



Australian Government

Department of the Environment, Water, Heritage and the Arts

Ms Joanna Blair
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Montara Commission of Inquiry
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Dear Ms Blair

Thank you for the opportunity to respond to submissions from AMSA and PTTEPAA, on the Inquiry's draft findings in relation to the environmental response, sent to me under cover of your email of 25 May 2010. We wish to respond on a number of issues raised in these submissions, as they relate to the Department of the Environment, Water, Heritage and the Arts (DEWHA).

AMSA Submission

Paragraph 1.25

As a point of clarification, a clear distinction needs to be drawn between DEWHA's formal role as an adviser under the National Marine Oil Spill Contingency Plan (section 2.10.3) and the responsibilities taken on by DEWHA specifically for the Montara incident; namely, the role of Environment and Science Coordinator (ESC) and oiled wildlife response manager. The DEWHA 'oil spill contingency plan' referred to by AMSA is not in fact an oil spill contingency plan but a draft DEWHA marine pollution response plan, prepared in May 2006 but still in draft form. As noted by AMSA, the aim of this draft plan was to detail processes and management arrangements for delivery of the advisory functions assigned to DEWHA under the National Plan. While the draft plan was considered by DEWHA during the Montara incident, it was of limited utility in that it covered only DEWHA's assigned advisory role and did not envisage DEWHA assuming operational responsibilities. Such circumstances were not foreseen at the time the guide was developed

The AMSA submission also questions why it took five days following commencement of the incident for DEWHA to provide advice to AMSA on habitats within Commonwealth marine protected areas and threatened marine and migratory species. We take this to be reference to the information provided by DEWHA to AMSA on 25 August 2009, four days after the incident (reference Paragraph 2.3 of DEWHA supplementary submission). In our view, DEWHA's provision of advice commenced at the first Incident Coordination Group meeting to which the department was invited, convened by AMSA on 23 August 2009, where environmental sensitivities were discussed. From our records, there was no request for formal advice at that



time. The first such request was received from AMSA on 25 August 2009 and information was provided that day.

DEWHA has previously acknowledged shortcomings regarding resourcing/cost recovery arrangements in response to oil spills. DEWHA accepts AMSA's proposition that parties other than DEWHA faced a similar problem. We would also point out that the absence of cost-recovery arrangements did not prevent DEWHA from taking action. To the extent that there were delays in taking action, these can be attributed to the lack of clarity around roles and responsibilities under the national plan, particularly in relation to the oiled wildlife response.

Paragraph 1.29

DEWHA acknowledges that the ESC role, as it is described at section 2.9.1.7 of the National Plan, does not include responsibility for oiled wildlife response. However, it was agreed with AMSA on 15 September 2009 that DEWHA, in its capacity as ESC, would take on these responsibilities during the Montara response (as noted at section 1.119 of DEWHA's original submission and section 2.5 and Attachment B of DEWHA's supplementary submission).

It is correct that DEWHA, in conjunction with numerous other Commonwealth, State and Territory agencies including AMSA, took a lead role in the oiled wildlife response prior to its appointment as ESC. However, as noted in section 2.4 of DEWHA's supplementary submission, prior to the decision to appoint DEWHA as the ESC for the Montara uncontrolled release, DEWHA had no mandate under the National Plan to do so.

DEWHA's submission to the Inquiry provides several recommendations that relate to this issue. Section 3.9 of DEWHA's original submission and section 2.18 of DEWHA's supplementary submission recommend a review of the National Plan to, *inter alia*, comprehensively define the roles and responsibilities of relevant Australian Government agencies. Furthermore, section 3.11 of DEWHA's original submission recommends that a wildlife response capability should be established in an existing Australian Government agency or outsourced to relevant States and Territories to take responsibility for such operations in Commonwealth waters.

Paragraph 1.45

DEWHA does not agree with AMSA's suggestion that "the draft finding should refer specifically to the ability of DEWHA as regulator to determine the content and timing of Scientific Monitoring". The legislative framework administered by DEWHA operates according to thresholds and regulates only a proportion of activities in the offshore marine environment from which an oil spill could occur. Implementing AMSA's suggestion would result in no scientific monitoring being undertaken as a result of spills emanating from sources that do not trigger the EPBC Act, for example, shipping and most exploration drilling. As stated in paragraph 3.13 of DEWHA's original submission, DEWHA recommends that the requirement for environmental impact monitoring, including scientific monitoring, be legislated in a framework that captures all relevant activities such as the *Protection of the Sea Act 1991*.

PTTEPAA Submission

Row 1

DEWHA agrees that PTTEPAA first provided a draft monitoring plan on day 13. A number of peer review processes ensued, culminating in a final plan being agreed on Day 49.

Row 4

The proposed amendment by PTTEPAA would be more accurate if further amended to include the italicised text below:

'Concerns were also raised about the potential conflict of interest that could arise for the owner/operator given its involvement in the design and implementation of Scientific monitoring and the reporting of the results. However, the process used by PTTEPAA and DEWHA to design implement and report the results of each study ensured that any potential conflict of interest did not in fact affect these matters. ***A Technical Advisory Group was also established to independently evaluate the Monitoring Plan and individual study proposals, and to reduce any perceived conflict of interest.***

Row 8

PTTEPAA asserts this comment is speculative. However, the words "may not become apparent for some years" are substantiated on page 16 of the Monitoring Plan where it states that "Because stock individuals are often not recruited into a fishery until they are 5-6 years old, any effects on catch may not be evident until after this time." Although this statement was made in relation to fish larvae recruitment, the same data lag can be expected for coral.

I thank you again for the opportunity to respond to these submissions and I trust these clarifications will of assistance to you.

Yours sincerely



Gerard Early
Deputy Secretary
Biodiversity Group

28 May 2010