate is changing and New South Wales voters want climate solutions, not new fossil fuel projects that add to the problem. They want politicians to be bold and to show leadership by listening to science and reason, banning unneeded and risky offshore oil and gas projects. New South Wales has led and can continue to lead the country on climate action.

We know there is broad and authentic climate ambition in this Parliament. Bipartisan support for this bill would see New South Wales transcend politics and demonstrate the following: firstly, that New South Wales is for protecting our pristine ocean and supporting the many coastal communities that rely on and enjoy it; secondly, that New South Wales values existing jobs in coastal communities over hypothetical offshore fossil fuel jobs which have an expiry date, pose risks to our marine ecosystems and contribute to climate change; thirdly, New South Wales leaders—you—listen to communities who want you to take emissions reductions seriously. Banning new offshore oil and gas projects shows you mean action. Finally, you will demonstrate the type of leadership voters are thirsting for—leadership that puts good policy before politics.

To wrap up, a question. The most recent whale migration saw unprecedented numbers off the New South Wales coast. Once hunted to near extinction, mostly for their oil for energy, they have been a sight to behold for countless numbers of Australians. Are we really going to put them at risk again for a source of energy—a fuel source that is itself on a trajectory towards extinction? In the decades to come, do you want to look to the horizon in search of migrating whales or will you have to search for a video of one online? We all borrow the ocean from our children. Please use your time in Parliament to create a tomorrow our children will appreciate. It's time to draw a line in the sand on new offshore oil and gas projects nationally and New South Wales can lead this change right now. Thank you.

PETER MORRIS: I acknowledge the people of the Gadigal land where we meet. We thank the Environment and Planning Committee for this opportunity to speak. In 2018 Save Our Coast started the public campaign against seismic testing and offshore gas. We've had over 13,000 conversations in the community and amassed 88,000 signatures on a petition to the Prime Minister. We've had almost universal support in the campaign to protect our marine life, our coast and our local economy from the certain and potentially catastrophic impacts of seismic testing and offshore gas. Stopping PEP 11 was a key priority in the last Federal and State elections. In coastal seats, every candidate elected has a policy of stopping PEP 11. The outgoing government had promised legislation to stop offshore gas proceeding.

The New South Wales Government has opposed PEP 11 for many years, dating back to the time when Don Harwin represented the State on the joint authority over four years ago. That's a responsible position to take because Australia has plenty of gas and the majority of it is exported. The claimed gas shortage is confected, and recent industry claims of public support are based on slanted survey questions that didn't identify the context or the risk and led to a desired answer. I'd be pleased to answer a question on this. New South Wales has good policies on offshore gas exploration and mining but can't stop PEP 11 through the joint authority. However, it can achieve the results through legislation such as the bill that spawned this inquiry.

It is abundantly clear that the people of New South Wales, in particular those living along the coast, oppose offshore gas. Our elected representatives in this place can act to safeguard the health and wellbeing of coast communities; supporting and passing this bill would do that. Any decision-maker considering the cost of stopping this risky development should also consider the cost of not stopping it, which would mean taking a risk of catastrophic outcomes. It's a risk we simply cannot afford. I would particularly welcome a question on this. Thank you.

ROWAN HANLEY: Thank you for this opportunity to provide evidence to this inquiry. Surfrider fully supports the intention of the Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023. We hope that by the end of this inquiry the New South Wales Government will be able to produce an elegant and legally robust bill that will protect our coast and ocean from fossil fuel mining in perpetuity. Surfrider Foundation is a not-for-profit sea-roots organisation, dedicated to the protection and enjoyment of our ocean, waves and beaches through a volunteer network comprising of 17 branches around Australia. Our branches are on the front line of environmental impacts to our coastlines and so serve as a first response to local issues. We are also part of the global Surfrider Foundation Organisation, which has over 250,000 supporters and members as well as over 100 local branches worldwide.

Surfrider Foundation Australia is opposed to offshore gas and oil drilling as our ocean, waves and beaches are vital recreational, economic and ecological treasures that will be polluted and harmed as a result of the proposed industrialisation of our coastline. Offshore mining accidents happen and any risk to Australia's most valuable coastline is much too great. Therefore, we strongly encourage government at every level to use all available legislative levers to protect our coast.

The minerals legislation amendment bill was born out of the New South Wales communities' fury over PEP 11, petroleum exploration permit 11, which is the application to drill for oil and gas off Newcastle. Whilst the lease has been alive since the early 1990s, as is the way with most offshore mining, few people knew about it apart from government departments and mining prospectors. Once the community was made aware of an application, they did not want a bar of it. PEP 11 is the mine that nobody wants and nobody needs, and people came out in their absolute thousands to protest its existence.

We are in a new era of accelerated climate breakdown. Climate disasters are playing out across the world and across the Northern Hemisphere and is on its way to our summers. Our Australian communities are calling for the protection of our natural environments and for sustainable energy solutions to guide us into the future. New offshore fossil fuel mining and its harsh practices are unacceptable. Our communities have made that abundantly clear and our laws must now catch up. The New South Wales Government has the opportunity with this bill to walk its climate action talk, to lead and to set a legislative example for other States to follow. Thank you.

Ms MARYANNE STUART: First of all, thank you to your organisations for making the submissions and thank you so much for appearing today. Mr Kirkman and Ms Baggs, other submissions have raised that the definition of "relevant development" suggests the bill is intended to cover the offshore area outside of the State. Can you explain to us please why you believe it does not purport to do this?

JOSHUA KIRKMAN: Would we be able to pass this on to our legal counsel?

Ms MARYANNE STUART: Absolutely.

HANNAH MARSHALL: Thank you. The question that you've raised concerns the language of the proposed amendment to the Environmental Planning and Assessment Act in section 10.17. Subsection (1) creates a series of prohibitions on various kinds of "relevant development", which is a defined term. The language of relevant development says that—it means the following: "whether occurring in the coastal waters of the State or the offshore area of the State". That, I think, is where the question arises as to does this go further than seeking to regulate New South Wales coastal water. Our advice, and my view on this, is that it does not. Let me explain why. Relevant development as a defined term describes a range of different types of development activities covering a wider geographical area. The language of the prohibition itself says that relevant development, which is defined to mean this geographical area, is prohibited in the coastal waters of the State.

So applying a natural and ordinary interpretation of the language of the prohibition, no inconsistency arises. And in subsection (b) the same arises. Relevant development is prohibited within the State for the purposes of x, y and z. So the additional language referring to the offshore areas comes into play insofar as it's describing the kinds of activities which might occur in offshore areas and have ancillary services connected to the State. There's nothing to suggest that the purpose of the bill or that it's operation are intended to actually have effect in the offshore areas themselves. Based on that reasoning, my view and the view expressed in our advice is that, on a correct statutory interpretation, there's no inconsistency and, therefore, no constitutional issue arising under section 109.

Ms MARYANNE STUART: Ms Hanley and Mr Donohoe, would your organisation support passing the bill if it could be overridden by the Commonwealth?

ROWAN HANLEY: I think Surfrider Foundation considers the mineral legislation bill to be effective in creating additional economic barrier to any preferred proposed fossil fuel mining activities, therefore making it an unappealing economic prospect. So we support the bill as a deterrent. The actual legal details are not in our

wheelhouse. That is for other people to decide. But we support the intention of the bill and think that it's frankly remarkable that we're actually talking about such a piece of original legislation.

BRENDAN DONOHOE: Can I just add, you can only do what you can do. If the Commonwealth can override it, at least they realise that the people of New South Wales have got an impediment in the way. If you don't do it, there's absolutely no reason for the Commonwealth to consider that.

Ms KELLIE SLOANE: I am interested in the perspective of Surfers for Climate and whether you agree with that. Let's just say it is in dispute as to whether there is a constitutional impediment. Some sources are saying yes, your bill is robust and that it will prevent Commonwealth intervention; others might say the reverse. In that situation, what would your opinion be: Should New South Wales legislate or say it's simply too tough?

BELINDA BAGGS: We absolutely one hundred per cent support the bill going ahead in New South Wales regardless. We agree with Surfrider Foundation that it sends a really clear message nationally and to other States that this is what the community wants and that the Parliament would be standing up and actually doing things for the community. We believe that this bill will have really positive impacts on our marine life and also put the hearts of our community at ease in knowing that we don't have to continually be fighting these things. If the Commonwealth can override, then again, I think it's a really great message that we are sending out.

Ms KELLIE SLOANE: I have a quick follow-up personal perspective from you as a pro surfer who has trained at beaches that aren't as clean as ours. Can you describe what that's like in areas where they drill for oil?

BELINDA BAGGS: Yes. I grew up in Newcastle on Awabakal country. I know this part of the coastline is very heavily populated, but for anyone who's visited the beaches in Sydney or in Newcastle, you know that the water is just pristine. It's so clear, it's so beautiful and the coastline really provides a place for families to come together, as well as the livelihoods of communities. I have travelled all over the world surfing. Primarily, I have been to California a lot where there are oil and gas rigs out in the ocean. It's common practice to walk up the beach and have thick slicks of oil and tar stuck to the bottom of your feet. It's not fun, and surfers and beachgoers there don't think twice about it; they don't think anything of it. I don't want that to become normal practice on our coastline. I really commend the New South Wales Government if they do pass this bill.

Mrs JUDY HANNAN: To Mr Peter Morris, you said that you had questioned about 13,000 people and they were mostly in favour of your point of view. Do you have examples of some of the kickback you got from other people who were against your point of view?

PETER MORRIS: None that I could quote, except that they were typically people involved in the industry. The 13,000 conversations are people that we spoke to at a variety of events: markets, festivals, functions, events—wherever we could get to meet people and talk to them. These are genuine conversations with people. We explain what the proposal is, what the risk is and got their signatures on the petition. The 13,000 is the paper signatures, which were part of the 88,000 that went to the Prime Minister. These are people who were convinced—and I will add, very easily—that this is a risk that we can't afford. I said overwhelming, more than 99 per cent. There were 12 or 13 people—obviously, the signatures are well documented and the records of all of those meetings with the public came back with about 12 people who said, "Oh no, I think it's a good idea."

Mrs JUDY HANNAN: You talked also about the risk of not stopping this. Do you want to add to that?

PETER MORRIS: Yes. The risk to communities and the economy can't be overstated. Here's what four prominent New South Wales residents have said about it. The first person said:

> Last year nearly two million people holidayed on the Central Coast, adding $692 million to the local economy, and more are expected this summer. There are currently 20 jobseekers for every vacancy on the coast, and tourism, hospitality and retail will have an important role to play as we recover from the economic impacts of the pandemic.

The second person said:

> We don't want this project. If anything goes wrong, we will more than regret it. Australia has plentiful energy sources. We don't need drilling rigs set up within spitting distance from major cities and towns. There are some six million Australians, almost a quarter of us that live near the PEP 11 coastline.

The third person said:

> Offshore oil and gas exploration and production through PEP 11 could have dire consequences for our ecosystems, tourism businesses, coastal communities and climate. Under no circumstances should it proceed. The Central Coast and Newcastle both have a gross regional product worth an estimated $14.33 billion and $35 billion respectively. It's beyond ludicrous …

That's for Central Coast and Newcastle. The fourth person said:

> I say no to PEP 11. I say no to endangering our beaches and coastline. I say no to endangering our lifestyle. I say no to endangering the fishing and tourism industries that are the bedrock of local employment.

These four people are Emma McBride, the member for Dobell; Sharon Claydon, the member for Newcastle; Zali Steggall, the member for Warringah; and Pat Conroy, the member for Shortland. They all said those things in the Commonwealth Parliament on 19 October 2020. Pat Conroy continued on radio the next day:

> Well it doesn't make sense from an environmental or economic point of view. The environment issues are very obvious - any accident could damage our coastline greatly and imperil our coastal way of life - and it doesn't make sense economically because this project, if it goes ahead, will only create a handful of jobs, but it will endanger the thousands of local jobs that depend upon fishing, tourism, accommodation. All of those jobs ultimately depend upon our beach, coastal style of life and this is endangered by this project.

The CHAIR: Does everyone live on the northern beaches?

ROWAN HANLEY: We're on the northern beaches.

JOSHUA KIRKMAN: Forster-Tuncurry.

BELINDA BAGGS: I grew up in Newcastle.

The CHAIR: Where do you live now?

BELINDA BAGGS: I live in Victoria.

The CHAIR: Thanks for coming up.

BELINDA BAGGS: Moving back very soon.

The CHAIR: Yes. Why would you leave Newcastle? Mr Morris?

PETER MORRIS: I live at Lake Macquarie.

The CHAIR: Can I just go a little bit to the politic here, please, because you talked about the lead-up to the State election. Was it you, Mr Morris?

PETER MORRIS: Yes. I mentioned that.

The CHAIR: We have a submission from one of the independent candidates in the lead-up to the State election. She talks about the fact that there were independent candidates who were supportive of legislation like this, but she doesn't speak to whether or not it was supported by the Liberal or Labor candidates at the time. Do you have a recollection of that you could share?

PETER MORRIS: That would be Jacqui Scruby's submission. I've read all the submissions. She said that. She only spoke of the—

ROWAN HANLEY: I can jump in there. There isn't a single coastal State or Federal MP on the northern beaches that supports oil and gas off New South Wales.

PETER MORRIS: I was getting to that point. Well done. There was universal opposition to PEP 11. Every MP that is elected anywhere in the coastal seats has the policy of stopping PEP 11. No-one who had a policy of proceeding with PEP 11 got elected.

The CHAIR: One of the submissions—I think it's Ms Scruby—has this comment here from retiring MP Rob Stokes, who was also planning Minister a couple of times. Can I just say I have the utmost respect for Rob. I'm Labor, but Rob's Liberal, and he's 10 times smarter than I ever will be. But Rob said this, in the media at the time, about sticking to the facts.

> Referencing Independent for Pittwater candidate Jacqui Scruby's pitch for the NSW Government to investigate legislating against offshore mining so that the PEP-11 gas lease could never resurface, Mr Stokes said:
>
> "It's nothing to do with the State - we've got a very clear policy when it comes to offshore gas or oil exploration or drilling: it's not allowed.
>
> "The only way to ensure PEP-11 can never return is to change federal law - PEP-11 is outside State waters.

Does that comment from Rob not represent the position that the Liberal candidates were taking at the time?

ROWAN HANLEY: In 2020 Brendan Donohoe and I, along with Tom Kirsop, met with Rob Stokes in his office to talk about PEP 11. Rob Stokes actually raised the possibility of this type of legislation, which was to prevent infrastructure development. We followed up later and it didn't go anywhere, did it, Brendan?

BRENDAN DONOHOE: No.

ROWAN HANLEY: For whatever reasons, we thought that perhaps it required more legal rigour to look into it. But the idea was there. Of course, in the lead-up to the election, Justin Field, Alex Greenwich and Jacqui Scruby, along with, I believe, the Parliamentary Library, drafted the minerals amendment legislation. Regardless of who does what, it is broadly supported as a way in which to prevent, slow down, delay or put a

spanner in the works of any oil and gas development. Then after the election the Liberal Party appropriated the bill and ran with it. We don't care how; we don't care who—

The CHAIR: Can I just clarify, when these comments were made from Ms Scruby, I looked back to see what Labor or Liberal were saying in the lead-up to the election. I couldn't find any of that.

Ms KELLIE SLOANE: As the first person after this, I'd like to add a few words, Mr Chair.

The CHAIR: Yes. Mr Morris?

PETER MORRIS: Just for clarity to make sure it's on the record—Rob Stokes was the member for Pittwater and no longer is. The bill that we're discussing was tabled by the member for Pittwater.

The CHAIR: Can I just again clarify Rob is one of the nicest human beings I've ever met.

Ms KELLIE SLOANE: I wanted to make the same point, that Rob Stokes was the former member for Pittwater and, as said here, the current member for Pittwater has lodged this bill. Equally, pre-election, I stood at a press conference on the northern beaches with a number of Liberals. I do know it was supported by Labor as well. There's a whole list—I don't have it in front of me—of Labor MPs who supported this.

The CHAIR: Candidates.

Ms KELLIE SLOANE: Candidates and former MPs at the time as well.

Mrs SALLY QUINNELL: My question is for everyone. Maybe go down the table. Do you feel that this legislation goes far enough or do we need to include CCS, seismic exploration—do you think they need to be specifically mentioned in the legislation?

JOSHUA KIRKMAN: As strong as this bill can be, it should be. We're in a climate emergency. You've heard enough from experts who know better than me about the economic implications. If this bill can be strengthened, it should be strengthened. That will only be a better outcome for the people of New South Wales and the country at large.

BELINDA BAGGS: I completely agree with Josh, my colleague. If it can be strengthened, let's strengthen it.

ROWAN HANLEY: Carbon capture and storage just distracts from cutting the emissions at the source. The actual process of carbon capture and storage poses unacceptable risks to our marine habitats. It's the same as the risk of offshore drilling but even more so. For example, with PEP 11, instead of drilling two kilometres into porous sandstone shelf, it will be three kilometres into porous sandstone shelf. What could possibly go wrong? A lot. Carbon capture and storage is a greenwashing ruse, and, as was explained very beautifully by Louise Morris from ANC, we need to send a very clear message that they can't use that as a distraction. So, yes, I think if we can include carbon capture and storage and seismic testing, that would be extremely beneficial.

BRENDAN DONOHOE: I'd agree with all of that, with one major exception, which needs to be thoroughly investigated by the Parliament, which is offshore sand nourishment. There needs to be an ability which is captured in this bill to investigate that thoroughly, particularly with the advent of that hideous seawall that's been built along Collaroy-Narrabeen beach. This is going to become more and more of an issue up and down the coast. There is another seawall at Wamberal being proposed. The only way we're going to keep our beaches—which every Australian identifies with, yet I don't think most Australians understand what sorts of fights are going on around these beaches all the time. The development pressures on these beaches are immense. If we're going to be a beach-loving culture, given that 50 per cent of Australians live within seven kilometres of the beach, we really need to address this nourishment and climate adaptation issue on the coast. In terms of carbon capture and storage, they can't do it on land. Why would you be trying to do it under water? The only reason you can think of is because no-one knows what's going on down there. So make it as strong as possible.

PETER MORRIS: The three processes of testing, production and storage are all terribly threatening processes with potentially catastrophic consequences. Yes, they should all be included.

The CHAIR: Can I go to a comment there, Mr Donohoe, because I think it's in your submission—the Surfrider Foundation submission. Recommendations for government action dot point two says, "Include the prohibition of offshore seismic surveys, CCS and marine geoengineering." Can you explain geoengineering?

ROWAN HANLEY: Definitely. The reason we brought this up in the submission was because, at the Federal level, they recently passed an environmental protection Act, which is also called the sea dumping Act, which allows and updates for carbon capture and storage and marine geoengineering. They are methods to combat climate change by intervening in the ocean environment to lower carbon emissions. It is at its experimental stage, with issues arounds its long-term safety. An example of marine geoengineering would be ocean fertilisation,

which involves feeding iron dust to marine algae. Through the process of photosynthesis, the algae pulls the CO2 from the atmosphere to be stored in the ocean. Just imagine how much algae would be needed to be produced to sequester carbon emissions from a mining project. What happens to the ocean floor once the algae has sunk and smothered it? What happens to the ocean oxygen levels and other nutrients? Nobody actually knows. Can you imagine the size of such an undertaking to effectively sequester adequate emissions? Ocean fertilisation and marine geoengineering, at the very least, need a moratorium. There's another type of marine—

The CHAIR: Sorry, Ms Hanley, can I interrupt you there for a second? I will just clarify the nature of my question. Mr Donohoe talked about breakwalls, and I didn't know if that included geoengineering—

ROWAN HANLEY: No. I'm sorry, that's—

The CHAIR: We scuttle ships out there at different times that become reefs and terrific environments for fish. We're talking about wind farms off the coast of Newcastle, which are probably ultimately going to be somehow drilled into the surface. It doesn't include any of that?

ROWAN HANLEY: No. Marine geoengineering involves things like ocean fertilisation and cloud brightening, which is shooting sea spray into clouds to make them brighter to cool the reef. It's as preposterous as it sounds.

The CHAIR: Can I ask about sand? It's my understanding that we also mine sand not just for replenishment but to go onto golf courses and we send it off internationally onto beaches and things like that. This bill would essentially prohibit that.

ROWAN HANLEY: I believe it does not.

The CHAIR: It only allows sand mining for the purpose of replenishment of the beaches.

ROWAN HANLEY: Yes.

BRENDAN DONOHOE: That would suit us down to the ground, yes. The offshore sand that we're talking about is an incredibly valuable resource that, if you get into a public-private partnership, you can bet your bottom dollar that most of it is going to go to private. You need to be matching sand to embayments. There is a lot of sand offshore. It has to be identified and has to be delivered and managed. As soon as you start to pollute that with a private imperative—like, "You'll get the sand delivered to the beach for no cost if we can use the rest of it for the building industry", or whatever—that's when you'll run out of sand for future generations.

This is a public resource. Beaches are public facilities. You can grow public open space by doing this. You can protect property and you can protect infrastructure. If beaches needed vertical concrete seawalls, like which is at Collaroy, they'd have them. They don't need them; they need sand. The loss of sand because of development too close to the coast, and the loss of beach that we're going to see with rising sea levels and increased storm activity, can only be remedied by producing more sand and managing it effectively.

To the best of my knowledge there's no-one anywhere in Federal, State or local government that is concentrating solely on this issue. Other countries have been doing it for many, many years. We're not flying to Mars here. It's quite a normal activity. And for a country like Australia that pretends it loves its beaches so much—and it's not pretending; we do—the "she'll be right, mate" is not good enough for the coast anymore. We really need to take action.

The CHAIR: Ms Marshall, I have a question about your advice, particularly with regards to schedule 3, section 10.17 about the development of the land. Your submission goes on to talk about the use of the land in terms of the subdivision of the land or the erection of a building and the carrying out of work. How do we possibly monitor that? Let's say some land got subdivided and then somebody decided to put a supermarket on it, and then the offshore drillers would come and buy groceries and things like from the supermarket. How do we possibly track and monitor that back to the source of the decision about subdividing the land?

HANNAH MARSHALL: I think that's ultimately a question that will fall to the hand of the regulators responsible for this legislation in terms of their monitoring and investigative powers rather than necessarily being an impediment to the legislation itself.

The CHAIR: Okay. I think you made a comment talking about section 103A (1) (c) where you acknowledge that the bill that we're talking about today does not affect the ability of the joint authority to grant a licence—and this is for a pipeline—under the Commonwealth petroleum Act. Let's say that, despite what the New South Wales legislation says, the joint authority says, "Go ahead and build your pipeline and bring it to shore." Where would that leave us all legally? What do we do with that?

HANNAH MARSHALL: It's already the case, by design, that there's a division between the offshore waters, which are all under the hands of the joint authority, and the State waters. Each has the power to grant relevant licences already to the extent that a pipeline traverses the relevant areas of the water. And so that doesn't create a new issue in the sense of the division of those jurisdictions between the State and Federal powers. All it is saying—and it's already the case that the State could not approve a pipeline to the extent it traverses the State coastal waters. What this does is create the opportunity or create a rule saying that the State will not approve: There can be no pipeline in the State waters. To the extent that it falls within the Commonwealth remit, the two may produce inconsistent outcomes, but that of itself does not mean that the bill should not proceed. It is already the case that that can occur by virtue of the joint authority and the State having their own approval powers.

The CHAIR: Part of what this Committee is struggling with is where that leaves the State in terms of potentially being open to compensation or legal challenge. That seems really quite complex and vexed. I'm not legally trained, but where there's an inconsistency my understanding is the Commonwealth overrules the State.

HANNAH MARSHALL: That's absolutely correct in the sense that section 109 of the Constitution says that to the extent of any inconsistency, the State law will be invalid. My view on it is that it doesn't create an inconsistency because it is not messing the division between the two. To take a practical example, the PEP 11 licence—the result of the bill passing would be that they can't build a new pipeline that goes in through State waters. It doesn't stop the Commonwealth Government from reapproving that licence and the people controlling the licence from undertaking other activities which go around the boundaries of the State coastal waters.

Ms KELLIE SLOANE: Can I follow that up while we're still talking about it? To be clear, you're saying that you could have the joint authority approving the drilling and then New South Wales saying, "Sorry, no pipe through our waters"?

HANNAH MARSHALL: Correct.

Ms KELLIE SLOANE: Could the Commonwealth in your opinion then override New South Wales' decision to ban that pipeline?

HANNAH MARSHALL: No.

Ms KELLIE SLOANE: No, so that's the point.

HANNAH MARSHALL: Yes.

Ms KELLIE SLOANE: And New South Wales is a member of that joint authority in any case.

HANNAH MARSHALL: Yes.

Mrs JUDY HANNAN: Just to Mr Kirkman, and this is a little bit different again, I note that the question was asked where you all live and you all come from the shore not far from where this bill is addressing. What would you say to the people out in the rest of New South Wales that may say that you're all saying, "Not in my backyard"? Do you have a response to those people that think that gas is something that they—we represent the whole of New South Wales. What would you say to them if they're saying that when they're facing similar issues?

JOSHUA KIRKMAN: I do sympathise with people who live in those communities who are dealing with threats from fossil fuel companies that are very serious. When I stated earlier that we're in a climate emergency, that applies to people who live inland from the coast. The whole country has the ocean as its collective backyard. The majority of people live within 50 kays of the coastline, so we're predominantly coastal people, and people living inland also enjoy the ocean as much as anyone who had the privilege to grow up with it on their doorstep like myself and everyone else on this panel. Their concerns are real. I sympathise with them. This legislation specifically speaks to an oceanic threat or an oceanic fossil fuel project, so unfortunately at this point in time this legislation is for this purpose. That would be my response to them. I'd say that I a hundred per cent sympathise with what they're dealing with. I a hundred per cent hope that this Parliament can address their needs and their concerns in the future and in the future that's closer to now than not. That's my answer to that question.

BELINDA BAGGS: Can I just add to that quickly. We also surveyed—at the time of our submission it was around 1,000 people and now that survey has gone up to about 1,600 people, and 98 per cent of the people surveyed, the respondents, said they strongly support the bill. Those people weren't just off the affected PEP 11 zone; they spanned the entirety of the New South Wales coastline. I have a heat map here; it's quite messy and printed out quite poorly. It is a heat map where you can see people all along the coastline as well as people even out near Mildura have voted on this—sorry, surveyed.

Mrs SALLY QUINNELL: I was just going to ask if you feel that NOPSEMA's role affects how you feel about the protection of those environmental situations. What NOPSEMA are doing, does it affect your opinion of the protection of those environmental situations?

ROWAN HANLEY: I'm happy to start. My personal opinion is that perhaps NOPSEMA, whilst better than what was there previously, I'm not sure that it asks the right questions when it comes specifically to PEP 11. When we first found out about this particular application to drill off our coast—Surfrider found out about it in 2018—we were shocked. We didn't know anything about it, and I was there with another conservation friend called Robbi Newman from Living Ocean. They are a citizen science research charity from Avalon. He studies whale migration up and down the coast, and a lot of his data from their citizen science research actually, we believe, prevented the 3D seismic testing that was proposed at that time.

So I had afternoon tea with Robbi and he was telling me about this seismic testing, and also present at that afternoon tea was Tim Buckley from the Institute of Energy Economics and Financial Analysis and he was telling us about the state of the gas industry and the likelihood that PEP 11 would be an expensive, highly subsidised stranded asset by the time it got up. I left that morning tea and I went home to try to research the particular companies that were—Advent Energy—purporting to roll out this lease and this exploratory drill. It wasn't very easy because the website for Asset was a bit glitchy and it was hard to get information.

But when I did gather information and find out about this Gordian knot of investment companies and prospecting companies that are involved in PEP 11, what I found was that there was very little offshore mining experience. I think Advent has done one exploratory drill in the PEP 11 zone, which brought up sort of sludgy, salty mud. Apart from that, they have two mines in the Bonaparte Basin—EP386 and RL1. So that's not a lot of mining experience and it's certainly not a lot of offshore mining experience or expertise.

Now, if I was an Olympic athlete, I wouldn't go with a first-time orthopaedic surgeon to operate on my knee. Our coast along New South Wales is our gold medal Australian coast; it is the most valuable coastline in Australia. Would we really risk it with this particular company, with very little experience? No, I don't think NOPSEMA asks the right questions. It has lots of boxes which you can tick and manipulate information, but that's my opinion.

JOSHUA KIRKMAN: We're not going to the rest of the panel on that question?

The CHAIR: Yes, I thought we were.

JOSHUA KIRKMAN: I thought Peter Morris.

The CHAIR: That's who I was looking at.

BRENDAN DONOHOE: Do you want to add to that question?

PETER MORRIS: No, I won't add to that. Thanks very much.

BELINDA BAGGS: I'll add to it. Climate impacts are not covered by the existing regulatory regime. Both the International Energy Agency and the IPCC have shown that new developments in oil and gas are incompatible with the global goal of 1.5 degrees with no or limited overshoot. Also, when something goes wrong on one of those drilling platforms, it goes catastrophically wrong. We've seen that with Montara; we've seen that with Deepwater Horizon. I understand PEP 11 is gas; it's not oil. But it doesn't mean there's still not condensate and a lot of other toxins that are happening out there in the ocean being brought up as well—as well as the disposal of toxic waste from drilling fluid. We just can't risk it.

Again, I'm not an environmental scientist; I'm a professional surfer. I spend every single day in the ocean with my family and now my own son. But from what I've seen, what I've researched and what I believe—which is very similar to what Louise Morris from AMCS said earlier—is that NOPSEMA and NOPTA's regulatory environmental standards are the bottom of the barrel. That's simply not good enough for 2023.

Ms MARYANNE STUART: Ms Baggs, you mentioned before about the oil slicks in some places where you have surfed.

BELINDA BAGGS: Yes, in California specifically.

Ms MARYANNE STUART: Have you or your colleagues found that there have been health effects from that that you maybe aware of?

BELINDA BAGGS: I probably haven't spent an extended period of time there to really give a great comment on that. The Californian coastline and waters are much more polluted than ours are in general. So, yes, a lot of surfers get sick when it rains there; people don't surf for at least a week. I don't want that to happen on our coastline. I'm sure that there are problems with ingesting oil when you're out in the water, absolutely. That tar that sticks to the bottom of your feet is toxic, and it would go up through the pores of your skin, into your bloodstream. Sorry, I'm not a doctor; I don't know the exact health issues of that, but I can't imagine that it would be good for our health at all.

BRENDAN DONOHOE: I think it would be fairly to safe to say it doesn't have a positive effect on our health.

Ms MARYANNE STUART: I just wondered if any of your colleagues have had specific health issues?

BELINDA BAGGS: Not to note anyone that had specific issues, but I do know that parts of the California coastline have also been shut down for months on end because of oil spills that have gone in there. They've lost a lot of wildlife et cetera, et cetera.

The CHAIR: And perhaps the final question I'm going to ask to Mr Morris. In your opening comments you talked about, essentially, we can't afford to not act here. It remains unclear to me personally whether or not we would be exposed to compensation. But if the Government was going to make a decision about legislation that could potentially expose us to compensation—it could be millions or tens of millions or hundreds of millions—you would say, "Yep, go ahead and do that, and take that on"?

PETER MORRIS: It's a difficult thing to say yes to an infinite amount of money. However, the figures that I quoted are realistic figures of what's at stake. If it did come back to a matter of compensation, the State Government could well form the view, and I would argue it should say, "Well, if there is a cost in buying off this project to stop it, we'll pay that cost," because the cost of not doing it is, in every likelihood, much, much higher.

The CHAIR: Thank you all so much. Thanks for sticking around for an extra 11 minutes—it's been a fascinating conversation—and for the time you've put into your submissions et cetera. Formally, I thank you for appearing before the Committee today. You will each be provided with a copy of the transcript of today's proceedings for corrections. If you find anything in there that you feel is incorrect, please let us know. The committee staff will email any questions you have taken on notice—which is zero—and any supplementary questions from the Committee which might be coming your way. We kindly ask that you return answers within seven days. I apologise in advance for how quick that turnaround is, but we're under a bit of time pressure here. Could I just clarify, please, if a supplementary question goes in the direction of Surfers for Climate, which then potentially goes to Ms Marshall, is that okay?

HANNAH MARSHALL: Yes.

The CHAIR: I am just very mindful of your workload and your life—

HANNAH MARSHALL: That's quite alright. Please, don't hesitate.

The CHAIR: Alright. The Committee—

Ms KELLIE SLOANE: Sorry, Chair, I just wanted to clarify, I did say that I had a long list of all of the MPs from both sides of politics that supported this bill. Are you happy for me to read their names to put them on the record?

The CHAIR: Sure.

Ms KELLIE SLOANE: The member for Gosford on 8 February 2021 opposed PEP 11; the member for Wyong, David Harris, on 20 February 2023; the member for Swansea, on 25 February 2022. Penny Sharpe, the environment Minister, in 2021 was strongly opposed to PEP 11. This is Labor, so far. Let me just go on. Anthony Albanese, Pat Conroy, Emma McBride have also been very public in their opposition. Chris Minns, the Premier, on 4 February 2023 said:

> For over a decade NSW Labor has opposed PEP-11, and nothing has changed. We still oppose it.

I stood at a press conference with Felicity Wilson, with James Griffin—who was the environment Minister and is now the energy shadow Minister—and with Rory Amon, who submitted the bill. The Federal member for Kingsford, Matt Thistlethwaite, on 21 October 2021—I have more and more, but I think you get the idea that there is broad cross-party support on the record: Liberal, Labor and crossbench.

The CHAIR: Thank you very much, Ms Sloane—good research. Thank you very much, everyone. We really appreciate your time.

(The witnesses withdrew.)

(Short adjournment)

Professor MICHAEL CROMMELIN, before the Committee via videoconference, affirmed and examined

Professor ANNE TWOMEY, sworn and examined

Ms EMMA SESTITO, Senior Solicitor, Safe Climate, Environmental Defenders Office, before the Committee via videoconference, affirmed and examined

Mr BRENDAN DOBBIE, Managing Lawyer, Safe Climate, Environmental Defenders Office, affirmed and examined

The CHAIR: I welcome our next panel of witnesses. Would a representative from the EDO like to make a short opening statement before we begin the questions, and then I'll come to professors Twomey and Crommelin to do likewise?

EMMA SESTITO: Certainly. Environmental Defenders Office is a national legal centre specialising in public interest environmental law. We've engaged in environmental policy and law reform through legal interventions and provision of expert legal advice to parliamentary processes for over 30 years. EDO supports the intent of the Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023 to prohibit petroleum and mineral exploration and recovery in New South Wales coastal waters and to prohibit development in New South Wales that would support the offshore petroleum industry in Federal waters off the New South Wales coast. However, EDO considers that the bill could be strengthened in four critical areas, each of which we will address briefly.

First, EDO considers that the legislative framework proposed by the bill should be expanded to prohibit development related to carbon capture and storage, or CCS, in New South Wales coastal waters. CCS is a false solution to the climate crisis and poses significant risks to the marine environment, including through the use of seismic testing surveys and the construction of infrastructure, which is as complex and resource intensive as the infrastructure that this bill seeks to ban.

Secondly, EDO is of the view that the drafting of the bill raises potential constitutionality issues in relation to its purported application to Federal waters. The uncertainty arises from the definition of relevant development in proposed section 10.17 (2) of the Environmental Planning and Assessment Act 1979. In EDO's view, in its current form, it may be open to construe section 10.17 (1) (a) as prohibiting the exploration and recovery of petroleum and minerals in Federal waters. This interpretation could give rise to potential constitutionality issues in relation to section 109 of the Constitution. In EDO's view, there's a simple solution to the potential constitutional issues, which is set out in our submission.

Thirdly, EDO considers that the bill is an opportunity for further reforms to take place specifically in relation to updating and modernising relevant penalty provisions. The bill does not propose any new penalties in the Petroleum (Offshore) Act 1982 or the Offshore Minerals Act 1999. The existing penalties in both Acts with respect to the exploration and recovery of petroleum and minerals are grossly inadequate and differ across the Acts for similar violations. In addition, each of the Acts utilises vastly different penalty mechanisms. Lastly, EDO notes that the bill is not the complete answer to stopping Petroleum Exploration Permit 11, or PEP 11. The proposed amendments to the Environmental Planning and Assessment Act 1979 would have the effect of prohibiting any development in New South Wales that would support offshore petroleum activities in Federal waters.

However, some petroleum activities in Federal waters do not require any ancillary development to proceed. This includes seismic testing and exploration drilling, which do not require any connection to the mainland through New South Wales coastal waters. The intimation in the second reading speech that the bill will prohibit seismic blasting from being conducted under PEP 11 is misplaced. The EDO makes the following recommendations to the Committee. Recommendation 1—the EDO supports the bill. However, in order for New South Wales to ensure that global warming is limited to 1.5 degrees, then all new fossil fuel use and production should be prohibited and all existing fossil fuel developments should be phased out at soon as possible.

Recommendation 2—the bill be amended to prohibit CCS activities in New South Wales coastal waters. Recommendation 3—proposed section 10.17 of the Environmental Planning and Assessment Act 1979 be amended as follows: the phrase "whether occurring in the coastal waters of the State or the offshore area of the State" be removed from the definition of "relevant development" in section 10.17 (2) of the Environmental Planning and Assessment Act 1979 and the phrase "in the coastal waters of the State or the offshore area of the State" be added to the end of the proposed wording in each of sections 10.17 (1) (b) (i) to (iii) of the Environmental Planning and Assessment Act.

Recommendation 4—the bill should increase the penalty provisions in the Petroleum (Offshore) Act 1982 and the Offshore Minerals Act 1999 to appropriately reflect the seriousness of the offence being punished, which must be at least in line with inflation since each penalty provision was introduced. Recommendation 5—the bill should introduce a tiered penalty unit system in the Petroleum (Offshore) Act 1982 and the Offshore Minerals Act 1999 which mirrors the penalty unit system in the Environmental Planning and Assessment Act 1979. Alternatively, a penalty unit system should be introduced in the Offshore Minerals Act 1999 to replace the outdated existing specific financial penalty provisions in the Offshore Minerals Act. With the implementation of these recommendations, EDO supports the passage of the bill.

The CHAIR: Professor Twomey, do you have an opening remark you'd like to make?

ANNE TWOMEY: I'm primarily here to assist the Committee with the constitutional complexity of it. So maybe I'll just give a small overview of that. The complexity arises from the fact that we're dealing with an area—the coastal waters offshore—which is not State jurisdiction. So the State has effectively two sorts of powers it can use there. One is its own power to legislate with extraterritorial effect and the other is the power conferred on it by the Commonwealth as a consequence of the offshore settlement. That's the legislation—the Coastal Waters (State Title) Act of 1980 and the Coastal Waters (State Powers) Act of 1980. Those are two sources of power for the enactment of this kind of legislation.

But, depending on what the source of power is, the potential conflict arises in a different way. If the State is using its own power to enact a law with extraterritorial effect, then that triggers potentially section 109 of the Constitution if the law is inconsistent with the law of the Commonwealth. Whereas, if the State is using its powers under the offshore settlement, those powers that it has are powers that were given to it by the Commonwealth and are therefore subject to any qualifications that the Commonwealth puts on giving it those powers. That includes, for example, in section 4 (2) of the Coastal Waters (State Title) Act, a qualification that says that rights that are given to the State are subject to:

> … a right of the Commonwealth to authorize the construction and use of pipelines for the transport across the sea-bed … of petroleum …

That's a qualification on the power that was given to the State under that legislation. Any conflict that arises there is not a section 109 conflict; it's a question about what's the extent of the power that the Commonwealth has given to the State and what limits there are on it. The final observation is that there is lots of complexity in the law about inconsistency under section 109 of the Constitution but in recent times the High Court has preferred a test which says that when a State law if valid would alter, impair or detract from the operation of a law of the Commonwealth Parliament, then to that extent it is invalid. I will quote one sentence where a majority of the High Court discussed that in a case called Outback Ballooning, which I think is relevant. They said:

> Notions of 'altering', 'impairing' or 'detracting from' the operation of a Commonwealth law have in common the idea that a State law may be said to conflict with a Commonwealth law if the State law in its operation and effect would undermine the Commonwealth law.

Ultimately that is precisely what this particular bill is trying to do: undermine the operation and effect of any Commonwealth law, if there were indeed a Commonwealth law that provided for pipelines across the seabed, et cetera. My final comment would be that I have no expertise whatsoever in the minerals and petroleum laws of the Commonwealth or the State and on that I will defer to my colleague, Michael Crommelin, who knows an awful lot more than me on that.

The CHAIR: Thank you, Professor Twomey, and thanks for bringing hot air ballooning into this inquiry—not where I thought we were going today. Professor Crommelin, do you have some opening remarks for us?

MICHAEL CROMMELIN: Yes. I am here at the invitation of the Committee to discuss constitutional and other legal matters that may arise. Can I simply endorse the remarks of Professor Twomey regarding constitutional issues that are raised by this bill and say that I do have some experience in teaching and research relating to both Commonwealth and State mineral and petroleum laws, including the relevant Offshore Petroleum and Greenhouse Gas Storage Act of the Commonwealth and the Offshore Minerals Act of the Commonwealth.

Ms KELLIE SLOANE: This question is open to any witness to respond to. In the current drafting of the bill in section 10.17 (2), under "relevant development"—and this has been raised already—if we were to remove the words "or the offshore area of the State", would the bill be constitutionally sound, or would there still be some opportunity for challenge? Could I start with Ms Sestito?

EMMA SESTITO: The EDO submission sets out what we think is an easy solution to this, any potential constitutionality issues, and one limb of that proposal is to remove the words "or the offshore area of the State" from the definition of "relevant development".

The CHAIR: I'm just looking at your recommendation. In part (a) you've got "remove" and then in part (b) you've got "add". You still include "'or the offshore area of the State' be added". What am I missing there?

BRENDAN DOBBIE: I could perhaps clarify, Chair, if you don't mind. We see the inconsistency there arising from, essentially, what's kind of a circular definition of relevant development, which applies to coastal waters of the State, which is New South Wales jurisdiction, and the offshore area of the State, which is the Federal waters component. So, because section 10.17 (1) (a) refers to relevant development, which can either be in New South Wales waters or in the offshore Federal waters, and then it goes on to say "coastal waters of the State", there's kind of a duplication of the geographic application of that provision. So the solution that we propose is to remove the geographic reference from "relevant development" and then just reinstate it in section 10.17 (1) (b), which is the prohibition on the ancillary development in Federal waters, just to make it clearer that what's intended by subsection (b) there is to prohibit development occurring within New South Wales, whether on the mainland or within New South Wales waters, but for the purposes of offshore development in Federal waters.

The CHAIR: Thank you so much, Mr Dobbie. Back to you, Ms Sloane.

Ms KELLIE SLOANE: Part of my question will relate exactly to that. Professor Twomey, first of all, maybe, what are your thoughts on that?

ANNE TWOMEY: I read the EDO's suggestion. I think that's a sensible suggestion. Really, it just resolves a bit of a drafting problem which seems to, on the one hand, say you're only dealing with this in coastal waters and then saying "offshore". I can understand why you're using "offshore" in relation to (b) (i) and (ii) because you're talking about things that happen onshore for the purposes of doing things in relation to what might happen offshore. That makes sense. I don't think that that in itself is the particular problem. But equally it's not going to solve the other potential problems. There's a broader inconsistency, possibility arising if this legislation were to operate in a way that undermined the ability of Commonwealth legislation to operate. But, having said that, I don't know that there's any Commonwealth legislation at the moment that specifically conflicts, and this raises also what constitutional lawyers call an operational inconsistency. That means that you can have laws that happily exist in parallel—they do not conflict with each other—until such time as a decision is made under a law that has the effect of triggering an inconsistency.

For example, until such time as the Commonwealth decided that they did want to give some kind of a licence to someone to run a pipeline across the coastal waters and to have it, presumably, come out in New South Wales and have the petroleum come out and be dealt with, until such time as there actually is a decision to do that and a decision that's supported by legislation—there'd need to be legislation to support it, which I'm not sure exists. But, until you got to that point, then there wouldn't be a problem. But, if you did get to that point, then, potentially, there would be a problem because, for example, of that carve-out of the jurisdiction of the State in relation to the coastal State waters, that was in relation to pipelines and the possibility that this kind of legislation would conflict with and undermine the operational effect of any Commonwealth law supporting it. So that's where the problem essentially lies.

Ms KELLIE SLOANE: Given that we live in a federated model, I'm assuming this wouldn't be the only example of a law where there's some contestability, Commonwealth to State. This is a fairly common occurrence?

ANNE TWOMEY: It is. If you're looking for Commonwealth, State litigation, the issue of inconsistency would be one aspect of that because it's often a bit in the eye of the beholder. These tests are not absolute in any kind of way. So there are a lot of grey areas around it. It makes it very difficult for any parliament legislating to know precisely whether or not its legislation might be deemed to be inconsistent or not. So it is quite common.

Ms KELLIE SLOANE: And the only way to test that is by having a case, where, as a hypothetical example, someone seeking to drill in the PEP 11 area would potentially sue a government for legislation. Is that a possibility?

ANNE TWOMEY: It is certainly the case that in terms of inconsistency there will be some areas where it is not clear, and the only way of resolving it will be by litigation. There will be other forms of inconsistency where it is extremely obvious that there's an inconsistency, because one law says you must do X, and another law says you may not do X. In those sorts of cases it's clear inconsistency and both sides know in advance. This is much more difficult because what we're talking about here are issues about whether or not you're potentially undermining the operative effect of a Commonwealth law. At the moment we don't even know what the Commonwealth law would be. We don't have the terms of it, nor do we have the terms of any licence that might be granted under that law to be able to compare with.

So really we're trying to look in the future and say, "Well, what might be the effect of this law in the future? Might it end be being found to be not operative because of that kind of conflict that arises in the future?" It's a possibility. You can't say it is not a possibility. It's a possibility. But nor can one say, "This is unconstitutional. You can't do it." There is nothing firm of that nature either.

Ms KELLIE SLOANE: Some of the people that have been concerned about this say "Yes, well"—I put it to people as an example. We should have sovereignty over our waters, and it is not our job as Parliamentarians to think about a future hypothetical case. And the response to that has been, "Well, what if we get sued as a government?" Is that a possibility, or could someone who is litigating simply prove that the legislation isn't valid and it will have to go away?

ANNE TWOMEY: It depends on the circumstances. If, for example, the consequences of the legislation led to someone losing money, then you might end with some kind of order against you because you acted in a way that was invalid or something or other. Again it comes down to not so much the legislation, but the validity of how people act. To the extent that you have legislation here saying the Minister shall not give a licence or whatever—so you're instructing the Minister as to what to do, then the Minister acts in accordance with that legislation, and later on it is found that the legislation was inoperative because it was in conflict with the Commonwealth law, that may have some sorts of flow-on consequences. Again, we're dealing with things that are so far ahead and require so many different steps to have happened along the way, it is really hard to predict any of those things.

Ms KELLIE SLOANE: We're talking about checkmate when we haven't made the first move.

ANNE TWOMEY: It could arise in some circumstances. The one thing we all know about mining is that there's lots of money involved. The consequence is that the stakes are high, there are always lawyers involved, and litigation is far more conceivable than in many other areas. You just need to look at some of the Palmer litigation that's gone on in Western Australia recently. It's probably a more litigious area than many because the amount of money involved is significant. Michael might be able to tell you a bit more about that.

The CHAIR: Do you want to pose your original question to Professor Crommelin? I don't think he had a chance to respond.

Ms KELLIE SLOANE: Professor Crommelin, what is your view on whether we remove those words from schedule 3, new section 10.17 (2), the definition of relevant development—the words "or the offshore area of the State"?

MICHAEL CROMMELIN: I think those words create a drafting problem, and also a potential constitutional problem. So there are two reasons I think for removing them. Even if we put aside the constitutional issues, to which I'll return in a moment, I think there's a matter of drafting. There's an inconsistency or at least a possible confusion between section 10.17 (1) (a) and 10.17 (2), definition of relevant development. So I think they need to be removed.

As for the constitutional issues, if I start a very broad level, we're talking about three jurisdictional areas. One is the territorial area of the State of New South Wales, which ends at the ordinary low watermark, by and large. The second is the area of coastal waters, where the New South Wales Parliament has both legislative authority and proprietary rights as a result of the Commonwealth legislation—the Coastal Waters (State Powers) Act and the Coastal Waters (State Title) Act. The third jurisdictional area is what is defined in the words "offshore area of the State". That's a defined term in the Commonwealth legislation, in both the offshore petroleum and offshore minerals legislation.

The authority of the New South Wales Parliament does vary from one area to the next there. In no case is the authority of the New South Wales Parliament completely unlimited, but there is much more extensive legislative authority within the territorial area of New South Wales. There is very substantial, but not absolutely identical, legislative authority in coastal waters. And there's some, but less, authority of the New South Wales Parliament in the offshore area of the State of New South Wales. Any attempt by this legislation to intrude in the offshore area of New South Wales does face a serious question of the scope of the legislative authority of the New South Wales Parliament.

The starting point is that the limits are most important in the offshore area of the State. In addition to that, you have two pieces of Commonwealth legislation that are enforced in relation to the offshore area of the State of New South Wales. One is the Offshore Petroleum and Greenhouse Gas Storage Act, and the other is the Offshore Minerals Act of the Commonwealth. Any New South Wales legislation that is inconsistent with either of those Acts will be, as a result of section 109 of the Constitution, inoperative. That takes us to the issue of applying section 109 to circumstances that could arise if this legislation intruded into offshore areas. Broadly speaking, obviously that's a very large question. But I make the point, which I'm sure is familiar to the Committee, that the

legislative regimes in both the Commonwealth offshore petroleum Act and the Offshore Minerals Act are very extensive regimes, so the risk of inconsistency is very high in relation to that.

I am not saying that they necessarily exclude all legislative intrusion into that area; in fact, they don't. They provide for application of some New South Wales laws in the offshore area of the State. But to the extent that this bill interfered with the matters that both of those Acts deal with in very extensive terms, then, of course, the New South Wales bill, if it became an Act, would be inoperative. I think there is a very high risk of inconsistency arising, to the extent that this bill were to attempt to interfere in any way with exploration, production and transportation, as well as any other developmental activities involving petroleum or minerals, in the offshore area of New South Wales.

Ms KELLIE SLOANE: But, to be clear, if we removed the definition of the offshore area of the State, to a large degree that would remove most of the inconsistency?

MICHAEL CROMMELIN: I think so, yes. I think the question is what you might put in its place. But if you simply removed it, it would take away a high risk factor that I think would occur on the current drafting.

Ms KELLIE SLOANE: The proposal is that there would be a full stop after "whether occurring in coastal waters of the State". It limits the relevant development, which is the suggestion of the EDO and I think—

MICHAEL CROMMELIN: As long as the amendment did not purport to take the operation of this bill into the offshore area of the State, then I think there's high chance of constitutional validity in coastal waters and onshore.

Ms KELLIE SLOANE: Great. Thank you very much.

MICHAEL CROMMELIN: I need to make one important qualification, though, or perhaps for clarification: That's on the basis of the way the Commonwealth Acts—the Offshore Petroleum and Greenhouse Gas Storage Act and the Offshore Minerals Act—are currently drafted. They are currently drafted to apply only to offshore areas, including the offshore area of New South Wales. The Commonwealth Parliament could, of course, amend them.

Ms KELLIE SLOANE: They could, but I think our job isn't to suggest the what-ifs and maybes, but what we are focused on today.

MICHAEL CROMMELIN: Yes. I just don't want to be taken as saying that the Commonwealth would have to just passively accept what is done here. But it is important to underline the fact that one of the reasons why the inconsistency issue arises specifically in relation to the offshore area, the third of the three jurisdictions, is because the existing pieces of Commonwealth legislation specifically relate only to that area, not to coastal waters of New South Wales or the territorial area of the State of New South Wales.

Mrs SALLY QUINNELL: I have so many questions. I hope the first one will be a brief one. Professor Twomey, you mentioned that we're speaking about legislation that may not necessarily have been written yet Federally. Are organisations able to retroactively litigate or sue if we were to put something in place and then the Commonwealth was to put a law in place that retroactively made our law impact that company? Are they able to retroactively sue on that? I'll try to think of an example and come back to you.

ANNE TWOMEY: I don't know at the moment. It's a complex question. It would depend on—put it this way: I think it is unrealistic in terms of a question because ordinarily the Commonwealth wouldn't legislate in a way that had a retrospective effect which would result in financial consequences. It strikes me as an unlikely scenario.

Mrs SALLY QUINNELL: Okay, thank you. Ms Sestito, do you foresee any unintended consequences of expanding this legislation to include CCS and seismic exploration and thereby strengthening it?

EMMA SESTITO: No. As set out in our submission, we strongly support the inclusion of CCS in this bill.

Mrs SALLY QUINNELL: Specifically named?

EMMA SESTITO: Specifically named.

Mrs SALLY QUINNELL: Thank you. My final question is to everyone, or whoever feels most capable of answering. It is about section 10.17 (b), to do with the maintenance, repair, provisioning or fuelling of vessels, aircraft or equipment and prohibiting the development of anything new. Are there any unforeseen legal consequences? If there is currently a fuelling depot that currently exists, it's fine but someone can't put up a competition fuelling for those ships because they might be used offshore. Is there any conflict there legally?

BRENDAN DOBBIE: Sorry, do you mean in terms of creating a monopoly of who's already existing—

Mrs SALLY QUINNELL: Yes, and stopping competition or being able to find out who was fuelling which ships—our legal responsibilities to international ships that come into a fuelling station. I know it's a very, very broad question. I'm sort of asking if there is any unforeseen knock-on effect of that.

BRENDAN DOBBIE: I don't think we've considered that specifically, but I think these amendments in the planning Act are designed to capture more significant development that might be proposed to facilitate offshore oil and gas developments. I guess if there are existing plants working, they would have existing use rights under the legislation and could continue, but you wouldn't have a whole new refuelling station that could be proposed and given planning approval to support the offshore oil and gas industry. I think it would be quite clear what was happening. There wouldn't be any kind of unintended consequences.

Ms MARYANNE STUART: Thank you for your submissions and thank you for your attendance today. My first question is to Mr Dobbie or Ms Sestito. On page 8 of your submission in the first paragraph, it's quite a long sentence and I'm just asking for you to be able to explain to me in plain English what this means please. It's the last sentence. It says:

> In particular, the MLA Bill cannot directly prohibit, or render nugatory by prohibiting ancillary development, all offshore petroleum or mineral activities in Federal Waters off the coast of NSW, including within Petroleum Exploration Permit 11.

Could you quickly summarise what that is saying please?

BRENDAN DOBBIE: I can have a go. What we're intending to say there is that—just taking the bill at face value, which is it firstly prohibits any offshore oil and gas development within New South Wales waters and also intends to prohibit ancillary development to support offshore oil and gas in Federal waters. But what we are saying there is that there are some Federal activities that can continue without any ancillary development in New South Wales. So, for example, seismic testing can occur just by dragging the machine behind a ship. It doesn't need anything actually within New South Wales to support that. Even exploration drilling can occur in Federal waters without necessarily having any connection to the New South Wales mainland or going through New South Wales waters.

There are some incidences of production actually happening completely at sea. So there's an example of one of Shell's projects off the north-west coast of WA which is entirely a floating production unit and everything is contained within Federal waters and doesn't need to go through the WA coastal waters at all. So that's the intention there. I think some of the rhetoric that has surrounded the proposal of this bill has suggested it's a complete answer to banning development in PEP 11. That's not the case, from our perspective. Emma, did you want to add anything more there?

EMMA SESTITO: Nothing further, thanks, Brendan.

Ms MARYANNE STUART: Thank you, that was really helpful. To both of the professors, if I may, you've spoken about high risk in regards to section 10.17. Are there any other high risks or inconsistencies in this bill that you can highlight for us today?

ANNE TWOMEY: Maybe I'll start. The one thing that did strike me as potentially an issue was in relation to 103A (1) (c) which says that a Minister must not grant a pipeline licence for construction of a pipeline across coastal waters of the State. On its face that seems fine, but I note, again, that provision in the Coastal Waters (State Title) Act that confers rights on the States in relation to the coastal waters, subject to a right of the Commonwealth to authorise the construction and use of pipelines for the transport across the seabed of petroleum. That, of course, leaves everything still—I was going to say up in the air—under the water. It still leaves it all open because, to the extent that if there is no legislation currently in existence at the Commonwealth level—if there is none and, again, I'm not an expert on this—at the moment about laying pipelines across coastal State waters, and if the Commonwealth legislation just deals with the offshore stuff, then there is no inconsistency in that provision in there.

But if, on a future occasion, the Commonwealth did decide to execute a power to do that, this particular qualification would suggest that the State's ability to act to stop that would be limited. Again, this is just talking about the State Minister approving a licence. In those circumstances, it would presumably be the Commonwealth Minister approving a licence under Commonwealth legislation, and so the State Minister not approving it would probably be irrelevant anyway. But I just wanted to point out that there is a lurking concern about the pipelines over the coastal water areas of the State in case the Commonwealth, in the future, decided to exercise its powers there, because I think it could as a consequence of that exclusion in the Coastal Waters (State Title) Act. But again, we're just talking about possibilities way off in the future; we're not talking about current conflicts.

Ms MARYANNE STUART: Professor Crommelin, did you have anything further to add?

MICHAEL CROMMELIN: I think it is important to note that provision, that qualification, in the Coastal Waters (State Title) Act at section 4 (2) (c). I broadly agree with what Professor Twomey has said. I will just make a couple of additions to it. I can confirm, and it is certainly my view, that the current Commonwealth legislation—both the Offshore Petroleum and Greenhouse Gas Storage Act and the Offshore Minerals Act—do not purport to operate outside offshore areas. In other words, they do not apply their provisions to the coastal waters of New South Wales. So at the moment there's not a problem.

If this bill were passed, and then the Commonwealth decided to amend its legislation or pass new legislation to confer power on a Commonwealth Minister to grant a pipeline licence across the coastal waters, then, in my view, that would very likely be valid. So, in effect, the attempt to prevent a pipeline by stopping the New South Wales Minister from granting a licence in relation to coastal waters would simply be unsuccessful.

Ms KELLIE SLOANE: I think it would be a pretty big deal if we had the Commonwealth trying to—

Ms MARYANNE STUART: It was remiss of me not to ask if the EDO wanted to comment on that as well. Did either of you?

BRENDAN DOBBIE: I think it's good to just reflect on what Professor Twomey has said about any potential constitutionality issues being in the future and this concept of operational inconsistency depending on what happens in PEP 11 or other Federal titles that might be granted off the coast of New South Wales. As the law currently stands, and the current practice between the way that New South Wales grants approvals within coastal waters and what happens in Federal waters with NOPSEMA, is that there is a distinction between the coastal waters of the State and then the Federal offshore area. So at the moment this inconsistency wouldn't arise.

I think we'd also say that this inconsistency that we're talking about only applies to one aspect of this bill, and the other important aspect is banning offshore oil and gas within New South Wales coastal areas. I think, of itself, that's a very important goal and certainly consistent with New South Wales' net zero plans. I believe that the environment Minister is currently working on a draft bill to set net zero targets, so it is completely consistent with that, and the intent to also prohibit ancillary development for oil and gas in Federal waters is also a laudable intent, despite the issues that Professor Twomey and Professor Crommelin have mentioned. It seems, to me at least, that those issues are a bit hypothetical at this stage and will only arise in the future if something actually happens in PEP 11. Of course, at the moment we don't know what that might be. That's what I'd add. Emma, did you want to say anything further there?

EMMA SESTITO: Nothing further.

The CHAIR: Thank you very much. This is a question for Professor Twomey and Professor Crommelin. The Offshore Constitutional Settlement, as I understand it, basically provides for the States to have that power or control—if we want to call it something like that. Forgive my incorrect term. But on coastal waters, under a joint authority, if this legislation were to be enacted, wouldn't that instantly—not at some point in time far off in the future—expire the purpose of the joint authority? Because the New South Wales Minister is going to be told that the answer is no, it's always no and it's going to be no, and wouldn't that then mean that the joint authority becomes largely irrelevant, as per the settlement?

MICHAEL CROMMELIN: Perhaps I should respond first on this. The joint authority is a construct of the Offshore Petroleum and Greenhouse Gas Storage Act, the Commonwealth legislation. It is not a core element of the Offshore Constitutional Settlement, which was a political arrangement between the Commonwealth and the six States given effect to by the passage of the two Commonwealth Acts that we've been talking about, the Coastal Waters (State Powers) Act and the Coastal Waters (State Title) Act. So the joint authority doesn't have a role, as the very complex legal regimes operate, in coastal waters. The essence of the Offshore Constitutional Settlement in relation to coastal waters was that, by and large, they were to be managed by the States in the same way as they would have been if they had fallen within State territorial boundaries.

So if you go back to what gave rise to the Offshore Constitutional Settlement in the first place, the High Court decided, I think it was in 1975, in the case of the lead plaintiff, which was New South Wales, that the territorial boundaries of the States were represented by the ordinary low watermark. In other words, State territory did not include what was then called the territorial sea, which then only extended out to three nautical miles. The States were very unhappy, of course, with that arrangement, and so there were political negotiations stretching over about four years resulting in the Offshore Constitutional Settlement, the essence of which was that the Commonwealth Parliament would enact legislation to put the States in the same position, as far as it were possible to do so without actually altering State boundaries, that they would have been in if the High Court had held that the territorial sea was part of State territory.

The joint authority was created subsequent to all this whole constitutional settlement but only to perform functions in relation to the offshore areas of each State, which were defined to begin only at the outer edge of the

State coastal waters. I apologise for the complexity of that because it is really a very elaborate system. As things currently stand, joint authorities have no role in relation to the coastal waters of any State. Their roles are in relation to the offshore areas of States. So, to the extent that this bill was to operate in relation to the coastal waters of New South Wales, then it would not impinge on the decision-making and the exercise of authority by the Joint Authority of the Commonwealth and New South Wales.

ANNE TWOMEY: I have to say I know nothing about the joint authority, so I will defer to Professor Crommelin on that.

The CHAIR: Going back to a comment that you made earlier, Professor Twomey. You've been clear about section 109 of the Constitution and the phrase "alter, impair or detract from" the decision-making, that essentially the intent of this bill is to alter, impair or detract. Did I interpret what you said correctly?

ANNE TWOMEY: Yes. I probably should have been a bit more careful in my wording there.

The CHAIR: This is your chance.

ANNE TWOMEY: Indeed. The intention of the bill, as I understand it, is to do as much as New South Wales can to impede mining of petroleum, not only in the coastal waters but to impede it in the offshore areas, to the extent of the State's capacity. To that extent, you've got that provision in section 10.17 which talks about development within the State that would support activity in that offshore area. As we've previously discussed, that reference to "offshore areas" might be removed. But to the extent that it's there at the moment, there is an intent here to use the power that the State has in relation to activities within the territory of the State to impede action that might be happening in an offshore area.

So here we talk about "a person must not carry out development within the State for the purpose of maintenance, repair and provisions or fuelling of vessels, aircraft or equipment used for relevant development"—which is defined as including in offshore areas—"or handling, refining or processing petroleum or minerals obtained from relevant development". Again, if there was a relevant development offshore, this is trying to impede that by saying that no-one is allowed to handle, refine or process that petroleum or the minerals obtained from it et cetera.

There does seem to be an element here of an attempt to impede the operation of Commonwealth law, to the extent that it deals with the offshore area. But in relation to things that fall within the State's jurisdiction—so things that happen onshore—the extent to which that might trigger the kind of test in section 109 of the Constitution is just unclear. It would be on the very edges of inconsistency. It is not a straight out, direct inconsistency. There would be an argument that could be made that such action, to the extent that it's intended to impede the effectiveness of the operation of Commonwealth laws offshore, that there might be a problem with that. However, if the references to the offshore area were excluded as discussed earlier, then that would no longer be a problem.

The CHAIR: We talked earlier about the potential for the developer or the applicant to take legal action against a government. When the former Prime Minister made the decision that he was going to get rid of this, ultimately that led to some legal action, which got us to where we are today. Based on what you've just described, is it possible that we could end up with the Australian Government and the New South Wales Government in court against each other trying to clarify this? Is that one possible form of legal action that could come? Or is that unprecedented? The Feds never take the State—

ANNE TWOMEY: It's certainly not unprecedented. As someone pointed out, the original seas and submerged lands litigation was a challenge from New South Wales against Commonwealth legislation. Certainly, the Commonwealth and the States can disagree about the extent of the operation of legislation. I just think it's quite a difficult analysis, because here you've got a State exercising powers in relation to the matters happening within the State and saying that you're not allowed to develop and engage in certain kinds of development within the State if they are for the purposes of aiding things that are happening offshore. Before you get anywhere, you've actually got to have something that is happening offshore that is approved by Commonwealth legislation before you even get to the point of looking at some kind of inconsistency.

Again, we come back to that idea of operational inconsistency. There would still have to be an approval granted. There would have to be some kind of evidence that somehow this legislation was impeding the ability of the Commonwealth law to operate—might be evidence that the Commonwealth law can operate without the need for any kind of onshore development. I mean, presumably, when we talk about, for example, not allowing new development for the purposes of maintaining, repairing, provisioning or fuelling vessels and aircrafts, there's got to be a lot of places already in existence where vessels are fuelled and aircraft can take off from an airport. There has to be an awful lot of them. The extent to which this might in any practical way impede the ability of the

Commonwealth to exercise its powers in relation to offshore areas would have to be the subject of some kind of evidence. It may well be that it doesn't do that at all.

The CHAIR: Yet another fascinating conversation. Thank you for appearing before the Committee today. You will each be provided with a copy of the transcript of today's proceedings for corrections. If you feel like you need to correct it, please let us know. The Committee staff will also email any questions taken on notice from today. There weren't any. Any supplementary questions from the Committee—if they are forthcoming to you, we kindly ask that you return the answers within seven days. I apologise in advance for the short turnaround on that, but we have some time-critical deadlines for us at this end as well.

(The witnesses withdrew.)

Ms SUE McCARREY, Chief Executive Officer, National Offshore Petroleum Safety and Environmental Management Authority, before the Committee via videoconference, sworn and examined

Mr CAMERON GREBE, Head, Environment, Renewables and Decommissioning, National Offshore Petroleum Safety and Environmental Management Authority, before the Committee via videoconference, affirmed and examined

The CHAIR: I welcome our next witnesses. Do either of you have any questions about the hearing process that we are about to embark on?

CAMERON GREBE: No.

SUE McCARREY: I think we're right.

The CHAIR: Would either of you like to make a short opening statement before we begin questions?

SUE McCARREY: As was mentioned, I'm the chief executive officer of NOPSEMA, or the offshore energy regulator. We've also now picked up the role as the offshore infrastructure regulator, which will pick up the offshore renewables, and that will attach to new regulations that are being undertaken. NOPSEMA is an independent regulatory authority and undertakes regulatory tasks in the occupational health or work health and safety area and well integrity, infrastructure integrity and environmental management of offshore petroleum activities, particularly under the Offshore Petroleum and Greenhouse Storage Act. That involves, of course, environmental approvals of any exploration or petroleum greenhouse gas activity that is actually being undertaken, but in Commonwealth waters.

We only pick up if a State refers powers to us and the only State that has referred powers for work health and safety and well integrity parts of the regulations is the State of Victoria. In relation to New South Wales, we regulate outside the three nautical miles. At the moment we have no activities on foot. Particularly in relation to the bill that's before the Committee at the moment, NOPSEMA has no current environmental plans that have been submitted and are under assessment, nor have we had any contact with any organisation in relation to that. If we do receive a submission, then it must actually be put out for public comment, so the public would be notified of that occurring. I thought that might just be a very quick lead in, but I'm open to any questions that you might have.

Ms MARYANNE STUART: Thank you for your submission and attendance today. Ms McCarrey, I will confirm there are no pending applications for approvals, no activities at this stage, and you have had no contact with any organisations regarding PEP 11?

SUE McCARREY: No. Just to clarify, we did actually have a submission for seismic survey way back and completed in 2018. There's been nothing since that time.

Ms MARYANNE STUART: Nothing since that time?

SUE McCARREY: No.

Ms MARYANNE STUART: How would NOPSEMA assess an application for exploration activities such as the seismic surveys you've just spoken about, or exploration drilling?

SUE McCARREY: I'm happy to hand to Mr Grebe.

CAMERON GREBE: I'm head of environment, renewables and decommissioning at NOPSEMA. The process for exploratory activities is set out in the environment regulations, under the Offshore Petroleum and Greenhouse Gas Storage Act. It sets out a range of prescriptive process and content requirements for environmental approvals, starting with a lot of responsibility and duty on the titleholder to go and consult with relevant persons, which are set out under the regulations, in the course of preparing an environment plan, which is the name of the approval document for exploratory activities.

Once a titleholder submits an environment plan, the regulations set out details on the process we have to go through in considering an application, starting with completeness and, with not complete requirements, to return it to a titleholder; right through to processing applications and putting it on our website for public comment; and then, following the public comment, setting out requirements for what matters we have to consider when making decisions on environment plans.

Those criteria for acceptance are defined in the regulations, under 10A, and cover matters such as the environment plan demonstrating that it's appropriate for the nature and scale of the activity, relates to environmental impacts and risks to acceptable levels and ALARP, consultations being completed and so on. There are about eight or nine acceptance criteria. The regulations require that we need to be reasonably satisfied that the environment plan demonstrates those requirements have been met. If they have, if it does demonstrate, in our

view, that that's been met, then, the regulations stipulate, we must accept. If the environment plan doesn't meet those requirements, the regulations require that we either request further information or we provide a "not reasonably satisfied" decision and an opportunity for the titleholder to modify and resubmit their application.

There are statutory time frames in each of those assessment processes of 30 days that we have to make a decision within. The regulations do allow under circumstances to extend time frames. The regulations do identify that, if we aren't reasonably satisfied after reasonable opportunity to modify and resubmit an environment plan, we may either refuse to accept it or move to accept with conditions or limitations. There are other parts of the regulations that deal with more specifics on the content requirements that an application must contain, as well.

Once accepted, an environment plan—I should mention the publication points in terms of the transparency provisions specify that the points at which an environment plan is published is when it's for public comment for an exploratory, seismic or drilling; when it's submitted following the public comment, along with a report prepared by the titleholder on the public comments received, if any; and then subsequently the environment plan version that's accepted by us, if it's accepted, is required to be published, as well. We have a website, which maintains environment plans that are open for public comment, a database that shows environment plans that are under assessment. It shows the various status through the assessment process. Then also, if things are approved as part of a project or an exploratory activity, we have a database that gives access to information about approved activities.

Ms MARYANNE STUART: Thanks. I have two supplementary questions. Do you then communicate or consult with government agencies? Let me be clear: I'm asking about Federal, State and local government.

CAMERON GREBE: The requirements for consultation in our regulations are quite detailed. They do actually specify the requirement to consult in the first instance is on the titleholder. There are about five criteria that define who has rights and must be consulted. That includes the governments in the adjacent jurisdiction, include the State of New South Wales, for example, if petroleum activity was in Commonwealth waters adjacent to New South Wales. It also sets out that the relevant State Minister, be it the Minister with resources responsibilities would need to be consulted as well; and then as well, any organisation or person whose functions, activities or interests may be affected by the activity. Typically, of course, this includes local governments.

The consultation scheme and the regulations are designed to ensure that consultation occurs at an early stage where a titleholder is preparing the environment plan. The purpose of that consultation is clearly to inform the management of the environmental impacts and risks and the policy position that drives regulations in that way, so that when it's in the planning stage, there is greater ability for changes to be effected in the way petroleum activity or greenhouse gas storage activity would be undertaken. NOPSEMA, in the way it conducts assessments, has a policy during the assessment that if we identify a need to consult directly with the relevant person, for example another government agency, we identify that we would do so. But it's case by case, and it is not set out in the regulations when and how that should be carried out.

Ms MARYANNE STUART: Thank you. The last question is that you said you would put the application up on your website for comment. What other communication methods would you deploy to ensure that most of the community would know that this application has been submitted?

CAMERON GREBE: Thanks. Good question. Of course, our environment plan assessment policy identifies that for exploratory activities, it goes through public comment, and that the titleholder must place public notices in the relevant State and local newspapers. This is to align with equivalent public notice periods around environmental approvals out for comment that exist in most onshore jurisdictions. By the time it comes to public comment, because of the extent of consultation on development process that's occurred, there's typically a great degree of awareness of that.

In terms of our side, it is more than just posting on our website. We have a system where subscribers can be notified of the submission. You don't have to check the website daily to see if something's up; the notification automatically notifies people. You can screen out areas that you're not interested in or select based on geography and activity type and so on. There's a great degree of tailoring that someone can do to ensure that the notifications they receive are the ones they want to know about. That notification and subscription functionality exists on the assessment side of things as well, so you're notified when submissions are made for assessment post public comment, and also any decision that is made to accept or refuse an environment plan. There are similar subscription notification facilities there as well.

Mrs SALLY QUINNELL: In your submission you have stated that all offshore petroleum activities, including seismic activities, exploration, development or production activities, must reduce risk to the environment to as low as reasonably practical. Could you please explain to me what that means?

CAMERON GREBE: There are two elements—these relate to the criteria for acceptance under the regulations. One of them is impacts and risks to acceptable levels. The other one is to ALARP—as low as reasonably practicable—which is a concept that arose through safety regulation out of the Piper Alpha incident in the 1970s in the North Sea, where it was found that prescriptive requirements for a major hazard industry weren't sufficient to ensure that the management of risk was contemporary and adopted best and latest practices. This is a model now that's been taken up in Australia through both the safety regulation but also offshore petroleum, and in the safety side of things it's called a safety case.

Essentially, the environment plan is an impact assessment, but also an analysis of whether more can be done to reduce impacts or risks to lower than acceptable levels in the spirit of better practice. The concept is best described as you only demonstrate that risks and impacts are ALARP where you're able to justify that any additional control measures to further reduce risks aren't resulting in grossly disproportionate imposts compared to any risk reduction benefit gained. That is my best, simple explanation of the concept of ALARP. There are more technical, detailed papers analysing how you navigate through that.

In an environment plan, the content requirements require the titleholder to detail not just what is being done and what control measures are in place, but those that were rejected and the arguments as to why those aren't justified because they result in either no risk benefit reduction gained or not enough compared to any imposts that would be incurred by them.

Mrs SALLY QUINNELL: Is there not—and please correct me if I'm wrong—a perceived disparity of control, where the titleholder is telling you what they can do and what's applicable for them, but the environment impacts can't argue for themselves, so they've kind of got to prove that they're doing it wrong?

CAMERON GREBE: That's why we're here, I guess, is the simplest explanation. You're dead right; the environment can't talk for itself. So we maintain a team of experienced marine scientists and people with experience in the offshore petroleum industry. Our job is essentially to challenge, test and pressure test the titleholder's case around whether they're doing enough to reduce impacts to even lower levels than acceptable. This is routinely the case. I think more than 98 per cent of environment plans, when they're first submitted, we find we're not reasonably satisfied with—quite often because we believe that more can be done to reduce the impacts and risks and they haven't made a sufficient case. This usually arises because either we're aware of other technologies or information, or we don't see that there's evidence that justifies that the impost is that great compared to the benefit.

An example of where this can occur is under the Federal environment legislation, the EPBC Act. There are guidelines about the management of underwater sound impacts from marine seismic. They were implemented quite some years ago. Since then, there's understanding about the effects of noise on marine life, as well as control measures that could be used to mitigate impacts and risks to below what was established as acceptable for protecting key marine species. You can go further and adopt those technologies. In a seismic survey that's accepted today, we include many control measures that aren't identified in the minimum accepted practice for acceptable levels. That's because the impost isn't that great. The technology exists. It's readily available, can be deployed and does substantially reduce any risk of sound exposure to marine animals.

SUE McCARREY: That's one of the key issues with the concept of ALARP, or "as low as reasonably practicable": It changes over time. One of the roles of our team is to be up to date with new practice that might be occurring overseas that is becoming more common across the industry. Therefore, the concept of ALARP will shift as time goes on, which is one of the reasons why it is better than if you have really prescriptive legislation. Modern techniques become available, but you're still working on a set of regulations that are quite prescriptive around past technologies. That ALARP concept allows our team to become up to date with what is actually happening and what the latest research is telling us, including having a chief environmental scientist as part of our team. Therefore, what is acceptable, as Mr Grebe was saying, actually does shift and change over time.

Mrs SALLY QUINNELL: Following on from Ms Stuart's question earlier about community consultation, we know, in this business, how hard it is to get people informed about certain things that are happening. My concern is that post-COVID, the legislation about how to seek consultation has changed. Having it in the control of the titleholder, who doesn't have a vested interested in having a lot of feedback, I find that quite concerning. To be perfectly honest, I'd never heard of NOPSEMA before this, so I wouldn't have known to be on your subscription list. How are you proactively getting out and letting notified communities know that this is something they might want to comment on? We've had a huge amount of support coming in today. How are we accessing those people?

SUE McCARREY: Certainly, consultation is required. I think Mr Grebe mentioned before that our job is to pressure test. Yes, it is the titleholder's responsibility to undertake that comprehensive consultation in order to develop the environmental management plans—the environment plan. Our job is to have a look at all of the

detail and the consultation that has occurred—who with and how was the consultation undertaken. It's not just about gaining a quick bit of feedback. Our job is to assess that the consultation was done effectively, where those being consulted were well aware of what was being discussed and how it was undertaken.

Certainly I understand that should there be any activity in Commonwealth waters in the New South Wales area, we would actually reach out to key people, as I think Mr Grebe mentioned—people like the Minister and departments within New South Wales. Obviously, we're probably a little more well-known in Western Australia, Victoria and South Australia at the moment just simply because that's where the majority of the activity is undertaken. But certainly, if there was activity to occur in New South Wales, we would reach out so that people would know who we were.

CAMERON GREBE: If I can, I'd also add that it is not surprising that you would not have heard of us. It has been many years since there was any petroleum activity occurring. You'd probably be the first to find out that someone is planning one, because there'd be consultation by the titleholder, and that's usually when we start detecting there's a need to reach out directly. I would share that in 2017 and 2018 NOPSEMA undertook, including with the Department of Industry, Science and Resources—whatever they were called at the time—community consultations to explain the regulatory process in New South Wales and visited both regionally and New South Wales departments in Sydney, explaining our process. That's quite a long time ago. As Ms McCarrey said, if there was activity arising—we're a public service agency; we'd obviously need to put our resources where there's justified work. If it was to come up, there would be someone doing a petroleum activity and we'd be doing the same thing again, I'm sure, in New South Wales.

Ms KELLIE SLOANE: In Advent Energy's submission they talked about the prospective areas for drilling in the PEP 11 area. They said:

> It is Advent's intention to test one of these structures, the Baleen prospect, by drilling the Seablue-1 well which would occur approximately one year after granting of the licence extension, subject to specific environmental approvals …

Can you confirm whether you have or have not heard anything about this from Advent Energy?

CAMERON GREBE: No, we have not heard anything.

SUE McCARREY: We haven't heard anything.

Ms KELLIE SLOANE: You said that normally an environmental assessment would happen fairly early on in the process.

CAMERON GREBE: Early on in the process, the activity that is happening or the work that is happening is that the titleholder would be out consulting with stakeholders. From our perspective, that is focused on relevant person consultation under the regulations. How long that takes depends on how much interest and how many there are. That is something that doesn't happen, obviously, by the regulator; that's a company going to consult to inform their plans. Typically, I guess, from experience, that is happening at least three to 18 months before we see any application.

Ms KELLIE SLOANE: As Ms Quinnell has taken us through, it is the titleholder's responsibility. If Advent Energy is out there consulting at the moment, once they'd approached you, what would roughly be—I know you took us through all the multiple steps before. What would an average time be before they've gone from environmental consultation to "go" on a project?

CAMERON GREBE: There's quite a big range, mostly driven by how responsive or how good the titleholder was in preparing their application in a manner that complies in the first instance, but then, if there are issues identified, how quickly they resolve them. Our statistics show that seismic is generally between nine months to 18 months, but it really does depend. The time frame allowed for them to go and address any issues we identified that prevent approval isn't stipulated. By policy they are limited to 12 months. It is fairly long in the tooth, and we don't like assessments being out longer. We usually move to make a final decision if we've not heard from someone within 12 months, but otherwise we need to let them have time to do the work necessary to comply. Particularly in the last year, the consultation provisions have meant, with the increasing interest in offshore petroleum, that the task to consult is longer and that does generally also then continue through the assessment where we identified gaps in consultation. Probably three-quarters or more of environment plans have consultation as an issue identified as well in the first submission.

Ms KELLIE SLOANE: If there was an urgent need for gas supply in New South Wales, could it be solved by someone starting the process today?

CAMERON GREBE: I don't know if we could comment on that. I think the environment plan process is fairly specifically set out in the regulations, and what we did prescribe actually was that all of the powers and the authority to make decisions under the regulations and the Act that relate to safety in environmental

management are given to the authority and to the CEO. The CEO delegates internally and there's no latitude to consider economic or social factors in making a decision. It's purely on the merits of environmental management and so we would follow the necessary process and it would entirely depend on how expedient the titleholder could do that environmental plan preparation and have it comply.

Ms KELLIE SLOANE: No matter how good the environmental regulator is and your risk management processes, you would have seen from the Montara oil spill, it's very hard to prevent some accidents. What did you learn from that spill?

CAMERON GREBE: Montara is important for us for two reasons: One, I guess it stimulated the creation of NOPSEMA out of just the safety regular, so during the Montara incident NOPSEMA was NOPSA, the National Offshore Petroleum Safety Authority. I was recruited to be the first environment management employee to set up our environmental management function which, along with the wells, commenced in January 2012. It's a long time ago now. We took on the responsibility from the adjacent State and Northern Territory jurisdictions for environmental management regulatory oversight and we were able to build a critical mass of compliance staff and inspectors to be able to regulate. The kinds of learnings were identified in the commission of inquiry for Montara.

But you're probably asking about things going wrong. One of the key aspects is to have a much more matured contingency plan ready for oil spill response, because although it's a very, very low probability, the consequences if it's persistent oil can be significant for the environment, not to mention the safety of people on facilities. So the need to maintain focus on prevention is obviously a key lesson of Montara and any incident but being well prepared, given the substantial consequences.

NOPSEMA has made quite a lot of progress and improvements in that space, including significantly stepping up the level of equipment, resources and competencies available to respond to a spill; environmental scientific monitoring; but, most importantly source control to ensure that if there is a well blowout that it doesn't take 88 days to cap it and it's brought well down to very short time frames. This has been the global effort as well, I must say, and we've worked closely with international regulators all around the globe both on the safety and environment side, to ensure that we're able to rely on the international, and national systems of cooperation, which are a feature of our oil spill marine pollution contingency measures in Australia.

SUE McCARREY: And probably just so you're aware, there has been quite a huge shift since Montara in the way oil spill preparedness and response is being addressed in Australia. That's not just ourselves being involved in that. It's obviously a key amount of work being done by the industry working together but also the Commonwealth Government, through policy agencies setting out frameworks for oil spill preparedness and response, but also working with fellow agencies like AMSA—the Australian Maritime Safety Authority—and others because there tends to be crossover. It's working together in that area. Just so you're aware, where any incident occurs, whether it be a lower level incident or something that happens internationally, we always examine the outcome of causal factors that led to that incident occurring so that we are constantly learning and encouraging that update and, again, back to managing the risk ALARP by monitoring incidents across the world.

Mrs JUDY HANNAN: According to the conversation that's here, at this moment there's no approved infrastructure exploration testing relating to gas off New South Wales within State or Federal territory. That's what I'm gathering by the conversation. Is that correct?

CAMERON GREBE: I can't comment on New South Wales State borders. We're only able to give comments about the statuses in Commonwealth waters, so from three nautical miles.

Mrs JUDY HANNAN: So in Federal jurisdiction off New South Wales. There has been some discussion about the actual supply of gas. What is the reason that New South Wales is not coming up in your jurisdiction when WA, South Australia and Victoria are?

Is it, in fact, that, as we've been told, there is not much gas off New South Wales shores?

SUE McCARREY: I wouldn't want to comment on what is actually sitting in the reserves anywhere else. We are not across that kind of information. That's a matter for Ministers and governments to actually look into those issues. It comes to us after the fact; once a title is actually granted in the offshore environment. Part of that is obviously there so that we are an independent regulator looking at safety and environmental issues. So we are not in involved in those up-front supply or policy decisions.

Mrs JUDY HANNAN: So it would be true to say that most of your work is in those other States?

SUE McCARREY: Definitely, yes, at this stage.

Mrs JUDY HANNAN: My last question is simply about fines versus outcomes. In some of those areas, are the fines so minimal that it's actually worth taking a risk for some of these companies, or is the fine substantial?

CAMERON GREBE: I'll answer that. There is a different agency that looks at the prospectivity and resource development policy. That is not us. That's the Federal Department of Industry, Science and Resources, with Geoscience Australia. We could not comment on something like that.

The CHAIR: If somebody disagrees with a decision of NOPSEMA, is there any legal path forward for that person?

SUE McCARREY: Yes.

CAMERON GREBE: There are two. We're a Commonwealth agency, so if you're dissatisfied with a decision or action of ours you can go through the Commonwealth Ombudsman; if it's an administrative decision, that's reviewable under the Administrative Decisions (Judicial Review) Act, or ADJR, which is Federal; or you can seek relief through the Federal Court.

The CHAIR: Thank you for appearing before the Committee today. You'll each be provided with a copy of the transcript of today's proceedings for corrections. Please get in touch if you're unhappy with the words that have been recorded against your name. The Committee staff will also email any questions taken on notice from today—there aren't any—and any supplementary questions from the Committee will be sent to you. We kindly ask that you return these answers within seven days. We apologise in advance for that really short turnaround. We're working through some tight timelines at this end. I'm sure you know what that's like. Thank you for joining us from the other side of the country, and congratulations on the work you do.

(The witnesses withdrew.)

(Luncheon adjournment)

Mr DAVID BREEZE, Chief Executive Officer, Advent Energy Limited, sworn and examined

Mr VICTOR VIOLANTE, General Manager, Policy & Advocacy, Australian Energy Producers, affirmed and examined

The CHAIR: We welcome our fifth panel of witnesses. Thank you both for being with us today. Would either of you like to make a short opening statement before we go to questions?

DAVID BREEZE: Yes, thank you. Good afternoon, Chair and Committee members. Advent Energy welcomes this opportunity to appear before this inquiry today. Through our wholly owned subsidiary, Asset Energy, we are going through the process of reapplying to have the PEP 11 permit extended following the Federal Court overruling a previous decision by former Prime Minister Morrison to deny that extension. The prospective resource we are seeking to develop, if proven, has the possibility of supplying New South Wales families and businesses with the bulk of their gas needs for 20 years, supporting the State's energy transition and helping reduce energy costs. That energy transition is underway and is seeing increasing use of and investment in renewable energy. But the fact remains that New South Wales, Australia, and indeed the world, will need natural gas for decades to come.

That is supported by Australia's resources Minister, Madeleine King, who said just last week that gas would play an evolving role as a transitional energy source as the world decarbonised. And the New South Wales energy, environment, and climate change Minister, Penny Sharpe, has stated that gas is an important part of the transition. Minister King last week released the Australian Government's *Future Gas Strategy consultation paper* which, drawing on analysis from the Australian Energy Market Operator, AEMO, and other sources, showed a widening shortfall of gas supply versus gas demand in eastern Australia commencing in 2027. I am happy to table these references.

Chair, we do believe that there is a need to develop new gas supply for New South Wales. Of course, we must demonstrate that these activities can be conducted safely and sustainably. The good news is we know they can. The offshore oil and gas industry might be unfamiliar to many in New South Wales, but around Australia it has a long and strong track record, with more than 3,000 wells drilled over the past 60 years. As in other States there is no reason offshore gas exploration and production should impact the New South Wales coast in any negative way. Advent does not propose any offshore activity closer than 15 kilometres to the coast. That is well beyond the horizon. No-one standing on the coast will see anything related to our project. After the 60 to 90 day drilling period, the drill rig and any other infrastructure are removed and there is nothing visible from the coast or from the air.

Advent has also made it clear that it has no intention of conducting activity in the southern portion of the permit, so we will not be exploring or producing anywhere near Sydney's beaches. Our focus is offshore the Lower Hunter, the area we believe is most prospective for future gas development. It is also important to note that Advent is exploring for natural gas, not oil. All the scientific evidence collected over the years shows that the area where we are planning to explore is a gas prospect. Claims that oil spills could result from the proposed activity are not credible. There is simply no reason that New South Wales alone amongst Australian States and Territories should ban offshore gas exploration and production. The science and the research supports this. Our project is a safe and valuable prospect for New South Wales. It is, therefore, our submission that the proposed amendment to existing legislation should not be supported. We would be happy to take any questions you may have.

VICTOR VIOLANTE: Thank you, Chair. Thank you, Committee members, for the opportunity to make an opening statement. I'd like to begin by acknowledging the traditional owners of the land on which we meet, the Gadigal people. I pay my respects to their Elders past, present and emerging. Australian Energy Producers is the peak body representing around 95 per cent of Australia's oil and gas exploration and development. Natural gas has an increasingly critical role to play in Australia's energy transformation, as a partner to renewables in electricity generation, as a feedstock to Australian manufacturing and as a leader in carbon capture, utilisation and storage and low-emission production of hydrogen technology.

Our industry is committed to providing secure, reliable and affordable energy to all Australians while also doing our part to reduce emissions and support our shared goal of reaching net zero emissions across the economy by 2050. New gas supply is critical to keeping the lights on, to helping alleviate cost-of-living pressures and supporting the transition to net zero. The ACCC, the Australian Energy Market Operator and industry are all clear that without urgent investment in new gas production, the east coast gas market faces structural shortfalls from as early as 2027. State and Federal governments, particularly on the east coast, must prioritise bringing on new gas supply as a matter of urgency to ensure our energy security.

As the recent *NSW Electricity Supply and Reliability Check Up* by Marsden Jacob noted, gas will play a vital role in supporting renewables. With no current gas production in New South Wales, the State will continue to rely on gas imported from interstate until the Narrabri Gas Project is developed. Bans and moratoriums on new gas exploration and production, such as this bill proposes, limit potential future gas supply that the people and the businesses of New South Wales will need. They also undermine the robust regulatory framework that is in place for offshore gas projects which, as we've already heard from NOPSEMA today, has served Australia well for decades and has unlocked hundreds of billions of dollars of investment in essential gas supply around Australia. Carbon capture, utilisation and storage is also going to be critical to Australia and the world's transformation to a net zero economy. Australia is well placed to be a leader in CCUS, and that should be a consideration when the Parliament considers this bill as well. I am happy to answer any questions.

The CHAIR: Thank you both. Mr Breeze, I think you made reference to providing other evidence or facts that you made reference to?

DAVID BREEZE: Yes.

The CHAIR: Thank you. Mr Breeze, earlier today—and I will paraphrase—we had some testimony from somebody who was sitting where you are, basically saying that Advent didn't have a lot of active or ongoing experience in doing this type of work and bringing it to market, or something similar to that. Could you speak to your experience? Are you active in the industry, been active for a long time or not a long time?

DAVID BREEZE: We've been in this industry since 2004. Most importantly, I'll go to the nub of the question that you asked. When we, as a proponent of a permit like the offshore one, as with other industry participants, involve ourselves in an offshore project, we have a wide range of independent consultants and specialist groups who are able to provide drilling services, design, environmental—and I'll stop at that point and just talk to the environmental issues. We involved Xodus on environmental planning. We've engaged them and we have a 660-page environmental plan that we will, subject to the approval of the regulator, then submit. That's available, and it's been available for a year or so. We have a well-designed—and structurally—process of engaging in the drilling process. Now, that type of process is followed by other players in the industry that are much larger than us.

The CHAIR: Thank you. I just wanted to start there. In all fairness it was something that was said earlier that we sat through.

Mrs JUDY HANNAN: At the moment how much of New South Wales gas that's used in industry and households in New South Wales comes from New South Wales?

DAVID BREEZE: It was 5 per cent. It may now be zero or down to 2 per cent.

Mrs JUDY HANNAN: In our other gas offshore and all the rest of it in Australia, how much of that is transported overseas?

DAVID BREEZE: I don't have a figure in my head. Perhaps Victor might have that figure of how much is exported overseas.

VICTOR VIOLANTE: It various from jurisdiction to jurisdiction. As a percentage of total production, it's in the order of 70 per cent or 80 per cent that's exported. To your earlier question, as I mentioned in my opening statement, there is no gas production occurring in New South Wales at moment. So New South Wales is reliant on Victorian and Queensland gas predominantly.

DAVID BREEZE: If I can add something more in there, the Future Gas Strategy consultation paper that I just submitted is an excellent source of facts in relation to usage support and that's the material that I've just provided to the Committee.

Mrs JUDY HANNAN: You might want to enlighten me as to how having gas coming from New South Wales or offshore in New South Wales would be more valuable to New South Wales than for us to get the gas that we're using from other places in Australia that's being exported.

DAVID BREEZE: In fact, this is the significant difficulty that New South Wales faces, because it has no domestic sources. In fact, the New South Wales Government invested, together with the Federal Government, $2 billion into sourcing an extra 70 petajoules a year of gas. That was done around four years ago. There's been zero additional discoveries brought into that. So the short answer is Victoria's offshore fields are going to reduce and are currently reducing by around 50 per cent in their output. They have supplied a significant portion of the gas for the entire east coast of Australia over the last 60 years. But they're not capable of providing the additional gas.

What we saw, if you will, last year, was a significant interruption and crisis in the energy supply in eastern Australia. In fact, the gas system in Victoria started to quite literally run dry, such that the energy regulator, in fact, at that point said—they gave a direction to the gas-fired generator run by Snowy Hydro—"Turn off your gas-fired generation. We don't have enough gas in the system." The net cost to the consumer on the entire eastern seaboard and the initiation of inflation to the eastern seaboard—the net cost of that was $1.5 billion. That was passed directly onto consumers and households and industry.

VICTOR VIOLANTE: If I could just add to that, as I said earlier, the story does change from jurisdiction to jurisdiction. As Mr Breeze said, all of the Victorian production that we've had for the last 50 years has been and continues to be for the domestic market. What we do have on the east coast is a structural gas shortfall predicted by AEMO and others from around 2027. The export contracts that are in place are, in most instances, long-term contracts with countries such as Japan, whose multibillion-dollar investments have unlocked that supply for domestic use as well. It is not a simple—in fact, it would be a significant international issue to disrupt those contracts. That's something that we continue to work with the Federal Government on: the mandatory code of conduct and other levers around ensuring domestic supply.

Mrs JUDY HANNAN: There is a lot of debate about whether the gas usage is going up or down. I see that we are all debating whether we should stop gas connections et cetera, and we have heard different stories. I'm not sure who to believe. What's your story on whether the need for gas is increasing or decreasing?

DAVID BREEZE: If I may, I'll refer to this Future Gas Strategy paper. Whilst I wasn't able to get sufficient copies to hand around, I can provide individual copies.

The CHAIR: We are in the process of doing that now, Mr Breeze. Thank you. Sorry, I interrupted you, but in essence you are saying that the document, which is a Federal Government document, answers the question about demand versus supply?

DAVID BREEZE: It answers the question and it does so in a very graphic illustration on page 35. It shows the widening gap between demand, which does diminish—but supply drops dramatically. That's the problem for east coast Australia.

Mrs JUDY HANNAN: And does it take into account our exporting of about 80 per cent?

DAVID BREEZE: It's a gross accounting for demand and supply. However, the Queensland Government Minister and the South Australian Government Minister responsible for energy have both made statements—which, again, I'm happy to supply to the Committee; it would have to be done, as it were, a question on notice—that they equally can't be relied upon or New South Wales should not rely upon their States to supply that gas in the unique situation. In fact, what we see is an 800 petajoule per annum shortfall gap of supply into the east coast of Australia. It is a crisis.

The CHAIR: If you could take that on notice as a request from me, that you would send through those comments, that would be greatly appreciated. Thank you, Mr Breeze.

VICTOR VIOLANTE: If I could add to Mr Breeze's comments, a number of analyses, including AEMO, ACCC, including the AEMO analysis done for the Future Gas Strategy, all show that demand for gas, even with levers that governments are using to reduce demand through electrification, for example, still show that gas demand will remain very high—at current levels, if not higher. Importantly, the role of gas as a supporter of renewable electricity generation is also going to increase as coal generation comes down and intermittent renewable electricity increases. For example, the AEMO 2023 Gas Statement of Opportunities says that:

> The role of gas generation to firm the NEM (national electricity market) is increasing as coal generation retires, leading to greater volatility of gas consumption.

It's that volatility that the new supply that we are talking about will address.

DAVID BREEZE: If I may add one further point to that, AEMO has produced yet a further report, which I can provide on notice, and that is that we currently have around 11 gigawatts of gas-fired power generation in Australia, but out to 2050 we will need 10 gigawatts of gas-fired generation to actually support the renewable transition.

Mrs JUDY HANNAN: It is very confusing, because we have this national shortage in Australia, but we are exporting 80 per cent. That confuses me. I will let other members ask questions.

Ms KELLIE SLOANE: Mr Breeze, you are using words like "crisis" and "urgent need for new sources of natural gas in New South Wales". The New South Wales Government's Energy Roadmap doesn't include new sources of offshore gas. Are you suggesting the Government has got it wrong when it comes to their plans?

DAVID BREEZE: I'm suggesting that the data that's provided by the Australian Federal Government in this most recent report, which aggregates the ACCC and the AEMO reports in that graph, shows, in fact, that there is an impending crisis, yes.

Ms KELLIE SLOANE: But you admit that there are State-by-State variances. Do you think New South Wales is in good hands with its current energy road map?

DAVID BREEZE: No. I think that New South Wales in particular has a significant problem.

Ms KELLIE SLOANE: How serious are you about your prospects in the Baleen reserve?

DAVID BREEZE: We've spent nearly 20 years—sorry, it's the PEP 11.

Ms KELLIE SLOANE: In the PEP 11 area.

DAVID BREEZE: Yes. We've spent 20 years on the project. We've invested over, probably, $30 million to date.

Ms KELLIE SLOANE: What have you come up with in 20 years?

DAVID BREEZE: We've drilled one well. We did so quite safely offshore, just north of Newcastle, off Port Stephens. We have a significant gas—5.7 T.C.F—prospective recoverable resource as a result of the combined study that's been done over that time frame, including, most importantly, the drilling of that well off Port Stephens, which enables us to identify, again through independent geological advice, the structural target at 2,000 metres sub-seafloor, 30 kilometres south-east of Newcastle and about 26 kilometres out to sea. That is in that report, which we have released, by the way, which showed that the target there is a plus-TCF target that is analogous to the areas that are producing gas in the onshore Bowen basin, which is in the Permian-Triassic, at the same nature that we're looking to target in this next well.

Ms KELLIE SLOANE: Remind me. Is that the Bluebell, Bluebird?

DAVID BREEZE: Seablue.

Ms KELLIE SLOANE: That's it. What are your chances there of finally striking a decent gas supply after people have been prospecting for maybe almost 40 years now in that area?

DAVID BREEZE: A very important thing that we did during the drilling of the last well was to do gas sampling in the areas where gas is seeping out of the sea floor, at multiple points off the coast. In fact, gas is seeping right across this whole area, from structural traps and, we would believe, stratigraphic traps. In fact, we sampled that area and we found gas condensate or light-condensate gas. The analysis done by Schumacher on over a thousand wells around the world, drilled where you have positive geochemical analysis of a nature that we have—again, we've reported this previously—leads to an 80 per cent success rate.

Ms KELLIE SLOANE: I've seen what you reported to the stock exchange. What I hadn't seen until your submission was the details of a pipeline that you're planning to build that goes into the Munmorah station. How far advanced are you on those plans?

DAVID BREEZE: We have, in fact, released that with an alternate pipeline route directly into Newcastle, because Newcastle has a desperate need for more energy as we've seen with the loss of 250 jobs just in the last few weeks. In fact, we haven't advanced that further than the conceptual because it hasn't been either necessary nor appropriate to do so at this point.

Ms KELLIE SLOANE: How close are you? Putting this bill aside—this bill didn't exist, the potential bill—realistic time frame, are you on the verge of drilling for gas in New South Wales?

DAVID BREEZE: I was watching the NOPSEMA representatives give their submission this morning. They gave a period of time, which, I think from memory, was between four to eight months. It may have been.

Ms KELLIE SLOANE: It varied. So you've done your environmental report—

DAVID BREEZE: We have, as I said, a 660-page environmental plan prepared by Xodus, which is in fact ready for submission to NOPSEMA. We've now twice approached NOPSEMA, who said, "We're unable to engage with you at the moment because you don't have that extension approval from the joint authority."

Ms KELLIE SLOANE: So you're ready to go.

DAVID BREEZE: Yes.

Ms KELLIE SLOANE: And you'll be the first to produce gas out of New South Wales.

DAVID BREEZE: No, I can't say that with certainty, but in fact Santos, of course—and this is a really important point, and I'll show that to you in another map. There are only two areas that are possible to supply gas into New South Wales from New South Wales as a result of the regulatory process that's occurred in New South Wales.

Ms KELLIE SLOANE: I'm talking about in our coastal waters—just off our coastal waters.

DAVID BREEZE: There is only one permit. The Sydney Basin extends right through up into Queensland. But in fact that's a recognised gas basin.

Ms KELLIE SLOANE: Yes, sorry. I'm just trying to get an idea of how serious you are with this prospect and what you realistically think the chances are of meeting what you have described as an "urgent demand for gas". I'm trying to understand the time frame, and how your PEP 11 licence and how your drilling for gas off the New South Wales coastline in offshore waters will meet the urgent demand that you claim is in our community.

DAVID BREEZE: If you again look at the chart that the Federal Government supplied, we can realistically expect to supply gas within the need time frames of—

Ms KELLIE SLOANE: Before 2027?

DAVID BREEZE: Yes.

Ms KELLIE SLOANE: Okay, that is interesting. Your website doesn't show that—I know you talked before about the fact that you're not in this space currently. Have you delivered on offshore gas before? Because your website doesn't show that. With all respect, I expect that's very different from hiring people in to do it.

DAVID BREEZE: No, we have not, but in fact that's the process that many others have undertaken over time.

Ms KELLIE SLOANE: Okay. Thank you.

Mrs SALLY QUINNELL: My questioning is not that different, but I too can't quite get my head around the timeline that we're talking about. What is your current time frame for how long you expect your extension application to take?

DAVID BREEZE: That depends upon the joint authority.

Mrs SALLY QUINNELL: Yes. Ballpark.

DAVID BREEZE: Again, the joint authority as it was comprised under Prime Minister Morrison actually waited for the better part of—whilst Minister Pitt had already independently stated that he was prepared to approve the extension in 2020, it wasn't until 2022 that we were prevented. So in fact the regulatory authority took two years in that process.

Mrs SALLY QUINNELL: And then in your submissions, you're both talking about being part of the transition. But that feels to me like looking backwards—that gas is something we're transitioning from. It also says here quite clearly the current licence doesn't allow for any production. So then you would need to go and get it converted to a production licence. That is once you have found gas. So if it takes two years—let's say two years—for the extension application, then say it takes—how long would it take to find gas? Two, four, five years? Then you have to go for another licence. Is that another two years?

I'm kind of struggling to see. If this is a crisis as of tomorrow, I'm struggling to put those two timelines next to each other, rather than going and investing in a renewable energy that could fix it in two or three years. What sort of timeline do you foresee that you will be using this licence, or the production licence resulting from finding gas at this location, which hasn't been found yet? How long do you foresee that being—ballpark—before you are fixing the crisis that you say is happening now?

DAVID BREEZE: I'll give you two metrics in response to that. When Cooper Energy proved up their resource approximately 25 kilometres offshore Victoria and then needed to lay a pipeline, they were able to lay that pipeline in order to connect it with the onshore gas facility within four months.

Mrs SALLY QUINNELL: But that's assuming that you've found the gas and that you've got the licence for the gas.

DAVID BREEZE: So the second metric, if you will, the Marlin report—which, again, we've released—gave the Baleen target area a TCF-plus target zone, and that alone has the capacity. It will then depend upon the regulatory process in order to get to a result. If I can touch on renewables, to answer that point as well, I know that you are well aware that we've just seen Snowy delayed and going from a $2 billion cost out to around

$10 billion to $12 billion—and, on some figures, out to $20 billion. But it's not anticipated to come into production until, perhaps, as late as 2030.

The wind farms that are proposed for offshore New South Wales, we welcome. That's a necessary part of the energy transition. But they too may take until 2030 to actually supply the renewable energy that's required. What we're seeing on a global basis is that renewable energy is not meeting at either a cost or, in particular, a time line basis the needs of the communities around the world in both Australia and globally. Independent parties have said that there's a cost of about $1.5 trillion that Australia alone needs to implement to enable that renewable transition. In fact, just as this paper from the Federal Government points out, we need gas as a substitute.

Mrs SALLY QUINNELL: So you're not seeing gas as a solution to our long-term energy crisis; you're seeing it as a solution in the interim until we move to renewables?

DAVID BREEZE: The Australian energy market authority sees that we will need gas right through until 2050. That's why I said there's 10 gigawatts of gas-fired powered needed by 2050 on their independent input.

Mrs SALLY QUINNELL: Considering that the bill is legislating on New South Wales coastal waters, with some offshore extension, how do you see the current proposed bill stopping what you would like to do?

DAVID BREEZE: I also had the opportunity to observe Professor Twomey in giving her consultation process this morning. What I noted from her report is that she said, in particular—of course, subject to correction from Hansard—there does seem to be an element to impede Commonwealth law to the extent of the offshore area under section 109. That's not for me, but I'm sure that's a factor that you will consider in this whole process, and you are indeed getting legal advice on that matter.

Ms MARYANNE STUART: Thank you both for your organisations' submissions and for being here today. Mr Breeze, you said that the company has been operating since 2004. Is that correct?

DAVID BREEZE: Correct.

Ms MARYANNE STUART: How many offshore gas plants do you have?

DAVID BREEZE: We have none.

Ms MARYANNE STUART: You have none? How many have you had?

DAVID BREEZE: None.

Ms MARYANNE STUART: Okay, thank you. We're hearing that there is a crisis. You were just saying to Ms Quinnell that we need to look at the future et cetera. If there is a critical shortage of gas, why do you think we export 70 per cent to 80 per cent of our gas?

DAVID BREEZE: When those plants and those plans and those investments were put into place, there was, in fact—whilst some parties had recognised that there was likely to be a shortfall, and this has been going on for 10 years, there wasn't an apparent shortfall. Most importantly, Bass Strait had not entered the decline phase that it has. The Bass Strait fields declining in the way that they have has been the impetus to the change in the way in which the eastern States energy crisis has occurred.

Ms MARYANNE STUART: Mr Violante, would you like to add to that?

VICTOR VIOLANTE: I can add to that. Australian gas resources are abundant. We do have enough to meet domestic and export demand. Our exports have been integral to our international relations, particularly in our region. Japan—we've got the energy Minister in Australia right now, and the Australian Government has been reassuring to the Japanese Government over the last couple of days on our ongoing future as a reliable energy partner. Japanese investment over the last few decades has been critical to not only the economy and jobs but also to unlocking supply domestically, because that investment would not have happened in Australian onshore and offshore gas production had it not been for the investment of our international energy partners.

The exports are an essential part of the domestic supply in certain parts of the country where that has occurred, and it has been contingent on the understanding that Australia would continue to develop future gas supply as those resources depleted. In the Bass Strait, for example, those gas fields have been operational offshore in the Gippsland Basin for 50 years now, and they're now in decline. Good planning should mean that we plan for that decline and bring on new supply which we know is there.

Ms MARYANNE STUART: Thank you. Mr Breeze, back to you. Asset has an 85 per cent interest in the PEP 11. Is that correct?

DAVID BREEZE: Correct.

Ms MARYANNE STUART: Who owns the other 15 per cent?

DAVID BREEZE: The other 15 per cent is owned by Bounty, which is again a listed public company.

Ms MARYANNE STUART: Am I right in saying, with these maps, that the exploration area that you're considering is over 40 kilometres long and actually intersects with the declared area wind farm just off Newcastle?

DAVID BREEZE: Yes, that is correct.

Ms MARYANNE STUART: They cross over each other by the looks of it.

DAVID BREEZE: Yes.

Ms MARYANNE STUART: Am I right that it is 40 kilometres long?

DAVID BREEZE: No, I think it is longer than that. If you have a look, the scale there shows 20 kilometres. But if I can just touch on one point about the wind farm: We went to great lengths to provide a submission to the Federal inquiry on gas supply as a renewable source. We did so. Our submission to that is publicly available. But, equally, post the declaration of that area as a declared zone, we put out a release that welcomed the release of that area. In fact, wind farms and petroleum areas coexist and do so quite happily in the Northern Hemisphere, in the offshore area to the UK, and also coexist, I think, in the Gulf of Mexico as well.

Ms MARYANNE STUART: There is one last question—if I may, Chair?

The CHAIR: Very quickly, please.

Ms MARYANNE STUART: Very quickly: It was stated before by previous speakers that you can't capture gas because it burns. Do you have an opinion on that about carbon capturing and storage?

DAVID BREEZE: I believe that's an incorrect statement. You capture the gas, you burn the gas, you produce heat. If that's what the speaker was putting forward, CO2 is produced as a result of that, which you're well aware of I'm sure, and I've read all of the submissions that have been made to you. But the CO2 emissions from gas are around 50 per cent less than those of coal, but that's again another very good point. The area where we are offshore around New South Wales is a recognised independently reported-on area for potential carbon capture and storage and we do intend in the drilling of this next well to explore for the capacity to store, and carbon capture and storage has been recognised by the Federal Government as a necessary part of this energy transition.

VICTOR VIOLANTE: Can I please respond to that, Chair, as well? Carbon capture and storage is a proven technology. It has been used around the world for decades now. It works and it is also essential to the transition globally and for Australia to net zero. The International Energy Agency says that carbon capture and storage will be essential to globally achieving the net zero 2050 goal and the Federal Government here in Australia recognises that and is working with industry to create a regulatory framework that will enable carbon capture and storage technology.

Ms MARYANNE STUART: Are they meaning that with gas?

VICTOR VIOLANTE: Yes, it is something that the gas industry is already in Australia doing. The Gorgon project in WA for example has been operational for a few years, and there are several other projects that the gas industry has under development right now and there are also opportunities for other sectors that are emissions intensive to use carbon capture and storage to offset or capture their emissions.

The CHAIR: Can I ask one question, a clarification please from you, Mr Breeze? I think that you said we currently produce 11 gigajoules of gas power.

DAVID BREEZE: Gigawatts I think it should have been.

The CHAIR: My apologies. You probably said it right; I just got it wrong. You're saying we need an additional 10, so we'll go to 21?

DAVID BREEZE: No. It's in the AEMO report. We use 11 gigawatts of gas-fired and liquids as an energy source to produce electricity at the moment. But in 2050 we're going to need 10 gigawatts. In other words, yes, we'll drop off. That may well be the liquids component; I don't know and that wasn't in the data. But we're still going to need 10 gigawatts in 2050.

The CHAIR: So essentially in 2050 we're still going to need roughly the same amount of gas for electricity production?

DAVID BREEZE: Yes.

The CHAIR: Our time is up. Thank you for appearing before the Committee today. You will each be provided with a copy of the transcript of today's proceedings for corrections, and if you feel like you've been misquoted or there's something to correct, please let us know. The Committee staff will also email any questions taken on notice from today, and I think it was primarily the one about the quotes. We as a Committee may derive some supplementary questions to come to you and we ask that you respond to those within seven days. We appreciate that is time challenging but we're under the pump as well, so thank you for your assistance in that regard. Thank you so much, gentlemen, for being with us today and thank you for your time.

(The witnesses withdrew.)

Ms GEORGINA BEATTIE, Chief Executive Officer, Mining, Exploration and Geoscience, Department of Regional NSW, affirmed and examined

Ms JAMIE TRIPODI, Executive Director Assessments and Systems, Mining, Exploration and Geoscience, Department of Regional NSW, affirmed and examined

The CHAIR: I welcome Ms Georgina Beattie, the CEO of Mining, Exploration and Geoscience, as well as Ms Jamie Tripodi, the executive director of assessments and systems, Mining, Exploration and Geoscience, from the Department of Regional NSW. Thank you very much for coming along. Would either of you like to make a short opening statement before we begin questions?

GEORGINA BEATTIE: Yes, thank you, Chair. I will. Thank you again for inviting us to the inquiry today. Mining, Exploration and Geoscience sits within the Department of Regional NSW and is the New South Wales government agency responsible for granting and administering offshore mineral and petroleum exploration and mining authorisations in New South Wales coastal waters. We're also responsible for regulating the exploration and mining activities authorised under those titles, that is, overseeing the compliance and enforcement of those activities. This is the same role that we undertake for onshore exploration and mining for minerals and petroleum. Like onshore activities, legislation provides the framework for authorising and regulating offshore exploration and mining activities. The New South Wales Offshore Minerals Act and the New South Wales Petroleum (Offshore) Act are the two key pieces of New South Wales legislation that establish the offshore regulatory framework.

It is important to note that other New South Wales legislation will also apply to offshore exploration and mining activities in the same way that they apply to onshore exploration and mining. These legislative frameworks are the responsibility of other New South Wales government agencies. For example, the Environmental Planning and Assessment Act provides for granting development approvals for offshore mining and is the responsibility of the Department of Planning and Environment. Jurisdiction over Australian waters is split between States, Territories and the Commonwealth Government, depending on the distance from the coastline. Beyond New South Wales coastal waters are Commonwealth waters. The Commonwealth Government is responsible for granting, administering and regulating exploration and mining titles within Commonwealth waters under the Offshore Petroleum and Greenhouse Gas Storage Act and the Offshore Minerals Act. The Commonwealth Government has its own processes for considering development within its area of jurisdiction.

In Commonwealth waters, New South Wales has shared responsibility for decision-making as part of the joint authority established under the Commonwealth legislation, though the Commonwealth Minister has the final say in the event of an inability to reach agreement. The joint authority is a joint decision-making body comprising the Commonwealth Minister for Resources and the relevant State or Territory Minister—currently, the New South Wales Minister for Natural Resources. Obtaining authorisation to explore or mine for minerals or petroleum in New South Wales coastal waters requires an application to Mining, Exploration and Geoscience. Applications undergo a comprehensive assessment under the relevant legislation to ensure that all legislative requirements are met; that the applicant meets suitability requirements to hold an authorisation; and that relevant conditions are applied to manage the impacts of the activities, including environmental impacts, before a decision is made.

This is a rigorous and robust merit-based assessment, which ensures that approval to explore or mine is granted subject to obligations to undertake the activities in a safe and sustainable manner. It also ensures that appropriate considerations regarding the sensitive marine environments in which offshore exploration and mining activities take place are considered before any activity can occur, that mitigations to address relevant issues are applied through conditions, and that these are monitored and can be enforced should any compliance issues arise. Authorised offshore activities are regulated by the NSW Resources Regulator, which is a division within the Mining, Exploration and Geoscience group.

The Resources Regulator is the specialist New South Wales regulator responsible for regulating the exploration and mining industries. The regulator includes specialist staff and inspectors with mining-specific skills and qualifications, but it will also engage people with additional relevant skills and expertise as required. The Resources Regulator is responsible for assessing the impact of proposed exploration activities, such as drilling, in accordance with the Environmental Planning and Assessment Act, which requires a review of environmental factors. It takes a proactive and risk-based compliance and enforcement approach to ensure the industry meets its regulatory obligations. It can and does take quick and strong compliance action, where appropriate.

The Resources Regulator has strong powers given under the legislative frameworks and has a proven track record of enforcement action. This can include issuing notices and directions, penalty notices, suspension or cancellation of authorities, enforceable undertakings and prosecutions which can lead to substantial fines or, in serious cases, imprisonment terms for individuals. While there are some old mineral exploration titles in

New South Wales coastal waters, there is no exploration activity currently occurring in New South Wales coastal waters. There are no current authorities to mine for minerals or petroleum in New South Wales waters. There has been very limited interest in offshore exploration activities in New South Wales coastal waters. Exploration for sand in Stockton Bight as a potential source of supply for sand renourishment of Stockton Beach, near Newcastle, was the first offshore exploration activity granted in New South Wales coastal waters since the 1990s. That was granted in 2021.

The New South Wales Offshore Exploration and Mining policy was published in February 2022. The policy outlines that future exploration and mining for minerals, coal and petroleum in New South Wales waters for commercial purposes is not supported because of the potential impacts on sensitive marine environments, Indigenous heritage, commercial and recreational fishing and other recreational activities. However, the policy outlines that offshore exploration and mining may be considered where there is a clear need to put sand back on beaches through beach renourishment. In this regard, the policy intent of the bill in relation to exploration and mining authorisations in New South Wales coastal waters is largely consistent with the function of the existing policy. The bill's reference to associated infrastructure development is outside the remit of the Department of Regional NSW as it seeks to amend the Environmental Planning and Assessment Act. Thank you.

The CHAIR: Thank you. I think you were reading from a script. Would it be possible for you to provide a copy of that, through the secretariat, so that we can make sure we capture it accurately in *Hansard*?

GEORGINA BEATTIE: Of course.

The CHAIR: Ms Tripodi, do you have a separate statement?

JAMIE TRIPODI: No, nothing else to cover in opening, thank you.

Ms MARYANNE STUART: Thank you both for being here today. This question is to both of you. Have you or your department had any contact with Advent or Asset about the proposed licence?

JAMIE TRIPODI: In regard to PEP 11?

Ms MARYANNE STUART: Yes.

JAMIE TRIPODI: Yes, we have. I'll just note upfront that it's important for us not to make any statements that would affect any future decisions in regard to this matter.

The CHAIR: I reaffirm, absolutely, if there is any question that you are concerned about, just say so and we will move past that.

JAMIE TRIPODI: Yes, that's fine. We do have a role in assessing applications that come before the joint authority. The department has been involved in assessing these previously.

Ms MARYANNE STUART: Recently, have you or your department been in contact with the National Offshore Petroleum Safety and Environmental Management Authority about the PEP 11 exploratory licences being extended?

JAMIE TRIPODI: We are involved with NOPTA. Usually, NOPTA is the administrative agency of the joint authority. As to whether anyone at all across our agency has had contact, I am unable to confirm. However, we are in the process of looking at documents and things that do move to our agency in regard to the decision-making of that joint authority.

Ms MARYANNE STUART: So there is something within your department, you believe, at this point in time for consideration?

JAMIE TRIPODI: Yes. We're working, as part of the joint authority, on the reassessment of PEP 11.

Ms MARYANNE STUART: I have one last question. Are First Nations people, through the local Aboriginal land councils, consulted?

JAMIE TRIPODI: In regards to offshore, we do consider in different parts of process Aboriginal heritage and obviously—importantly, in the State waters, which is the first three nautical miles and which PEP 11 is just outside of State, we would engage with the native title claimants because there is a difference between—which you may be aware of—Aboriginal land rights and the Aboriginal Land Rights State Act, and native title claimants.

Ms MARYANNE STUART: Yes.

JAMIE TRIPODI: But usually those offshore—it would be appropriate to consult with native title parties or their representatives.

Mrs SALLY QUINNELL: How many times in the previous 12 years under the former Government were you asked to comment on a bill such as this? In order to ban offshore mining in a PEP-11-type situation, how many times this has come up as a proposed bill?

GEORGINA BEATTIE: I'm not aware of any, noting I've been in this role for 2½ years.

Mrs SALLY QUINNELL: Okay. That's fine. You listed off an extensive list of experience and expertise within your department. Does that include environmental scientists?

GEORGINA BEATTIE: Yes, we have environmental scientists. As I mentioned earlier, the focus of our work is on onshore exploration and mining because there's been very little interest in exploration and mining in New South Wales coastal waters. But, yes, we do have environmental scientists as part of our staff.

Mrs SALLY QUINNELL: Do you believe that your department and office has the knowledge and expertise to make decisions about coastal and offshore mining and that without a bill like this you would have the knowledge and expertise to make a decision? Not will you make a decision in either direction, but do you have the expertise to make that decision?

GEORGINA BEATTIE: We have the processes in places and the expertise to assess applications. Where we don't have the expertise required specifically for any kind of application that we receive, we would seek expertise to make sure we are completely covered to understand the proposed impacts of any application.

Ms KELLIE SLOANE: The former Government published the offshore exploration and mining policy in February 2022. Have you had a lot to do with that?

GEORGINA BEATTIE: Yes.

Ms KELLIE SLOANE: To what extent can that policy prevent any exploration for gas off our shores?

GEORGINA BEATTIE: The policy outlines the intention that the New South Wales Government does not support exploration and mining in New South Wales coastal waters for commercial purposes, but it allows the assessment of applications where it's used for beach renourishment. The way that applies is if we were to receive an application in New South Wales coastal waters, that policy would be considered as part of the assessment, and it would be unlikely that an application would be granted because of that policy.

Ms KELLIE SLOANE: If we took that, what is an existing policy under the former Government into legislation under the current, what extra teeth would that give you in terms of making decisions around this?

GEORGINA BEATTIE: I think the key difference would be that the applications would not be lodged in the first instance, whereas the policy applications can be received by the department but then they are assessed with the policy taken into consideration as part of that assessment.

Mrs JUDY HANNAN: You may not be able to answer this, but you've said there's very little interest in New South Wales coastal waters and yet we're told that there's a crisis coming our way to New South Wales. I would have thought, if there was a crisis coming, we would have been asking people to go out and explore the possibilities. Can you make any comment on that at all?

GEORGINA BEATTIE: You're referring to a gas supply?

Mrs JUDY HANNAN: A gas crisis, yes.

GEORGINA BEATTIE: We haven't had any applications received for petroleum under the petroleum legislation. Within the New South Wales coastal waters that we're responsible for, I'm not familiar with any major gas reserves. But, in any case, the policy covers off the New South Wales waters.

Mrs JUDY HANNAN: Coastal waters?

GEORGINA BEATTIE: Coastal waters, yes.

Mrs JUDY HANNAN: I guess your role to assess—it would be quite different if this bill actually proceeds through. As you're saying, they won't actually come to you if this bill proceeds. Is that correct?

GEORGINA BEATTIE: We haven't received any interest at all for any petroleum exploration in New South Wales coastal waters.

Mrs JUDY HANNAN: But if the bill goes through, it'll change how or what you would do if you did have that interest?

GEORGINA BEATTIE: Under the current arrangement with the policy, if we were to receive an application for petroleum in New South Wales coastal waters, it would be assessed and the policy which does not

support exploration in New South Wales coastal waters would be considered as part of that decision-making process.

The CHAIR: Ms Beattie, I think you referred to sand mining up at Stockton along the Stockton Bight. Please correct me if I'm wrong. It is my understanding that some of the sand that we mine ultimately gets shipped offshore or is used for building industries or glass manufacture or a whole range of things—on golf courses. Does none of that other use for sand other than beach nourishment or replenishment happen as a consequence of the sand mining that takes place in New South Wales?

GEORGINA BEATTIE: There is no current mining for sand in New South Wales offshore waters.

The CHAIR: Coastal waters?

GEORGINA BEATTIE: In New South Wales coastal waters. There was recent exploration in the Stockton Bight. That was for a specific purpose that that exploration activity occurred. That has now been completed and there are no other active exploration activities occurring in New South Wales coastal waters for sand or any other minerals. But you're right in that sand can be used for other purposes than beach renourishment. And there is sand exploration and mining happening onshore but not offshore.

The CHAIR: So the sand mining and export of our sand happens as an onshore activity?

GEORGINA BEATTIE: It can happen, yes.

The CHAIR: I want to talk to the joint authority within the limitations of what you can or can't say. I think it was explained to us earlier today that primarily the joint authority functions when we're talking about activities in offshore waters—non-New South Wales coastal waters offshore. Is my understanding correct? Can I check that with you?

GEORGINA BEATTIE: Yes.

The CHAIR: So the Minister for New South Wales is one of the participating decision-makers as the joint authority?

GEORGINA BEATTIE: Yes.

The CHAIR: Do I interpret what you said earlier in terms assisting the work of the joint authority—you would be doing some work in the background in terms of assessment, advice and guidance to help to inform the Minister or the Minister's team or something like that. Is that what happens in your role in supporting the joint authority?

GEORGINA BEATTIE: Yes, that's right. I might refer to my colleague who looks after our assessments area within Mining, Exploration and Geoscience. She can talk you through the process.

JAMIE TRIPODI: So the process is usually—and in regards to, say, PEP 11, it'd go before the joint authority, with the Commonwealth being the ultimate decision-maker, but there is a very clear role for the joint authority in a range of legislation and policy documents. You would usually get just a high level process not directly related to or referring to PEP 11. I just want to make that clear. You would usually request further information if required to be able to assess any application received. NOPTA would assess the further information received under that Commonwealth Act, because we're referring here to the Commonwealth legislation and Commonwealth waters.

NOPTA would issue an advice to the joint authority. NOPTA is the administrative agency that ensures everyone has access to the information that they need. On the applications, a decision usually would be made then by the Commonwealth, who would forward that on or send it through to the State for consideration as to whether the parties agree or not. The State usually then notifies the Commonwealth as to whether we agree with the decision. Ultimately if, for example, an application was approved, the joint authority then notifies through NOPTA, the administrative agency, that the decision has been made and it has been approved. If, though, the joint authority issues a notice of an intention to refuse, so that the decision is refusal, there's then a procedural fairness process that we go through to ensure that we've considered all relevant information, and that information is shared across the parts of the joint authority. Ultimately, though, any submission that comes back from the applicant would be considered to ensure they are afforded procedural fairness and we've not missed any important information and the New South Wales decision would be made. We would then refer that to the Commonwealth. They either agree or disagree with the State and they can override if they choose to. It is quite a process to make sure that—

The CHAIR: It really is.

JAMIE TRIPODI: It is, just to make sure that all the appropriate information is considered.

The CHAIR: Is there a flow chart? That's a lot to hold inside, so thank you for your work on behalf of the State.

JAMIE TRIPODI: It is, but it's an important process to get right.

The CHAIR: I think you said earlier that in terms of what has been referred to here as onshore development, that is not really a role for the Department of Regional NSW. Is that correct?

JAMIE TRIPODI: That's correct, yes.

The CHAIR: Where does the line happen? I totally understand if, say, there were to be works happening in the Port of Newcastle, because we talk about that as being metro, or Sydney Harbour, being metro. One of the proposals from the proponent is about going into Lake Munmorah, which—correct me—it's either going to be Lake Macquarie or Central Coast Council. Does that then become a question for Regional NSW?

GEORGINA BEATTIE: The scope of what we look at is really defined by the legislation under our administration, as opposed to regional versus metro classifications. Our role is to assess applications for exploration and mining titles under the relevant legislation, and in the case of offshore it is the two pieces of legislation we mentioned earlier. When it comes to connecting or associated infrastructure, that would be covered under the relevant planning approval, which would be done under the Environmental Planning and Assessment Act, which is not our legislation.

The CHAIR: No. This might be my complete ignorance or misunderstanding, but I thought that if there was to be job creation in a regional area where we have to build a new facility and then recruit, retrain and employ 50 people or 500 people, that might have fallen into the remit of Regional NSW, your department.

GEORGINA BEATTIE: My colleagues in the department would certainly be interested in that from a regional economic development perspective, but the authorising role in terms of approval would be through the Department of Planning and Environment.

Mrs SALLY QUINNELL: If someone was to build a jetty that went three nautical miles out from the low tide mark, or whatever length—how far does the jetty need to go before that goes beyond the onshore-offshore coastal waters idea? How long is the jetty before it comes under your jurisdiction?

JAMIE TRIPODI: The State is the first three nautical miles as you step off the beach. Once you get past the three nautical miles—and you would be lucky to get an approval for that length of a jetty, but if you did—beyond that is Commonwealth waters.

The CHAIR: It would be quite a jetty.

JAMIE TRIPODI: But the approval for that process is not mining related, obviously. It is Crown land out to three nautical miles—

Mrs SALLY QUINNELL: That couldn't belong to the mine?

GEORGINA BEATTIE: It could, but it would be assessed under the Environmental Planning and Assessment Act.

Mrs SALLY QUINNELL: It would still go under the same planning.

GEORGINA BEATTIE: Yes. The legislation works together in different ways. We work closely with our colleagues in the Department of Planning and Environment. They issue and assess for the development consent—

JAMIE TRIPODI: And the tenure. They require a tenure.

GEORGINA BEATTIE: —and we do the titles for exploration and mining. Exploration obviously comes first, and that's through us initially. Then, if a resource is found, they would need to get development approval before they can get a mining lease, which is again back to us.

The CHAIR: The concept of carbon capture and storage in our New South Wales coastal waters—would that be inside of your remit?

GEORGINA BEATTIE: Currently, carbon capture and storage, there is no mechanism for that in New South Wales.

Ms KELLIE SLOANE: I was so interested by that question and the response. Why is there no mechanism in New South Wales?

GEORGINA BEATTIE: It is not covered under any legislative framework.

JAMIE TRIPODI: It's not like a scheduled mineral like coal or marine aggregate.

Mrs SALLY QUINNELL: It's not something you can hold in your hand.

Ms KELLIE SLOANE: Could it happen in the offshore waters, past the three nautical miles? Does that hit Federal jurisdiction?

GEORGINA BEATTIE: Yes, once it's past three nautical.

Ms KELLIE SLOANE: That would apply there but not in New South Wales. That's actually really handy to know.

The CHAIR: Would that be a question whether or not the Feds had legislation, framework around carbon capture and storage?

Ms KELLIE SLOANE: I think it's just helpful to know from our legislation. We may not need to include it if it's not relevant. It's a good thing for us to chase up. Thank you.

The CHAIR: That's what I do, Ms Sloane: ask the excellent questions. We're still on *Hansard*, aren't we? Sorry. Sarcasm and stupidity doesn't translate. Can I ask about geoengineering, then? Is that something that's within the regional New South Wales purview?

JAMIE TRIPODI: When you say geoengineering, can you explain?

The CHAIR: No, I can't. I asked this question earlier and it was explained to me, but I didn't quite have the technicalities. I think it's got something to do with—

Mrs SALLY QUINNELL: Ocean seeding and cloud brightening.

The CHAIR: Some algae-eating something or other—ocean fertilisation.

JAMIE TRIPODI: No, we don't—not currently covered under the Mining Act.

The CHAIR: Thank you very much. What about other minerals? I think there's increasing chatter in the science community about other rare earth minerals—is that the hip term?—that potentially are on the seabed floor. Do I again assume that we haven't really defined what they are and how they might be dealt with by way of legislation and regulation?

GEORGINA BEATTIE: Critical minerals, rare earth, we regulate the titles for those onshore in the same way we do for other minerals. But the policy for offshore mining would apply in the same way, in that it is only supported in New South Wales coastal waters if it's for beach renourishment. Anything further outside of New South Wales coastal waters—three nautical miles extending beyond that—would be a matter for the Commonwealth.

The CHAIR: You were asked a question earlier about whether or not you felt that you had the technical expertise to do an assessment like this. We were told earlier that the Victorian Government recently or at some stage in the last couple of years turned to NOPSEMA for them to do an assessment of an application in their coastal waters. Are they necessarily mutually exclusive? Or is there a partnership, hybrid opportunity somewhere in there? Do you either hand it over to them and go, "We're done. You guys tell us what the answer is," or do you work together?

GEORGINA BEATTIE: In the case of the Stockton exploration licence, which is the most recent and the only really current exploration licence, we manage that ourselves. Depending on the application, depending on the technical nature of what was required, we would call on any relevant experts. If it was considered appropriate to work with our colleagues in the Commonwealth, we would consider that.

Ms MARYANNE STUART: Have you both seen Advent Energy Limited's submission?

JAMIE TRIPODI: The most recent submission, for this hearing?

Ms MARYANNE STUART: Dated 8 September 2023, the one for this.

JAMIE TRIPODI: Yes.

Ms MARYANNE STUART: I'm not sure of the page numbers. They're not numbered. It states:

> Under the current legislative framework in NSW, Advent would have options to bring the gas to market, the most direct route would be via pipeline to shore, a relatively short distance of 27km, to tie into the … Munmorah gas-fired power plant.

At what stage does that fall under your jurisdiction?

JAMIE TRIPODI: The development of that and assessment of that development would be the EP&A Act. It would be Planning. We may get referenced if it's related to mining or exploration. We work very closely with our State and Commonwealth colleagues on any of these types of projects. So we may get referenced. But that would not be within our decision-making statutory framework.

Ms MARYANNE STUART: So you would assess the planning development application?

JAMIE TRIPODI: No, no. We may get referenced. It would be the Department of Planning, within the Department of Planning and Environment, because it's a development consent and it would be approval under the EP&A Act.

GEORGINA BEATTIE: Our statutory framework is limited to the exploration or the extraction of the mineral, and that's for the New South Wales coastal waters, but the pipeline connected would be under the development assessment.

JAMIE TRIPODI: They may reference us around the geology or something technical if required to support them. We work closely with the other State government agencies, but we don't have a statutory role in that.

Ms MARYANNE STUART: I asked a question before about whether you or your department had had any dealings or contact with this proposed licence and the exploration. Ms Tripodi, you said you believe your department is doing some work with the joint authority?

JAMIE TRIPODI: No, we are doing work with NOPTA.

Ms MARYANNE STUART: Ms Beattie, you said there was nothing that had been submitted, to the best of your knowledge? Was that right or did I misunderstand something?

GEORGINA BEATTIE: I don't believe I said that.

JAMIE TRIPODI: It was about State waters and PEP 11 is not in State waters. The majority is in Commonwealth waters.

GEORGINA BEATTIE: We are fulfilling our role—

JAMIE TRIPODI: Yes, as part of the joint authority. We will continue to work with the Commonwealth through our role in the joint authority in determining PEP 11.

Ms MARYANNE STUART: So in the Federal jurisdiction there is something, and you're working as a joint authority, but there is nothing under the State jurisdiction?

GEORGINA BEATTIE: No, there are no petroleum applications in the New South Wales coastal waters.

Ms MARYANNE STUART: Thank you for clearing that up for me.

Mrs SALLY QUINNELL: Once a title has been granted, is there a trigger for a reassessment of that title? Does a title have a time frame around it—for example, that you've run out of gas? Or is there a trigger of either time or something else that you reassess that title and either continue it or end it?

JAMIE TRIPODI: Do you want me to answer?

GEORGINA BEATTIE: Yes.

JAMIE TRIPODI: There's a range of check-ins or triggers, I guess you could call them. Focusing on exploration—which is what we're talking about here, not mining—once an exploration title is issued, it has an expiry date.

Mrs SALLY QUINNELL: Is that why there's the seeking of an extension, because it's expired and so it's—

JAMIE TRIPODI: PEP 11 is a little bit different. They are seeking an extension based on—

Mrs SALLY QUINNELL: Okay, sorry.

JAMIE TRIPODI: Yes. In regards to State process, the check-in would be at renewal, so whether they are applying to renew. We also have a lot of conditions around reporting within the exploration titles that are issued. So you have a range of conditions—I think in the Stockton one there were 40-odd conditions around reporting and environment, so there are quite extensive requirements. There are those check-ins from a regulatory process, so compliance. But there are also the administrative checkpoints, which is us seeking reporting against the exploration that is done, that is then assessed as to whether we renew a title.

When you're looking at whether to renew a title, you are looking at their previous performance; you're looking at whether they need the whole area again; have they done the exploration to justify us extending that period of time? There are a significant number of check-ins through both statutory reporting requirements and conditions within a title. There are legislative requirements around renewals and when we can and can't grant renewals as well as some policy protections for renewals as well.

Mrs SALLY QUINNELL: If they are seeking renewal, do you go and check the environmental impact of what has occurred?

JAMIE TRIPODI: Just speaking generally, but even before renewal, they have reporting requirements they are required to do, and those are overseen by our Resources Regulator. Those reporting requirements are about progress, they might be about—even before they start exploration, we may issue an exploration licence with a whole heap of conditions. Usually those conditions will require things like work programs. We need to know exactly what function they are doing in which area by which date—all of that type of stuff. Then our regulators—if we need to, we involve the appropriate experts, such as our geologists, when we're looking at whether the exploration they've done in the time is appropriate. It does include a range of checks.

Mrs JUDY HANNAN: In State waters, you were saying, we don't have any legislation relating to carbon capture and cloud whitening or whatever. What happens if somebody does that in our State waters if we don't have any legislation for that?

GEORGINA BEATTIE: They wouldn't have any authorisation to do that. They would need to seek approval.

Mrs JUDY HANNAN: So they can't do it if there's no legislation.

Ms KELLIE SLOANE: What about seismic testing?

GEORGINA BEATTIE: Seismic testing is an exploration activity. Again, exploration can include seismic work in New South Wales waters. That would be assessed as part of our assessment of the relevant title. In New South Wales, because of the policy and the restriction on commercial activities, it would be limited. There would be very limited issuing of new grants in that area.

The CHAIR: Thank you for appearing before the Committee today. You will each be provided with a copy of the transcript of today's proceedings for corrections. As you know, if you're unhappy with them, please get back to us. The Committee staff will also email any questions taken on notice, of which there were none, and any supplementary questions from the Committee, which we won't resolve for the next 24 hours. We kindly ask that you return those within seven days, if that's possible. We appreciate, understand and apologise in advance for that time frame.

I sincerely thank you both for appearing, ladies. It has been interesting. Talking of interesting, that concludes an incredibly interesting public hearing for today. I would again like to place on record my thanks to all of the witnesses who have appeared and those who have made submissions and not appeared today. In addition, I would like to thank the Committee members, the Committee staff, Hansard and the staff of the Department of Parliamentary Services for their assistance in conducting the hearing today. I thank you all very much.

(The witnesses withdrew.)

The Committee adjourned at 16:00.