

Committee on Environment and Planning



LEGISLATIVE
ASSEMBLY

Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023



Report 1/58 – November 2023

New South Wales Parliamentary Library cataloguing-in-publication data:



A catalogue record for this
book is available from the
National Library of Australia

ISBN: 978-1-925214-35-2

The motto of the coat of arms for the state of New South Wales is "Orta recens quam pura nites". It is written in Latin and means "newly risen, how brightly you shine".

Contents

Membership	iii
Chair’s foreword	iv
Findings and recommendations	vi
Chapter One – The Bill	1
Offshore drilling and mining	1
NSW does not have much experience with offshore energy resources	1
Gas as an energy resource in NSW	1
The Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023	3
The provisions of the Bill	3
Referral of the inquiry to the Committee	4
Advice obtained from Counsel	4
Chapter Two – Environmental impacts of offshore drilling	6
Environmental impacts	6
Community views	9
The National Offshore Petroleum Safety and Environmental Management Authority	10
Chapter Three – The regulatory and approval regime	15
The broader regulatory framework	15
The legal framework regulating offshore activities is highly complex	15
State jurisdiction and legislative powers over coastal waters and the offshore area of the State	16
Petroleum legislation and the regulatory regime	18
The Commonwealth context	18
Regulatory authorities in the offshore area of the State	18
Petroleum Exploration Permit 11	20
The NSW context	21
The regulatory framework in NSW coastal waters	21
The NSW Government's Offshore Exploration and Mining Policy	23
Offence and penalty regimes for petroleum and minerals exploration and recovery in NSW coastal waters	24
Chapter Four – Potential issues and unintended consequences	26
The Bill raises some significant constitutional issues and may have unintended consequences	26
The Bill seeks to prevent offshore drilling and infrastructure, particularly in the offshore area of the State	27
Possible constitutional issues	28

Potential constitutional issues with proposed section 10.17(1)(b): intergovernmental immunity and constitutional inconsistency _____	28
The intended effect of proposed section 10.17(1)(b) _____	28
Intergovernmental immunity _____	30
Constitutional inconsistency _____	32
Proposed amendments to address constitutional issues _____	35
Unintended consequences _____	36
The history and significance of the Offshore Constitutional Settlement _____	36
The Bill may have unintended consequences for the Offshore Constitutional Settlement _____	37
Appendix One – Terms of reference _____	40
Appendix Two – Conduct of inquiry _____	41
Appendix Three – Submissions _____	42
Appendix Four – Witnesses _____	44
Appendix Five – Extracts from minutes _____	45

Membership

Chair	Mr Clayton Barr MP
Deputy chair	Mrs Sally Quinnell MP
Members	Mrs Judy Hannan MP Ms Kellie Sloane MP Ms Maryanne Stuart MP
Contact details	Legislative Assembly Committee on Environment and Planning Parliament House Macquarie Street SYDNEY NSW 2000
Telephone	(02) 9230 2151
E-mail	environmentplanning@parliament.nsw.gov.au
Website	https://www.parliament.nsw.gov.au/environmentandplanning

Chair's foreword

In his second reading speech to explain and describe his Private Member's Bill that he was putting forward, the Member for Pittwater made two important declarations about his Bill – that it was driven by politics and that it was intended to tackle one particular petroleum exploration project known as “PEP-11”. I commend the Member for his honesty, but also caution that those two qualities rarely make for good legislation.

The recent work of the NSW Legislative Assembly Committee on Environment and Planning has been to examine the impacts, intended and unintended, of the Member for Pittwater's Private Member's Bill, the *Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023*. The Private Member's Bill was referred off to Committee soon after the second reading speech, given the potential for constitutional conflict and other consequences.

Petroleum Exploration Permit 11 (PEP-11) was originally granted (by the Commonwealth Government) in 1991 and was renewed in 2012. That Permit was set to expire in 2021. During 2020, the proponent sought a two-year extension to their Permit. This application for extension sat as a 'live' request throughout 2021 and was not dealt with by the Commonwealth Government until March 2022, in the lead up to the federal election of 2022, at which time the then Prime Minister, the Hon. Scott Morrison MP, in his capacity as then 'secret' Minister for Industry, Science, Energy and Resources announced refusal of the application for a two-year extension of the Exploration Permit. The proponent successfully challenged that decision of the then Prime Minister in the Federal Court, on the grounds of bias, and the new Commonwealth Government were required to undertake a new consideration of the extension application (from February 2023). This renewed consideration is still currently underway.

Politically, the question of PEP-11 did play out during the Federal Election of May 2022. But the political campaigning that surrounded PEP-11 did not end there. It continued right through to the NSW State Election of March 2023. At some point during that State election campaign, the NSW Liberal Party made a commitment, 'if re-elected', to take action that they had not taken in the previous 12 years 'to ban the drilling for offshore gas in New South Wales'. What was overlooked was the reality that the Exploration Permit in question was in Commonwealth waters (more than 3 miles from the coast) and was a question for a Commonwealth Government, not a State Government. This point was made by the retiring Member for Pittwater and twice Planning Minister for NSW, the Hon. Rob Stokes MP when he commented that 'it's nothing to do with the State ...The only way to ensure PEP 11 can never return is to change federal law – PEP 11 is outside State waters'.¹

This insightful comment by the Hon. Rob Stokes is at the crux of this inquiry – what is the limit to the powers of the State with regards to coastal waters (3 miles), and at what point does a State seeking to make laws that would affect Commonwealth waters (more than 3 miles off our coast) cross into a constitutional crisis.

In short, based on a variety of legal advice received by the Committee, the constitutional conflict rises from the moment of the second reading speech for the Bill. Concerningly, the Bill

¹ Pittwater Life, [Stick to the election facts, urges Stokes](#), February 2023, p 10, viewed 20 November 2023.

also jeopardises the Offshore Constitutional Settlement. This is a Commonwealth-State settlement agreement that has been in place for more than 40 years and affects the interactions of each State of Australia and the Commonwealth Government when it comes to the waters off the coast of Australia. It is for these reasons that the Committee has recommended that the Bill should not be supported.

It is however important to note that communities and elected persons of all political persuasions have made comment about their environmental concerns for this particular Petroleum Exploration Permit and the potential of it moving to become a production/mining permit. This widespread community concern about the environmental impacts of PEP-11 was voiced strongly and loudly during the inquiry, and it is a position that I personally agree with, but it was not the role of this Committee to drive personal beliefs or opinions. Rather, it was our responsibility to explore the facts underpinning the Bill and to offer our best advice to the NSW Parliament.

This inquiry was made possible by an incredibly hard-working committee secretariat who have contributed countless hours against a tight timeline. Externally, we had also asked much of the community, to make their submissions and then appear before Committee at a hearing, also against the background of very tight timelines. And, as an extension to this wider consultation, the Committee asked the Clerk of the NSW Parliament on behalf of the Committee to engage legal counsel to wrestle with and advise on the complications of the constitutional questions at hand, and again this was asked of the Clerk against the backdrop of a tight timeline.

It has been my absolute pleasure to work with a focused and dedicated team of Members of Parliament throughout this inquiry. And, while we didn't always agree, the collective willingness offered by each person strengthened the threads of this report.

I wish each person that reads this report the very best, as you too will plunge into a fascinating interplay between State and Federal jurisdictions.

Clayton Barr MP

Chair

Findings and recommendations

Finding 1	6
There are serious concerns from the community about potential negative environmental impacts of offshore drilling. Many concerns relate to the impacts of seismic surveying which may be undertaken during the exploration for offshore oil and gas..... 6	
Finding 2	9
There is significant community opposition to offshore oil and gas projects in NSW. As a result, there may be community support for a legislative ban on offshore drilling. 9	
Finding 3	10
The National Offshore Petroleum Safety and Environmental Management Authority’s regulatory role includes assessing environment plans so that the potential environmental impacts are managed or mitigated so that the overall risk is a low as reasonably practicable. The existence of this regulatory regime may help address some community concerns around the environmental risks posed by offshore petroleum activities. 10	
Recommendation 1 _____	10
That the NSW Government work with the Commonwealth Government to explore opportunities to review existing environmental assessment standards that apply to petroleum and minerals exploration and recovery in the offshore area of the State..... 10	
Finding 4	15
The regime regulating the approval and management of activities offshore from the coast of NSW is complex, spanning both NSW and Commonwealth laws. Proposed offshore activities may require different authorisations and approvals from NSW and Commonwealth decision makers depending on their nature and location. 15	
Finding 5	23
The NSW Government's 'Offshore Exploration and Mining' policy may limit what potential petroleum projects in NSW coastal waters receive approval. There have been no applications for petroleum exploration in NSW coastal waters to date. 23	
Finding 6	24
The maximum penalties for breaches under the <i>Petroleum (Offshore) Act 1982</i> and the <i>Offshore Minerals Act 1990</i> are significantly lower than comparable offences under other NSW laws regulating petroleum and minerals exploration and recovery..... 24	
Finding 7	26
Key aspects of the Bill may be constitutionally invalid or have unintended consequences..... 26	
Recommendation 2 _____	26
That the Legislative Assembly not pass the Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023. 26	

Finding 828

Proposed section 10.17(1)(b) of the *Environmental Planning and Assessment Act 1979* may be constitutionally invalid to the extent that 'relevant development' is defined to include activities 'in the offshore area of the state.' The proposed section may be invalid for reasons of intergovernmental immunity and constitutional inconsistency. 28

Finding 935

The Bill could be amended to reduce the risk of constitutional invalidity. However, the amendments would undermine a core purpose of the Bill. 35

Finding 1037

The Bill's prohibition of pipeline licences in NSW coastal waters would undermine the broader intent of the jurisdiction-sharing arrangements under the Offshore Constitutional Settlement and may have unintended consequences for these arrangements..... 37

Chapter One – The Bill

Offshore drilling and mining

NSW does not have much experience with offshore energy resources

Summary

The Australian offshore oil and gas industry is mature. However, NSW does not have much experience with drilling wells in the ocean seabed for oil and gas as most wells in the State have been drilled onshore.

- 1.1 Offshore petroleum drilling is the process of drilling holes, known as wells, in the ocean seabed and extracting pockets of oil and gas from reserves that lie underneath.

What is 'petroleum'?²

Petroleum can occur in the earth in liquid or gas form, most commonly as crude oil and natural gas. Petroleum is formed from the remains of ancient marine organisms which transformed into carbon-rich and combustible substances.

- 1.2 The Australian offshore oil and gas industry has been operating over the last 60 years. Australian projects include more than 3,000 exploration and production wells, mostly located off the Victorian and Western Australian shorelines.³ However, there have been few offshore petroleum exploratory wells off the coast of NSW with most wells drilled onshore.⁴

Gas as an energy resource in NSW

Summary

There is conflicting evidence about whether the demand for gas in NSW is increasing or decreasing. However, gas is currently an important energy source for the State.

- 1.3 During the inquiry, the Committee heard conflicting evidence about the importance of gas as an energy resource moving forward.
- 1.4 Some inquiry participants argued that there is a current need for additional reliable and affordable gas supply in NSW.⁵ In its submission, Advent Energy Limited ('Advent Energy')⁶ claimed that gas meets almost 30 per cent of

² Britannica, '[Petroleum](#)', viewed 1 November 2023.

³ [Submission 38](#), Australian Energy Producers (AEP), p 3.

⁴ D Montaya, [Offshore petroleum exploration and mining](#), Briefing Paper No 01/2011, NSW Parliamentary Library Research Service, 2011, viewed 3 October 2023, p 6.

⁵ [Submission 48](#), Advent Energy Limited, pp 1-2; [Submission 38](#), Australian Energy Producers (AEP), p 3.

⁶ Advent Energy is the majority owner of the Petroleum Exploration Permit 11 (PEP-11), through its wholly owned subsidiary Asset Energy. This permit covers an area off the coast of NSW. See [Submission 48](#), Advent Energy, p 1.

Australia's energy needs and that more than 5 million Australian households use gas directly for heating and cooking.⁷

- 1.5 Advent Energy also referred the Committee to a 2023 report by the Australian Energy Market Operator (AEMO) to support its claim that there is a future need for gas in Australia. That AEMO report warned that there is a 'material risk' to the reliability of the National Electricity Market over a 10-year outlook due to potential coal, gas and diesel fuel shortages.⁸ Advent Energy also referred to a 2023 report by the Australian Competition and Consumer Commission to assert that, from 2026, there is an expected shortfall of gas supply on the east coast of Australia.⁹
- 1.6 Mr Victor Violante, General Manager of Australian Energy Producers (AEP), said that new gas supply is critical to help ease cost-of-living pressures and to support the transition to net zero. He echoed the AEMO report referred to above and warned of a structural gas shortfall on the east coast from around 2027. Mr Violante explained that there is not enough gas being produced in NSW, with the State mostly reliant on Victoria and Queensland. He argued that one way to avoid this shortfall and bring down prices would be to expand gas infrastructure and supply in NSW as 'the best gas is the gas closest to the customer'.¹⁰
- 1.7 Other stakeholders questioned the chance of a gas shortage, arguing that gas consumption in NSW is decreasing and that there is a limited energy or economic need for offshore gas drilling.¹¹ Dr Barry Traill AM, Director at Solutions for Climate Australia, told the Committee that NSW does not need new supplies of gas and that there is no shortage.¹²
- 1.8 Mr Kevin Morrison, Energy Finance Analyst, LNG/Gas Sector at the Institute for Energy Economics and Financial Analysis (IEEFA), supported this position. He gave evidence at the public hearing that there is no need for new gas supplies for NSW, noting that around 80 per cent of gas produced in Australia is exported and that gas demand is decreasing.¹³
- 1.9 However, Mr Morrison noted that forecasts for gas demand and supply vary depending on the scenarios used. He referred the Committee to a recent Electricity Statement of Opportunities report by AEMO which forecasted a decrease in demand as energy demand transitions from gas to electric, but also

⁷ [Submission 48](#), Advent Energy Limited, p 2.

⁸ [Submission 48](#), Advent Energy Limited, p 2; Australian Energy Market Operator, [2023 Electricity Statement of Opportunities](#), August 2023, viewed 8 November 2023, pp 4 and 6.

⁹ [Submission 48](#), Advent Energy Limited, p 6; Australian Competition & Consumer Commission, [Gas inquiry 2017-2030 interim report](#), January 2023, viewed 8 November 2023, p 116.

¹⁰ Mr Victor Violante, General Manager, Policy & Advocacy, Australian Energy Producers, [Transcript of evidence](#), 9 October 2023, pp 33-35; [Submission 38](#), Australian Energy Producers, pp 2-3.

¹¹ Mr Kevin Morrison, Energy Finance Analyst, LNG/Gas Sector, Institute for Energy and Economics Financial Analysis (IEEFA), [Transcript of evidence](#), 9 October 2023, p 7.

¹² Dr Barry Traill AM, Director, Solutions for Climate, [Transcript of evidence](#), 9 October 2023, p 4.

¹³ Mr Morrison, [Evidence](#), 9 October 2023, p 5.

cited a March 2023 report by AEMO entitled 'Gas Statement of Opportunities' that showed an increase in demand for gas.¹⁴

- 1.10 Some inquiry participants argued that there would be a reduced need for gas supply in NSW due to the growth of renewable energy sources. IEEFA submitted that the International Energy Agency have developed a net zero roadmap, which models how the global energy sector may transition to net zero carbon emissions by 2050. Under this modelling, it is projected that gas demand would decline 55 per cent by 2050 compared with 2020.¹⁵
- 1.11 The conflicting evidence suggests that the forecasted demand for gas in NSW is complex. However, the Committee notes that gas is currently an important energy source for the State.

The Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023

Summary

The Bill proposes to prohibit permits and licences for the exploration or recovery of petroleum or minerals in NSW coastal waters, as well as prohibit any developments that include seabed petroleum or mineral exploration or recovery. The Bill is introduced in the context of Petroleum Exploration Permit-11 (PEP-11), which is a permit for gas exploration in the offshore area of the State.

The provisions of the Bill

- 1.12 On 22 June 2023, Mr Rory Amon MP, Member for Pittwater introduced the Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023 (the 'Bill'). If passed, the Bill would amend:
- the *Petroleum (Offshore) Act 1982* (the 'NSW Offshore Petroleum Act') to prohibit the Minister from granting permits and licences to undertake or facilitate seabed petroleum exploration or recovery
 - the *Offshore Minerals Act 1999* (the 'NSW Offshore Minerals Act') to prohibit the Minister from granting licences under the Act, except licences for the recovery of sand for beach nourishment
 - the *Environmental Planning and Assessment Act 1979* (the 'EPA Act') to prohibit a person or company from carrying out certain developments to undertake or facilitate seabed petroleum or mineral exploration or recovery.
- 1.13 In his second reading speech, Mr Amon indicated that the Bill's intent is to 'protect our [NSW] coastline from harmful mining and exploration activities and

¹⁴ Mr Morrison, [Evidence](#), 9 October 2023, p 7.

¹⁵ [Submission 35](#), Institute for Energy Economics and Financial Analysis, p 4; International Energy Agency, [Net Zero roadmap: A global pathway to keep the 1.5 degrees Celsius goal in reach](#), 2023, viewed 8 November 2023, p 105; [Submission 39](#), Surfers for Climate, p 3.

to provide certainty to our coastal communities.¹⁶ He summarised the intended effect of the Bill:

In practice, the bill will ensure that, firstly, no licences will be granted for petroleum or mineral mining in New South Wales State waters. Secondly, if the Commonwealth approves petroleum or mineral exploration in the offshore area beyond New South Wales State waters—that is, beyond three nautical miles from the New South Wales coast—but within the offshore area of the state, no approval can be granted to development in New South Wales or its coastal waters for the purposes of the maintenance, repair, provision or refuelling of vessel, aircraft or equipment related to the exploration or recovery of petroleum or minerals from the seabed; the handling, refining or processing of petroleum or minerals from the seabed; or the unloading or transportation, including by pipeline, of that petroleum or minerals.¹⁷

- 1.14 Mr Amon then specifically referred to the potential impacts of exploration and mining activities under the Petroleum Exploration Permit 11 (PEP-11). The PEP-11 permit area covers 4,574 square kilometres from Newcastle to Manly.¹⁸ The Committee notes that Advent Energy Limited is the majority owner of the PEP-11, through its wholly owned subsidiary Asset Energy.¹⁹ This project is discussed further in Chapter 3.
- 1.15 Mr Amon cautioned that offshore gas exploration often includes seismic surveying as part of ocean bed surveying. He stressed that the stretch of coast covered by PEP-11 'is an area of abundant and diverse marine life.'²⁰

Referral of the inquiry to the Committee

- 1.16 On 29 June 2023, the NSW Legislative Assembly referred the Bill to the Committee for inquiry and report by 21 November 2023. The resolution of the House included that the Committee 'may seek independent legal advice.'²¹
- 1.17 Part of the terms of reference for the inquiry required the Committee to consider whether the Bill raises 'any constitutional issues or unintended consequences' and whether any amendments could address those issues identified. The full terms of reference are in Appendix One.
- 1.18 The Committee accepted the referral of the inquiry on 31 July 2023.

Advice obtained from Counsel

- 1.19 This inquiry involves complex legal and constitutional issues. For this reason, and also noting the timeframe involved, the Clerk obtained independent legal advice

¹⁶ New South Wales, Legislative Assembly, [Parliamentary Debates](#), 22 June 2023 (Rory Amon, Member for Pittwater), p 1.

¹⁷ New South Wales, Legislative Assembly, [Parliamentary Debates](#), 22 June 2023 (Rory Amon, Member for Pittwater), p 1.

¹⁸ New South Wales, Legislative Assembly, [Parliamentary Debates](#), 22 June 2023, p 2, (Rory Amon, Member for Pittwater).

¹⁹ [Submission 48](#), Advent Energy, p 1.

²⁰ New South Wales, Legislative Assembly, [Parliamentary Debates](#), 22 June 2023, p 2, (Rory Amon, Member for Pittwater).

²¹ New South Wales, Legislative Assembly, [Votes and Proceedings](#), 29 June 2023, pp 3-4, (Alex Greenwich, Member for Sydney).

on behalf of the Committee. The legal experts briefed were Mr Nicholas Owens SC, Fifth Floor St James' Hall; Mr Brendan Lim, Barrister, Eleven Wentworth; and Mr Jackson Wherrett, Barrister, Eleven Wentworth. The resulting memoranda of advice received from Counsel has not been published but has informed this report.

Chapter Two – Environmental impacts of offshore drilling

Environmental impacts

Summary

There are serious concerns from the community about potential negative environmental impacts of offshore drilling, mainly related to the impact of seismic surveying, as well as the risk of oil spills and climate change. However, some other evidence suggested that the risk of environmental impacts could be appropriately managed.

Finding 1

There are serious concerns from the community about potential negative environmental impacts of offshore drilling. Many concerns relate to the impacts of seismic surveying which may be undertaken during the exploration for offshore oil and gas.

- 2.1 Concerns were raised by many stakeholders throughout this inquiry about the potential environmental impacts of offshore drilling. In particular, several submission makers expressed concerns about possible negative impacts of seismic surveying on marine animals including whales, dolphins and sharks.²²
- 2.2 Seismic surveying involves the use of seismic airguns, which are blasted every 10 to 15 seconds and can reach more than 250 decibels. The sound waves penetrate the seabed and bounce back to the surface where they are detected by audio receivers. By analysing the sound patterns, geologists are then able to map out the areas most likely to find oil and gas reserves trapped in the ocean bedrock.²³
- 2.3 The Committee heard about the potential impacts of the airgun blasts' sounds on marine mammals. Stakeholders suggested that the noise could cause hearing damage and interfere with the ability of animals to communicate effectively. This may impact feeding and breeding patterns as the NSW coastline is a significant migration pathway for whales and dolphins.²⁴
- 2.4 In addition to masking vocal communications, Climate Action Network Australia cited the Commonwealth Scientific and Industrial Research Organisation to

²² [Submission 32](#), Climate Action Network Australia, p 1; [Submission 28](#), Save Our Coast, p 1; [Submission 30](#), Vets for Climate Action, p 4; [Submission 39](#), Surfers for Climate, p 3; [Submission 5](#), Surfing Australia, p 1; [Submission 7](#), Surfrider Foundation Australia, pp 4-5; [Submission 31](#), 1 Million Women, p. 2; [Submission 34](#), Australian Parents for Climate Action, pp 3-4; [Submission 23](#), City of Newcastle, p 3.

²³ [Submission 45](#), Australian Marine Conservation Society, p 3; [Submission 47](#), Solutions for Climate Australia, p 2.

²⁴ [Submission 34](#), Australian Parents for Climate Action, p 4; [Submission 31](#), 1 Million Women, p 2; [Submission 32](#), Climate Action Network Australia, p 1; [Submission 28](#), Save Our Coast, p 1; [Submission 30](#), Vets for Climate Action, p 4; [Submission 39](#), Surfers for Climate, p 3; [Submission 5](#), Surfing Australia, p 1; [Submission 23](#), City of Newcastle, p 3.

highlight that sounds from seismic surveying may even cause physical damage to the tissues and organs of marine animals.²⁵

- 2.5 Many submission makers raised concerns about potential risks from seismic surveying to zooplankton, which include a range of tiny crustaceans like krill and copepods, and the larvae of larger animals such as crabs, octopus and fish. The Australian Marine Conservation Society submitted that many zooplankton are found dead after seismic surveying, even up to 1.2 kilometres away from the surveying site. Some stakeholders warned that this may have 'disastrous impacts' on the functioning of the marine ecosystem as marine food chains and fishing industries are reliant on zooplankton.²⁶
- 2.6 Several stakeholders also submitted that the noise from seismic surveying may impact the mortality, behaviour and immune systems of commercially valuable species such as scallops and crayfish.²⁷ This includes the ability of these creatures to maintain homeostasis, which is the process by which these organisms regulate their internal stability while adapting to changing external conditions.²⁸
- 2.7 Community concern was expressed around the risk of oil spills.²⁹ Some submissions highlighted that the dangers of a serious oil spill are particularly present at the first drilling, although oil spills have also occurred during further drillings, pipeline leaks, production, and shipping accidents.³⁰ The Committee notes that Mr David Breeze, CEO of Advent Energy, stated at the public hearing that the company is proposing to explore for gas and not oil in the PEP-11 area, so concerns about oil spills do not apply to that project.³¹
- 2.8 Dr Traill AM referred the Committee to a major spill in Australian waters known as the Montara spill, which occurred in 2009 off the coast of the Kimberley in Western Australia.³² He explained that a 'blowout' on the well-head caused a major oil slick that polluted waters and coastline areas in Indonesia.³³ However, Mr Kevin Morrison, Energy Finance Analyst, LNG/Gas Sector at IEEFA, noted that the National Offshore Petroleum Safety and Environmental Management

²⁵ [Submission 32](#), p 1; Commonwealth Scientific and Industrial Research Organisation (CSIRO), [Submission 19/684 – Impact of seismic testing on fisheries and the marine environment](#), Parliament of Australia, 2019, viewed 8 November 2023, p 11..

²⁶ [Submission 45](#), Australian Marine Conservation Society, p 1; [Submission 30](#), Vets for Climate Action, p 4; [Submission 49](#), The Wilderness Society, p 6; [Submission 7](#), Surfrider Foundation Australia, p 4; [Submission 39](#), Surfers for Climate, p 3.

²⁷ [Submission 7](#), Surfrider Foundation Australia, p 5; [Submission 49](#), The Wilderness Society, p 6; [Submission 45](#), Australian Marine Conservation Society, p 4.

²⁸ [Submission 7](#), Surfrider Foundation Australia, p 5.

²⁹ [Submission 7](#), Surfrider Foundation Australia, p 4; [Submission 18](#), Ms Melina Mura, p 1; [Submission 19](#), Mr Gregory Dubler, p 1; [Submission 22](#), Mr James Benjamin, p 1; [Submission 24](#), Mr Peter Morris, p 1; [Submission 28](#), p 1; [Submission 30](#), Vets for Climate Action, p 5; [Submission 32](#), Climate Action Network Australia, p 2; [Submission 39](#), Surfers for Climate, p 3; [Submission 43](#), Ms Jennifer Reddan, p 1; [Submission 45](#), Australian Marine Conservation Society, p 3; [Submission 49](#), The Wilderness Society, p 6.

³⁰ [Submission 6](#), Doctors for the Environment Australia, p 1; [Submission 47](#), Solutions for Climate Australia, p 2.

³¹ Mr David Breeze, Chief Executive Officer, Advent Energy Ltd, [Transcript of evidence](#), 9 October 2023, p 33.

³² Dr Traill AM, [Evidence](#), 9 October 2023, p 3.

³³ Dr Traill AM, [Evidence](#), 9 October 2023, p 4.

Authority (NOPSEMA) was created following the Montara spill, and the overall regulatory framework has been strengthened since 2009.³⁴

- 2.9 Stakeholders also referred to the 2010 Deepwater Horizon spill that occurred in the Gulf of Mexico to illustrate the potential risks and consequences.³⁵ In addition to polluting marine ecosystems and harming aquatic organisms, the potential dangers to human safety and negative impacts on the economy were also stressed by members of the public.³⁶
- 2.10 Some submission makers suggested that there is a low risk of negative environmental impacts from offshore drilling. They argued that the strict regulatory framework around offshore activities reduces any potential impacts on the environment.³⁷ NOPSEMA is Australia's offshore energy regulator and is responsible for the environmental management of petroleum and greenhouse gas activities in the offshore area.³⁸ NOPSEMA's regulatory role is discussed in further detail below.
- 2.11 Advent Energy acknowledged that the current boundaries of PEP-11 reach as far south as 30 kilometres offshore from Manly. However, Mr Breeze gave evidence at the public hearing that the company has no intention to carry out activities around the southern PEP-11 area or within 15 kilometres of the coast.³⁹
- 2.12 Several submission makers and witnesses, including members of the public, raised concerns about potential climate change impacts, including about greenhouse gas emissions from extracting and using petroleum.⁴⁰ While the Committee acknowledges these concerns, it did not consider this issue in detail given the scope and timeframe of this inquiry.

³⁴ Mr Kevin Morrison, IEEFA, [Transcript of evidence](#), 9 October 2023, p 5.

³⁵ [Submission 6](#), p 1; [Submission 47](#), p 2; [Submission 35](#), Institute for Energy Economics and Financial Analysis (IEEFA), p 3; Dr Traill AM, [Evidence](#), 9 October 2023, p 3; Ms Belinda Baggs, Co-Founder & Director, Surfers for Climate, [Transcript of Evidence](#), 9 October 2023, 16.

³⁶ [Submission 39](#), Surfers for Climate, p 3; [Submission 19](#), Mr Gregory Dubler, p 1; [Submission 22](#), Mr James Benjamin, p 1; [Submission 24](#), Mr Peter Morris, p 1.

³⁷ [Submission 48](#), Advent Energy Limited, pp 11-12; [Submission 36](#), National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), p 4.

³⁸ [Submission No 36](#), NOPSEMA, p 5.

³⁹ [Submission 48](#), p 3; Mr Breeze, [Evidence](#), 9 October 2023, p 33.

⁴⁰ Mr Joshua Kirkman, Chief Executive Officer, Surfers for Climate, [Transcript of evidence](#), 9 October 2023, p 9; Mr Morrison, [Evidence](#), 9 October 2023, p 3; Dr Traill AM, [Evidence](#), 9 October 2023, pp 3-4; Ms Emma Sestito, Senior Solicitor, Safe Climate, Environmental Defenders Office (EDO), [Transcript of evidence](#), p 18; [Submission 1](#), Ms Julia Lee, p 1; [Submission 3a](#), Ms Glynn Glynn, p 1; [Submission 5](#), Surfing Australia, p 1; [Submission 6](#), Doctors for the Environment Australia, p 1; [Submission 7](#), Surfrider Foundation, p 5; [Submission 9](#), Dr Jonathan King, p 1; [Submission 10](#), Mr Felix Williamson, p 1; [Submission 14](#), Dr Murray MacDonald, p 1; [Submission 18](#), Ms Melina Mura, p 1; [Submission 19](#), Mr Gregory Dubler, p 1; [Submission 21](#), Mrs Brita Benjamin, p 1; [Submission 22](#), Mr James Benjamin, p 1; [Submission 24](#), Mr Peter Morris, p 1; [Submission 27](#), Mr David Palmer, p 1; [Submission 28](#), Save Our Coast, p 1; [Submission 30](#), Vets for Climate Action, pp 2-3; [Submission 31](#), 1 Million Women, p 2; [Submission 32](#), Climate Action Network Australia, p 1; [Submission 33](#), Mr Peter Moore, p 2; [Submission 34](#), Australian Parents for Climate Action, pp 2-3; [Submission 35](#), IEEFA, pp 3-4; [Submission 37](#), Lynn Benn, p 1; [Submission 39](#), Surfers for Climate, pp 2-3; [Submission 44](#), Mrs Jacqueline Scruby, p 3; [Submission 45](#), Australian Marine Consideration Society, p 6; [Submission 46](#), EDO, p 2; [Submission 49](#), The Wilderness Society, pp 5-6.

Community views

Summary

The Committee received evidence of significant community opposition to offshore drilling, especially for environmental reasons. As a result, there may be community support for a legislative ban on offshore drilling and associated infrastructure.

Finding 2

There is significant community opposition to offshore oil and gas projects in NSW. As a result, there may be community support for a legislative ban on offshore drilling.

- 2.13 Across the inquiry, the Committee heard concerns about the potential environmental impacts of offshore drilling from the broader community, particularly coastal communities adjacent to the PEP-11 area. Mr Peter Morris from Save Our Coast talked about the strong community support to prevent further seismic testing and offshore gas activities.⁴¹ The Committee acknowledges that there may be wider community support for a legislative ban on offshore drilling as a result of these concerns.
- 2.14 Some submission makers warned that offshore drilling may have a negative impact on the wellbeing of coastal communities. Save Our Coast highlighted that the enjoyment of a clean environment has physical and mental benefits to community members.⁴²
- 2.15 Several members of the public also expressed fears that damage to coastal ecosystems in NSW might interfere with people's enjoyment of the beaches. Some inquiry participants highlighted the reliance by local communities on the coastal environment for ocean views, water sports and fishing. They also warned that negative environmental changes to the NSW coast may adversely impact the State's tourism industry.⁴³
- 2.16 Many inquiry participants suggested there was broad community opposition to offshore oil and gas projects.⁴⁴ In their submissions, Mrs Jacqueline Scruby, independent candidate for Pittwater in the 2023 general election, and the Wilderness Society included lists of members of the public who oppose offshore oil and gas projects.⁴⁵ Surfing Australia highlighted media and social media posts, which also reflected community opposition to such projects in their submission.⁴⁶

⁴¹ Mr Peter Morris, Director, Community and Environmental Group, Save Our Coast, [Transcript of evidence](#), 9 October 2023, p 9.

⁴² [Submission 5](#), Surfing Australia, p 1; [Submission 28](#), Save Our Coast, p 2; [Submission 6](#), Doctors for the Environment Australia, p 1.

⁴³ Mr Morris, [Evidence](#), 9 October 2023, pp 11-12; [Submission 7](#), Surfrider Foundation Australia, p 2, 5; [Submission 28](#), Save Our Coast, p 2; [Submission 5](#), Surfing Australia, p 1; [Submission 19](#), Mr Gregory Dubler, p 1; [Submission 33](#), Mr Peter Moore, p 1; [Submission 34](#), Australian Parents for Climate Action, p 3.

⁴⁴ [Submission 28](#), Save Our Coast, p 1; [Submission 32](#), Climate Action Network, p 2; [Submission 34](#), Australian Parents for Climate Action, p 3; [Submission 31](#), 1 Million Women, p 2.

⁴⁵ [Submission 44](#), Mrs Scruby, p 7; [Submission 49](#), The Wilderness Society, pp 5, 8.

⁴⁶ [Submission 5](#), Surfing Australia, pp 3-12.

- 2.17 The Committee received several submissions from members of the public calling for an end to PEP-11 and new oil and gas projects.⁴⁷ Surfers for Climate referred to a public survey they carried out on public sentiment towards the Bill, which received over 1,000 responses. According to the survey, 98 per cent of those members of the public who were surveyed indicated that they strongly support legislation to ban new offshore oil and gas projects and associated infrastructure in NSW.⁴⁸
- 2.18 The Committee received evidence of significant community opposition to offshore oil and gas projects in NSW, and so acknowledges that there may be community support for a legislative ban. However, the Committee notes that there is a separate question of whether a legislative ban is appropriate. The appropriateness of a legislative ban in light of potential constitutional issues is explored in Chapter 4.

The National Offshore Petroleum Safety and Environmental Management Authority

Summary

The National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) is a national regulatory body that oversees petroleum exploration and recovery activities in Commonwealth waters. A titleholder must submit and obtain approval of an environment plan from NOPSEMA that identifies and manages potential environmental risks before carrying out any activities.

Finding 3

The National Offshore Petroleum Safety and Environmental Management Authority's regulatory role includes assessing environment plans so that the potential environmental impacts are managed or mitigated so that the overall risk is a low as reasonably practicable. The existence of this regulatory regime may help address some community concerns around the environmental risks posed by offshore petroleum activities.

Recommendation 1

That the NSW Government work with the Commonwealth Government to explore opportunities to review existing environmental assessment standards that apply to petroleum and minerals exploration and recovery in the offshore area of the State.

⁴⁷ [Submission 2](#), Ray Lynch, p 1; [Submission 3](#), Ms Glynn Glynn, p 1; [Submission 9](#), Dr Jonathan King, p 1; [Submission 10](#), Mr Felix Williamson, p 1; [Submission 11](#), Ms Diana Ryall, p 1; [Submission 12](#), Ms Marita Macrae, p 1; [Submission 13](#), Mr Fergus Gardiner, p 1; [Submission 15](#), Mr Christian Kent, p 1; [Submission 16](#), Mr David Donaldson, p 1; [Submission 17](#), Mr Dick Clarke, p 1; [Submission 18](#), Ms Melina Mura, p 1; [Submission 19](#), Mr Gregory Dubler, p 1; [Submission 21](#), Mrs Brita Benjamin, p 1; [Submission 22](#), Mr James Benjamin, p 1; [Submission 24](#), Mr Peter Morris, p 1; [Submission 27](#), Mr David Palmer, p 2; [Submission 29](#), Dr John Barrenger, p 1; [Submission 33](#), Mr Peter Moore, p 1; [Submission 37](#), Lynn Benn, p 1; [Submission 43](#), Ms Jennifer Reddan, p 1; [Submission 47](#), Solutions for Climate Australia, p 3.

⁴⁸ [Submission 39](#), Surfers for Climate, p 4.

- 2.19 The Committee received evidence from the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) and other inquiry participants about NOPSEMA's key role in the environmental management of offshore petroleum activities.
- 2.20 NOPSEMA is an independent statutory regulator that oversees petroleum and greenhouse gas exploration and recovery activities in the territorial sea.⁴⁹ NOPSEMA confirmed that it only has authority in 'Commonwealth waters'.⁵⁰
- 2.21 The Committee notes that 'Commonwealth waters' refers to the area over which the Commonwealth Government has exclusive powers and rights, following an agreement reached between the Commonwealth and the states known as the 'Offshore Constitutional Settlement'. This area begins from 3 nautical miles off the coast of state and extends all the way to the boundary of Australia's territorial sea.⁵¹ This Settlement is part of a more complex power-sharing arrangement over the territorial sea of Australia, which is discussed in Chapter 3.
- 2.22 In its submission, NOPSEMA outlined its functions under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) (the 'Commonwealth Offshore Petroleum Act'). NOPSEMA submitted that they are responsible for ensuring all offshore petroleum and greenhouse gas activities are done in accordance with the *Offshore Petroleum Greenhouse Gas Storage (Environment) Regulations 2009* (Cth) (the 'Commonwealth Offshore Environment Regulations').⁵²
- 2.23 Some of NOPSEMA's core functions concerning environmental management of offshore petroleum activities include:
- developing and implementing monitoring and enforcement strategies to ensure compliance with the Commonwealth Offshore Petroleum Act
 - investigating accidents and occurrences related to environmental management and well integrity.⁵³
- 2.24 As noted earlier, the Committee heard that NOPSEMA was created following the Montara spill. Mr Cameron Grebe, Head of Environment, Renewables and Decommissioning at NOPSEMA, explained that the Montara spill was significant to the agency. This is because it resulted in the then National Offshore Petroleum Safety Authority setting up an environmental management function in 2012, which created NOPSEMA from the previous National Offshore Petroleum Safety Authority. NOPSEMA has since focussed on compliance as part of its strategy to prevent oil spills. Mr Grebe noted that although there is a low probability of an oil spill occurring, NOPSEMA has increased its resources to respond to spills, including through ways to monitor and control well 'blowouts'.⁵⁴

⁴⁹ [Submission 36](#), NOPSEMA, p 3.

⁵⁰ [Answers to supplementary questions](#), NOPSEMA, 18 October 2023, p 2.

⁵¹ *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) s 5.

⁵² [Submission 36](#), National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), p 4.

⁵³ [Submission 36](#), National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), p 3.

⁵⁴ Mr Cameron Grebe, Head, Environment, Renewables and Decommissioning, NOPSEMA, [Transcript of evidence](#), 9 October 2023, p 31; NOPSEMA, [Our history](#), viewed 10 November 2023.

2.25 Ms Sue McCarrey, CEO of NOPSEMA, told the Committee that part of NOPSEMA's environmental management role involves 'environmental approvals of any exploration or petroleum greenhouse gas activity that is actually being undertaken'.⁵⁵ Under the Commonwealth Offshore Environment Regulations, titleholders must submit an environment plan to NOPSEMA for approval to conduct those activities. Before any activity can take place, NOPSEMA ensures that a petroleum titleholder has both:

- identified the environmental risks and impacts of an activity, and
- developed an environment plan to ensure risks are reduced to 'as low as reasonably practicable' (ALARP).⁵⁶

2.26 NOPSEMA highlighted in its submission that it is an offence to undertake any activity, such as seismic surveying, without receiving approval from NOPSEMA through an accepted environment plan.⁵⁷

2.27 Mr Grebe briefly outlined the detailed process required under the Commonwealth Offshore Environment Regulations when considering environment plans submitted to them:

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... 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.⁵⁸

2.28 On assessing environment plans, Mr Grebe pointed the Committee to the criteria under clause 10A of the Commonwealth Offshore Environment Regulations for accepting plans.⁵⁹ The criteria under clause 10A include:

- (a) is appropriate for the nature and scale of the activity; and
- (b) demonstrates that the environmental impacts and risks of the activity will be reduced to as low as reasonably practicable; and
- (c) demonstrates that the environmental impacts and risks of the activity will be of an acceptable level; and
- (d) provides for appropriate environmental performance outcomes, environmental performance standards and measurement criteria; and
- (e) includes an appropriate implementation strategy and monitoring, recording and reporting arrangements

⁵⁵ Ms Sue McCarrey, Chief Executive Officer, NOPSEMA, [Transcript of evidence](#), 9 October 2023, p 27.

⁵⁶ [Submission 36](#), NOPSEMA, p 4.

⁵⁷ [Submission 36](#), NOPSEMA, p 5.

⁵⁸ Mr Grebe, [Evidence](#), 9 October 2023, p 27.

⁵⁹ Mr Grebe, [Evidence](#), 9 October 2023, p 27.

- 2.29 The Committee notes that the Commonwealth Offshore Environment Regulations will be repealed on 10 January 2024 and replaced by the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023 (Cth)*. However, the criteria for acceptance of environment plans under these new regulations is identical to the current regulations.⁶⁰
- 2.30 Mr Grebe described NOPSEMA's role in considering environment plans as '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.' The CEO of NOPSEMA also stressed the value of the ALARP concept, noting that it serves as a benchmark standard which 'will shift as time goes on'. Because of this, Ms McCarrey said that the ALARP concept 'is better than if you have really prescriptive legislation' because it can incorporate the latest research.⁶¹
- 2.31 On seismic surveying, NOPSEMA gave examples of several internationally recognised controls which may mitigate potential environmental impacts. These included avoiding seismic surveying during migration and breeding periods and using technology and observers to detect and avoid marine animals.⁶²
- 2.32 The Committee heard that NOPSEMA is required by regulations to accept environment plans, if they are reasonably satisfied that the plan has met these criteria. For those plans that do not meet these requirements, the regulations require NOPSEMA to either request more information or provide titleholders an opportunity to change and resubmit their application. However, they may refuse an application which still fails to meet these requirements.⁶³
- 2.33 It is important to note that NOPSEMA's regulatory role concerning environment plans would apply to any proposed activities for titles like PEP-11. Relevantly, the CEO of Advent Energy informed the Committee that Advent Energy have prepared an environment plan for submission to NOPSEMA as soon as they receive approval from the Joint Authority on their extension application.⁶⁴ This extension application is discussed further in Chapter 3.
- 2.34 Some organisations expressed concerns about NOPSEMA's ability to adequately manage environmental risks. Ms Louise Morris, Oil and Gas Campaign Manager of the Australian Marine Conservation Society contended that NOPSEMA's risk assessment standard of ALARP is not strict enough as it has approved projects that she believed posed some systemic issues.⁶⁵ Ms Belinda Baggs, co-founder and Director of Surfers for Climate, expressed concerns that NOPSEMA's

⁶⁰ *Offshore Petroleum and Greenhouse Gas Storage Legislation (Repeal and Consequential Amendments) Regulations 2023 (Cth)* cl 2, Schedule 1; *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023 (Cth)* cl 34.

⁶¹ Mr Grebe and Ms McCarrey, [Evidence](#), 9 October 2023, p 29.

⁶² [Submission 36](#), NOPSEMA, p 6.

⁶³ Mr Grebe, [Evidence](#), 9 October 2023, pp 27-28; [Submission 36](#), NOPSEMA, p 5.

⁶⁴ Mr Breeze, [Evidence](#), 9 October 2023, p 36.

⁶⁵ Ms Louise Morris, Oil and Gas Campaign Manager, Australian Marine Conservation Society, [Transcript of evidence](#), 9 October 2023, pp 5-6.

environmental standards are too low because it does not adequately account for climate change risks.⁶⁶

- 2.35 While the Committee acknowledges these concerns, it believes that NOPSEMA undertakes rigorous and detailed environmental assessments of proposed petroleum activities. As a result, the environmental concerns raised by stakeholders may be properly considered and balanced by NOPSEMA in its assessment of an environment plan for approval of petroleum activities.
- 2.36 However, the Committee recommends that the NSW Government explore opportunities to work with its Commonwealth counterpart to review the existing environmental assessment standards that apply to petroleum and minerals exploration and recovery in the offshore area. The concerns expressed by some stakeholders could be considered in the course of this review.
- 2.37 The Committee notes that a separate regulatory regime applies to petroleum and minerals activities which are proposed to take place in the area extending within 3 nautical miles from the NSW coastline (that is, 'NSW coastal waters'). The broader regulatory and approval regime is considered and set out in Chapter 3.
- 2.38 On the environmental regulation of these activities, the Committee notes that the Department of Regional NSW (the 'Department') processes and assesses applications for petroleum activities in this area under the NSW Offshore Petroleum Act.
- 2.39 Ms Georgina Beattie, Chief Executive Officer of the Minerals, Exploration and Geoscience division (MEG) in the Department, described the NSW assessment process under the Act as 'a rigorous and robust merit-based assessment'. She further told the Committee that this assessment is intended to ensure that 'approval to explore or mine is granted subject to obligations to undertake the activities in a safe and sustainable manner' and 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.⁶⁷
- 2.40 However, it is important to note that the Department have not received an application for petroleum activities in the coastal waters of NSW to date.⁶⁸

⁶⁶ Ms Baggs, [Evidence](#), 9 October 2023, p 16.

⁶⁷ Ms Georgina Beattie, Chief Executive Officer, Mining, Exploration and Geoscience, Department of Regional NSW, [Transcript of evidence](#), 9 October 2023, p 41.

⁶⁸ Ms Beattie, [Evidence](#), 9 October 2023, p 43.

Chapter Three – The regulatory and approval regime

The broader regulatory framework

The legal framework regulating offshore activities is highly complex

Summary

The legal framework that regulates offshore activities in NSW is complex, covering both state and Commonwealth laws. How these laws apply will depend on the activity in question.

Finding 4

The regime regulating the approval and management of activities offshore from the coast of NSW is complex, spanning both NSW and Commonwealth laws. Proposed offshore activities may require different authorisations and approvals from NSW and Commonwealth decision makers depending on their nature and location.

- 3.1 To understand how the Bill interacts with the existing legal framework, it is necessary to consider laws regulating the exploration and recovery of resources located offshore of NSW.
- 3.2 Offshore resources are regulated by a complex arrangement of NSW and Commonwealth laws. This is because jurisdiction over offshore waters (i.e. the territorial sea) is administratively divided between state and Commonwealth governments.
- What is the 'territorial sea'?⁶⁹**

The territorial sea is a stretch of sea that is 12 nautical miles wide and begins at the territorial baseline, which is the low water mark on the Australian coast. Australia has exclusive sovereignty over its territorial sea. Under international law, no other nation can make laws that apply to Australia's territorial sea.
- 3.3 Generally speaking, state laws apply in 'coastal waters', which extend three nautical miles from the low water mark on that state's coast ('coastal waters').⁷⁰ Commonwealth laws apply in the remaining territorial sea, starting from this three nautical mile boundary and not extending further than 12 nautical miles (the 'offshore area of the State').⁷¹
- 3.4 It might be assumed that the relevant NSW laws would therefore apply to coastal waters and the relevant Commonwealth laws would apply to the offshore area of

⁶⁹ *Seas and Submerged Lands Act 1973* (Cth) pt II div 1, Sch 1.

⁷⁰ Australian Government Australian Government Attorney General's Department, [Offshore Constitutional Settlement](#), viewed 3 November 2023.

⁷¹ [Submission 39](#), Surfers for Climate, p 11.

the State. However, the Committee heard that the legal framework is more complex than this, as discussed below.

State jurisdiction and legislative powers over coastal waters and the offshore area of the State

Summary

States like NSW do not have sovereignty over coastal waters. However, NSW can make laws that apply in its coastal waters under its extraterritorial power or Commonwealth legislation.

Jurisdiction over coastal waters

- 3.5 As noted above, jurisdiction over the territorial sea is divided between state and Commonwealth governments. However, this is not because states like NSW have any inherent legislative power since they do not have sovereignty over their coastal waters. The High Court has found that a state's sovereign boundary ends at the low-water mark and therefore it has no sovereign or proprietary rights over the sea.⁷²
- 3.6 Although NSW does not have sovereignty over coastal waters, Professor Emerita Anne Twomey, former Professor of Constitutional Law at the University of Sydney, told the Committee that NSW may still make laws about its coastal waters under either its extraterritorial power or power granted by the Commonwealth.⁷³

What is the difference between 'sovereignty' vs 'jurisdiction'?

Sovereignty is a concept which concerns 'supreme' powers and authority. In law, 'legal sovereignty' means legal supreme power and authority within a territory. The holder of 'legal sovereignty' possesses the supreme lawmaking power. Effectively, sovereignty concerns an inherent 'right' to make laws over an area which is second to none.

Jurisdiction on the other hand is the scope and reach of a body's power and authority. It can be considered the 'territory' over which a sovereign state, court, tribunal or other body exercises such power. This concept concerns where the power and authority of a state like NSW or the Commonwealth can apply, and sometimes jurisdictions may overlap geographical or subject matter boundaries.

- 3.7 First, a state's extraterritorial power means that it can make laws which have 'extraterritorial' effect (that is, apply outside its geographical jurisdiction), as long as the activities the subject of the law have a 'sufficient connection' with the

⁷² [New South Wales v Commonwealth \(the Seas and Submerged Lands Case\)](#) (1975) 135 CLR 337 at [30]. The Committee notes that the 'low-water mark' is a geographic description of the lowest level the sea falls along the coast under normal conditions that is technically defined as the 'Lowest Astronomical Tide' as delineated on official maps. See Geoscience Australia, [Computing Australia's Maritime Boundaries](#), viewed 31 October 2023.

⁷³ Professor Anne Twomey, [Transcript of evidence](#), 9 October 2023, p 19.

state.⁷⁴ Under this legislative power, NSW laws may apply extraterritorially in coastal waters and the offshore area of the State.

- 3.8 Second, in 1979, the Commonwealth and state governments reached an agreement known as the Offshore Constitutional Settlement (the 'Settlement').⁷⁵ This clarified the roles and responsibilities of the states and the Commonwealth over the territorial sea. It includes arrangements about managing oil, gas and other mineral resources, marine parks and other issues such as fishing.⁷⁶
- 3.9 Through the Settlement, the Commonwealth passed two Acts that vest to states the power to make laws about seabed resources in their coastal waters. These powers are separate to the extraterritorial powers of a state. Those Acts are the:
- *Coastal Waters (State Powers) Act 1980* (Cth) (the 'State Powers Act'), and
 - *Coastal Waters (State Title) Act 1980* (Cth) (the 'State Title Act').
- 3.10 The State Powers Act permits a state to make laws about minerals and petroleum resources in its coastal waters, and defined the three nautical miles extent of those coastal waters. The State Title Act also vests title in and property rights over seabed resources in state coastal waters, as if those waters were within the sovereignty of the State.
- 3.11 Although NSW can make laws about its coastal waters, it is important to note that the Commonwealth continues to have sovereignty over coastal waters and sovereignty was never vested in the states. Advice prepared by Marque Lawyers on behalf of Surfers for Climate recognised that the Commonwealth has sovereignty over its territorial sea. However, it was further submitted that the Settlement granted the states 'responsibility' over its coastal waters.⁷⁷

Jurisdiction over the offshore area of the State

- 3.12 NSW law can also apply in the offshore area of the State, beyond the three nautical miles boundary. This may be through the extraterritorial application of NSW law, as discussed above. Separately, part 1.4 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) (the 'Commonwealth Offshore Petroleum Act') provides that some state laws apply 'as laws of the Commonwealth in the offshore area of that State or Territory' as if it were part of that state or territory.
- 3.13 The Commonwealth Offshore Petroleum Act is discussed in further detail below.

⁷⁴ [Port MacDonnell Professional Fishermen's Association Inc v South Australia](#) (1989) 168 CLR 340.

⁷⁵ Australian Government Attorney General's Department, [Offshore constitutional settlement a milestone in cooperative federalism](#), viewed 3 November 2023.

⁷⁶ Australian Government Attorney General's Department, [Offshore Constitutional Settlement](#), 3 November 2023.

⁷⁷ [Submission 39](#), Surfers for Climate, p 11.

Petroleum legislation and the regulatory regime

Summary

The Commonwealth Offshore Petroleum Act, NSW Offshore Petroleum Act and NSW Offshore Minerals Act all play a role in regulating petroleum and minerals activities off the NSW coast.

- 3.14 As explained above, both NSW and Commonwealth laws apply over the area off the coast of NSW. This includes laws about petroleum and mineral resources.
- 3.15 In NSW coastal waters, the NSW Offshore Petroleum Act and NSW Offshore Minerals Act regulate seabed petroleum and mineral resources.
- 3.16 The Commonwealth Offshore Petroleum Act regulates petroleum and greenhouse gas activities at the Commonwealth level, including the assessment, approval and monitoring of those activities. It creates a framework for assessing petroleum exploration and production activities in the offshore area of the State (that is, the waters outside NSW coastal waters).
- 3.17 This Act also sets out how applications for activities in the offshore area of the State are assessed and approved by the approval authority, known as the Joint State/Commonwealth Authority (the 'Joint Authority'). Professor Emeritus Michael Crommelin AO, Professor Emeritus in the Melbourne Law School at the University of Melbourne,⁷⁸ described the Joint Authority as a 'construct' of the Commonwealth Offshore Petroleum Act.⁷⁹
- 3.18 The Joint Authority makes decisions about petroleum exploration and production permit applications needed to undertake petroleum activities.⁸⁰ For activities in the offshore area of NSW, the Joint Authority is composed of the relevant NSW and Commonwealth Ministers.

The Commonwealth context

Regulatory authorities in the offshore area of the State

Summary

Under Commonwealth laws, several bodies have responsibility for regulating petroleum activities in the offshore area of the State.

- 3.19 The Committee received some evidence about the comprehensive nature of the regulatory regime for petroleum activities in the offshore area. The *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) (the 'Commonwealth Offshore Petroleum Act') has over 800 provisions for regulating offshore petroleum and greenhouse gas storage.
- 3.20 Under the Act, government agencies and authorities have statutory functions over petroleum titles and activities in the offshore area. These functions include

⁷⁸ Professor Crommelin's teaching and research interests are in constitutional law, mineral law and petroleum law. Formerly, he was Zelman Cowen Professor of Law and Dean of the Melbourne Law School.

⁷⁹ Professor Michael Crommelin, [Transcript of evidence](#), 9 October 2023, p 24.

⁸⁰ *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) pt 1.3.

assessing petroleum title applications and monitoring the environmental management of petroleum activities.⁸¹

- 3.21 The following bodies have a role in regulating petroleum activities in the offshore area of the State under Commonwealth laws:

Table 1: Commonwealth regulatory authorities⁸²

Agency	Functions
The Joint Authority, comprised of Commonwealth and State Ministers	Assesses and approves petroleum activities in offshore area of the State.
National Offshore Petroleum Titles Administrator (NOPTA)	<ul style="list-style-type: none"> Administers petroleum titles including monitoring and compliance. Advises the Joint Authority regarding title decisions.
National Offshore Petroleum and Environmental Management Authority (NOPSEMA)	<ul style="list-style-type: none"> Independent regulator of petroleum exploration and recovery activities. Assesses and approves petroleum activities by considering environment plans.

- 3.22 As noted above, the Commonwealth and NSW share authority under the Commonwealth Offshore Petroleum Act to approve petroleum activities in the offshore area of the State.
- 3.23 Ms Jamie Tripodi, Executive Director of Assessments and Systems in the Mining, Exploration and Geoscience (MEG) division of the Department of Regional NSW (the 'Department'), explained how NSW and the Commonwealth make decisions on petroleum applications in their respective roles within the Joint Authority. She told the Committee that an initial decision is made by the Commonwealth and referred to NSW, for consideration as to whether the parties agree. NSW then notifies the Commonwealth whether it agrees with the Commonwealth's decision.⁸³
- 3.24 However, the Australian Energy Producers (AEP) stated that the responsible Commonwealth Minister is the final decision maker for petroleum titles under the Commonwealth Offshore Petroleum Act.⁸⁴ The Act states that when the Joint Authority is making a decision, the Commonwealth Minister's decision will override the state counterpart where there is disagreement.⁸⁵
- 3.25 Ms Tripodi also told the Committee about NOPTA's role in administering petroleum applications in the offshore area of the State. She explained that

⁸¹ *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) s 4.

⁸² *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) s 4.

⁸³ Ms Jamie Tripodi, Executive Director Assessments and Systems, Mining, Exploration and Geoscience, Department of Regional NSW, [Transcript of evidence](#), 9 October 2023, p 44.

⁸⁴ [Submission 38](#), Australian Energy Producers, p 4.

⁸⁵ *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) s 59(2).

NOPTA provides access to relevant information and issues advice about applications to the Joint Authority.⁸⁶

3.26 NOPSEMA's role in the regulatory framework was discussed earlier in Chapter 2.

Petroleum Exploration Permit 11

Summary

PEP-11 is a petroleum exploration permit in the offshore area of NSW. However, there is no current approval to undertake exploration activities.

3.27 As noted in Chapter 1, the member who introduced the Bill referred to PEP-11 during his second reading speech. Mr Amon, the Member for Pittwater, stated that the greatest threat to the NSW 'coast is posed by exploration and mining activities under Petroleum Exploration Permit 11'.⁸⁷ It is therefore important to understand PEP-11 given its significance to the Bill.

3.28 PEP-11 is a current petroleum exploration permit off the coast of NSW. Importantly, the licence area begins from 3 nautical miles off the NSW coast and therefore is entirely within the offshore area of the State (see figure 1 below).⁸⁸ Numerous geological surveys have been undertaken in the PEP-11 area and one exploration well was drilled in 2010.⁸⁹

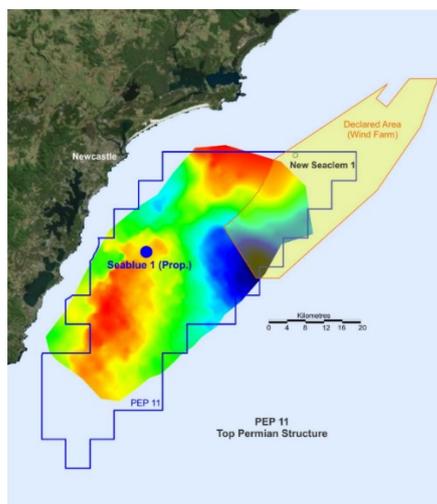


Figure 1: Area covered by the Petroleum Exploration Permit 11⁹⁰

3.29 PEP-11 was initially granted in 1981. Although the permit has an expiry date of February 2021, NOPTA records the status of PEP-11 as a pending application.⁹¹

⁸⁶ Ms Tripodi, [Evidence](#), 9 October 2023, p 44.

⁸⁷ New South Wales, Legislative Assembly, [Parliamentary Debates](#), 22 June 2023 (Rory Amon, Member for Pittwater), p 2.

⁸⁸ D Montoya, [Petroleum exploration permit 11 \(PEP 11\): Recent developments](#), Research Paper 2023-13, Parliamentary Research Service, September 2023, p 2.

⁸⁹ D Montoya, [Petroleum exploration permit 11 \(PEP 11\): Recent developments](#), Research Paper 2023-13, Parliamentary Research Service, September 2023, pp 9-13.

⁹⁰ [Submission 48](#), Advent Energy Limited, p 19.

⁹¹ NEATS Public Portal, NOPTA, [Exploration Permit PEP-11](#), viewed 1 November 2023.

Advent Energy does not currently have approval to undertake exploration activities like seismic surveys or exploration drilling.

- 3.30 In 2020, Advent Energy applied to NOPTA to vary the terms of PEP-11 and extend beyond 2021.⁹² This application was refused by the Joint Authority in 2022, however the refusal was undone and the application returned to the Joint Authority after recent litigation.⁹³ As of the date of writing, the Joint Authority's decision regarding the application to extend the timeline of exploration activities under PEP-11 is pending.⁹⁴
- 3.31 Advent Energy Ltd, which owns a majority holding of PEP-11 through its wholly owned subsidiary Asset Energy, has not carried out any petroleum activities in the PEP-11 area (including seismic surveys or exploration drilling) since 2018.⁹⁵ The CEO of NOPSEMA told the Committee that no environment plans for petroleum activities off the coast of NSW have been submitted or are being assessed.⁹⁶
- 3.32 NOPSEMA confirmed that it has not had contact with any organisation or received any applications for approval in relation to PEP-11 since 2018.⁹⁷ However, Mr Breeze, the CEO of Advent Energy, told us that NOPSEMA is not engaging with any applications for approval of exploration activities under PEP-11 until the Joint Authority decides their application.⁹⁸
- 3.33 Although the Department could not comment on approvals related to PEP-11,⁹⁹ Ms Tripodi confirmed that NSW is currently involved with the reassessment of PEP-11 as part of the Joint Authority.¹⁰⁰

The NSW context

The regulatory framework in NSW coastal waters

Summary

The Department of Regional NSW administers the *Petroleum (Offshore) Act 1982*, including assessing and processing applications for petroleum activities in NSW coastal waters.

- 3.34 As noted earlier, the NSW Offshore Petroleum Act regulates petroleum-related activities in the State's coastal waters, including granting of petroleum titles and

⁹² NEATS Public Portal, [Exploration Permit PEP-11](#), viewed 1 November 2023; NEATS Public Portal, [PEP-11 - Suspension, Extension and Variation](#), viewed 9 November 2023.

⁹³ *Asset Energy Pty Ltd v Commonwealth Minister for Resources* [2023] FCA 86.

⁹⁴ NEATS Public Portal, [PEP-11 - Suspension, Extension and Variation](#), viewed 9 November 2023.

⁹⁵ NOPSEMA, [Industry environment plans](#), viewed 9 November 2023; NOPSEMA, [Industry environment plans | Baleen 2D HR Seismic Survey](#), viewed 9 November 2023.

⁹⁶ Ms Sue McCarrey, Chief Executive Officer, National Offshore Petroleum Safety and Environmental Management Authority, [Transcript of evidence](#), 9 October 2023, p 27.

⁹⁷ Ms McCarrey, [Evidence](#), 9 October 2023, p 27.

⁹⁸ Mr Breeze, [Evidence](#), 9 October 2023, p 36.

⁹⁹ Ms Tripodi, [Evidence](#), 9 October 2023, p 42.

¹⁰⁰ Ms Tripodi, [Evidence](#), 9 October 2023, p 42.

licences like petroleum pipeline licences, and the conduct of exploration activities such as seismic surveys.

- 3.35 The Mining, Exploration and Geoscience (MEG) division of the Department of Regional NSW administers the NSW Offshore Petroleum Act.¹⁰¹ Under that Act, the Department processes and assesses applications for petroleum activities in NSW coastal waters, which includes seismic surveys and exploration drilling. For petroleum activities in the offshore area of the state, Ms Jamie Tripodi, Executive Director of Assessments and Systems in MEG told the Committee that the Department plays a role in assessing applications through the Joint Authority and has assessed previous applications.¹⁰²
- 3.36 Again, the exploration and extraction of seabed minerals in NSW coastal waters is regulated by the NSW Offshore Minerals Act. The Department also administers this Act.
- 3.37 Ms Beattie, CEO of MEG, told the Committee that development approvals for offshore mining activities are granted under the *Environmental Planning and Assessment Act 1979* ('EPA Act').¹⁰³
- 3.38 The EPA Act provides the framework for development in NSW, including environmental assessments and development proposals. It outlines a tiered assessment system with levels of assessment and approval that are based on the level of environmental impact.
- 3.39 Ms Beattie told the Committee that the Bill's provisions for associated infrastructure development 'is outside the remit of the Department of Regional NSW as it seeks to amend the Environmental Planning and Assessment Act.'¹⁰⁴ She clarified that the Department's role is to assess applications for exploration and mining titles, while the EPA Act covers planning approvals.¹⁰⁵

¹⁰¹ Ms Georgina Beattie, Chief Executive Officer, Mining, Exploration and Geoscience, Department of Regional NSW,, [Transcript of evidence](#), 9 October 2023, p 41.

¹⁰² Ms Tripodi, [Evidence](#), 9 October 2023, p 42.

¹⁰³ Ms Beattie, [Evidence](#), 9 October 2023, p 41.

¹⁰⁴ Ms Beattie, [Evidence](#), 9 October 2023, p 42.

¹⁰⁵ Ms Beattie, [Evidence](#), 9 October 2023, p 45.

The NSW Government's Offshore Exploration and Mining Policy

Summary

The NSW Government's 'Offshore Exploration and Mining' policy does not support offshore petroleum exploration and recovery in NSW.

Finding 5

The NSW Government's 'Offshore Exploration and Mining' policy may limit what potential petroleum projects in NSW coastal waters receive approval. There have been no applications for petroleum exploration in NSW coastal waters to date.

3.40 In February 2022, the NSW Government published the 'Offshore Exploration and Mining' policy (the 'Offshore Policy') which outlines the NSW Government's position on offshore exploration and mining.¹⁰⁶ The Policy states that:

The NSW Government does not support offshore coal and petroleum exploration and mining as the potential impacts on sensitive marine environments, indigenous heritage, commercial and recreational fishing and other recreational activities outweigh the potential benefits.¹⁰⁷

3.41 The Offshore Policy applies to 'exploration and mining authority considerations' under the NSW Offshore Petroleum and Minerals Acts, which concerns activities in the coastal waters of NSW. It does not directly apply to approvals and authorisations for petroleum activities in the offshore area of the State, but may inform the NSW Minister within their role in the Joint Authority concerning proposed activities in the offshore area of NSW.

3.42 The CEO of MEG told the Committee that applications for petroleum exploration in NSW coastal waters can still be received by the Department, but the Policy would be considered as part of any assessment.¹⁰⁸ She stated that for these applications in NSW coastal waters, 'it would be unlikely that an application would be granted because of that policy'.¹⁰⁹

3.43 However, the Department has not received any applications for petroleum activities in NSW coastal waters under the NSW Offshore Petroleum Act.¹¹⁰ The Committee heard at the time of the hearing that there are no current authorities to mine for minerals or petroleum in NSW coastal waters, and limited interest in exploration activities in those waters.¹¹¹

¹⁰⁶ Ms Beattie, [Evidence](#), 9 October 2023, p 45.

¹⁰⁷ NSW Government, [Offshore Exploration and Mining Policy](#), Department of Regional NSW, February 2022, p 1.

¹⁰⁸ Ms Beattie, [Evidence](#), 9 October 2023, pp 43-44.

¹⁰⁹ Ms Beattie, [Evidence](#), 9 October 2023, p 43.

¹¹⁰ Ms Beattie, [Evidence](#), 9 October 2023, p 43.

¹¹¹ Ms Beattie, [Evidence](#), 9 October 2023, p 42.

- 3.44 The Offshore Policy also states that it will inform the NSW Government's position for the offshore area of the State, by informing the NSW Minister in their role as part of the Joint Authority.¹¹²
- 3.45 Some inquiry participants told the Committee that legislation is needed.¹¹³ Surfers for Climate argued that 'regulations, regulators or new policies' may be changed by governments and does not provide 'long-term policy certainty'.¹¹⁴
- 3.46 While not a blanket prohibition, the Committee considers that the Offshore Policy may limit what potential mineral or petroleum projects in NSW coastal waters receive approval. However, this impact is hypothetical because there have been no applications for petroleum titles in NSW coastal waters to date.

Offence and penalty regimes for petroleum and minerals exploration and recovery in NSW coastal waters

Summary

Penalties for breaching the *Petroleum (Offshore) Act 1982* and the *Offshore Minerals Act 1990* are inconsistent. They are also considerably lower than the penalties for similar breaches of NSW laws regulating onshore resources.

Finding 6

The maximum penalties for breaches under the *Petroleum (Offshore) Act 1982* and the *Offshore Minerals Act 1990* are significantly lower than comparable offences under other NSW laws regulating petroleum and minerals exploration and recovery.

- 3.47 The Committee received evidence about the penalties under the NSW Offshore Petroleum and Minerals Acts. The Environmental Defenders Office (EDO) argued that the penalties under both Acts are lacking, given the severity of the potential environmental consequences.¹¹⁵ Ms Emma Sestito, Senior Solicitor in the Safe Climate team at the EDO, told us that the current penalties under both Acts for petroleum and mineral exploration and recovery 'are grossly inadequate and differ across the Acts for similar violations'.¹¹⁶
- 3.48 The EDO used the example of the offence for exploring and recovering resources without appropriate authorisation under both Acts. They highlighted that this offence under section 38 of the NSW Offshore Minerals Act carries a penalty of \$30,000 but the penalty for the equivalent offence under section 20(1) of the NSW Offshore Petroleum Act is 500 penalty units (\$55,000) and/or 5 years imprisonment.¹¹⁷ The Committee agrees that there is some inconsistency in the penalty regimes across both Acts.

¹¹² NSW Government, [Offshore Exploration and Mining Policy](#), Department of Regional NSW, February 2022, p 1.

¹¹³ [Submission 39](#), Surfers for Climate, p 2; [Submission 49](#), The Wilderness Society, pp 6-7.

¹¹⁴ [Submission 39](#), Surfers for Climate, p 2.

¹¹⁵ [Submission 46](#), Environmental Defenders Office (EDO), pp 11-13.

¹¹⁶ Ms Sestito, [Evidence](#), 9 October 2023, p 18.

¹¹⁷ [Submission 46](#), EDO, p 13.

- 3.49 The Committee also notes that penalties for breaches of these Acts are lower than comparable penalties in NSW laws regulating onshore resources. For example, it is an offence to prospect or mine for petroleum under section 7 of the *Petroleum (Onshore) Act 1991* without authority. This offence is subject to a penalty of 5,000 penalty units (\$550,000) for a corporation, or 1,000 penalty units (\$110,000) and/or 5 years imprisonment for a person.¹¹⁸ As noted above, section 20 of the NSW Offshore Petroleum Act includes a similar offence for exploring for petroleum without a permit. However, the maximum penalty of 500 penalty units (\$55,000) and/or 5 years imprisonment for this offence is significantly lower than the monetary penalty attached to its onshore equivalent.¹¹⁹
- 3.50 The EDO also recommended that the offences in both the NSW Offshore Petroleum and Minerals Acts be modernised by increasing them and including a tiered penalty system similar to that used in the EPA Act.¹²⁰ While the maximum penalties under both Acts are significantly lower, it is important to acknowledge that there have not been any petroleum titles under the NSW Offshore Petroleum Act to date. Therefore, it is difficult for the Committee to conclude that the relevant penalty regimes are insufficient to deter breaches.

¹¹⁸ [Petroleum \(Onshore\) Act 1991](#) s 7.

¹¹⁹ [Petroleum \(Offshore\) Act 1982](#) s 20.

¹²⁰ [Submission 46](#), EDO, p 13.

Chapter Four – Potential issues and unintended consequences

The Bill raises some significant constitutional issues and may have unintended consequences

Summary

The inquiry involved evidence from legal experts and independent legal advice. The Committee believes that the Bill potentially raises serious risks and should not be passed.

Finding 7

Key aspects of the Bill may be constitutionally invalid or have unintended consequences.

Recommendation 2

That the Legislative Assembly not pass the Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023.

- 4.1 The debate around the referral of the inquiry to this Committee highlighted that there were potential constitutional issues associated with this Bill. In undertaking this inquiry, the Committee met with legal experts and heard evidence from them at the public hearing.
- 4.2 However, after becoming aware of the complexity of the regulatory framework and legal issues involved, the Committee requested the Clerk brief legal experts on its behalf, to provide detailed advice on several questions. The resolution of the House referring this inquiry to the Committee contemplated the need for independent legal advice. This legal advice has informed the Committee's conclusions in this chapter.
- 4.3 The Committee considers that key aspects of the Bill may be constitutionally invalid or have negative unintended consequences for NSW. While amendments could address some of these constitutional risks, the Committee considers these would significantly undermine the overall intent of the Bill. Therefore, the majority of the Committee recommends that the Legislative Assembly not pass the Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023. This was not the unanimous view of the Committee, and the Committee acknowledges that Ms Kellie Sloane MP, Member for Vacluse, and Mrs Judy Hannan MP, Member for Wollondilly, supports the passage of the Bill with amendments.
- 4.4 The Committee's reasoning is outlined below.

The Bill seeks to prevent offshore drilling and infrastructure, particularly in the offshore area of the State

Summary

The Bill seems to be intended to stop petroleum activities from occurring off the NSW coast including in the offshore area of the State. There was particular attention to PEP-11, which is wholly in the offshore area of the State. The Committee believes that the potential negative risks raised by the Bill outweigh any symbolic benefits.

- 4.5 The second reading speech suggests that the Bill is intended to prevent petroleum and minerals activities occurring off the coast of NSW, especially in the offshore area of the State. This includes activities like PEP-11, which Mr Amon referred to in his second reading speech.¹²¹ Again, the Committee notes that PEP-11 is located in the offshore area of the State only.
- 4.6 Some inquiry participants understood that the Bill may not actually be able to ban such activities in the offshore area of the State, because some activities could occur without any ancillary development in coastal waters.¹²² Despite this limit, representatives from environmental organisations stated that the Bill may still send a strong 'signal' against drilling off the coast of NSW.¹²³ Answering a question about whether they would support the Bill if it could be 'overridden' by the Commonwealth, witnesses from the Surfrider Foundation and Surfers for Climate suggested that they would, given the Bill's intent.¹²⁴
- 4.7 The Committee acknowledges that inquiry participants supported the intent of the Bill. However, the Committee has found, for the reasons below, that the Bill could raise serious constitutional issues. In addition, the Bill's proposed pipeline licence prohibition may have unintended consequences for the jurisdiction-sharing arrangements under the Offshore Constitutional Settlement.
- 4.8 The Committee also notes that any amendments to limit the Bill's application to NSW coastal waters undermines the intent of the Bill. The Committee has found that drilling and associated infrastructure in NSW coastal waters is unlikely to be approved, given the NSW Government's 'Offshore Exploration and Mining' policy. As a result, the Committee considers that passing a law to ban such activities in coastal waters may not in practice go further than this policy. The benefits of legislating a ban on activities in coastal waters are also hard to gauge given there have been no applications for petroleum activities in NSW coastal waters to date.
- 4.9 For these reasons, the Committee believes that the constitutional issues and unintended consequences arising from the Bill may pose unacceptable risks that may outweigh the benefit of any symbolic gesture made by passing the Bill. The

¹²¹ New South Wales, Legislative Assembly, [Parliamentary Debates \(proof\)](#), 22 June 2023 (Rory Amon, Member for Pittwater), p 2.

¹²² Mr Brendan Dobbie, Managing Lawyer, Safe Climate, EDO, [Transcript of evidence](#), 9 October 2023, p 23; [Submission 46](#), EDO, p 8; [Submission 45](#), Australian Marine Conservation Society, pp 2-3.

¹²³ Dr Traill AM, Ms Morris and Mr Morrison, [Evidence](#), 9 October 2023, p 6.

¹²⁴ Ms Rowan Hanley, Branch Secretary and Mr Brendan Donohoe, President, Northern Beaches, Surfrider Foundation, and Ms Belinda Baggs, [Transcript of evidence](#), 9 October 2023, pp 10-1.

Committee has therefore recommended that the Bill not be passed given the express intent of the Bill.

Possible constitutional issues

Potential constitutional issues with proposed section 10.17(1)(b): intergovernmental immunity and constitutional inconsistency

Summary

The Bill proposes to amend the *Environmental Planning and Assessment Act 1979* by inserting section 10.17. Proposed section 10.17(1)(b) may raise constitutional invalidity issues of 'intergovernmental immunity' and constitutional inconsistency because it could apply to the offshore area of the State.

Finding 8

Proposed section 10.17(1)(b) of the *Environmental Planning and Assessment Act 1979* may be constitutionally invalid to the extent that 'relevant development' is defined to include activities 'in the offshore area of the state.' The proposed section may be invalid for reasons of intergovernmental immunity and constitutional inconsistency.

- 4.10 Proposed section 10.17(1)(b) of the *Environmental Planning & Assessment Act 1979* (EPA Act) may be constitutionally invalid on the grounds of intergovernmental immunity and constitutional inconsistency. This is primarily because the provision incorporates reference to the 'offshore area of the state', which is exclusively within the responsibility of the Commonwealth.

The intended effect of proposed section 10.17(1)(b)

Summary

The definition of 'relevant development' in proposed section 10.17 includes a reference to the 'offshore area of the state'. Through proposed section 10.17(1)(b), the Bill is intended to impact petroleum activities in the offshore area of the State.

- 4.11 Schedule 3 of the Bill proposes to insert section 10.17(1)(b) into the EPA Act as follows:

Despite any provision of this or another law, a person must not carry out—

- (a) relevant development in the coastal waters of the State, or
- (b) development within the State for the purposes of—
 - (i) maintenance, repair, provisioning or fuelling of vessels, aircraft or equipment used for relevant development, or
 - (ii) handling, refining or processing petroleum or minerals obtained from relevant development, or
 - (iii) unloading or transportation, including by pipeline, of petroleum or minerals obtained from relevant development.

Maximum penalty—Tier 1 monetary penalty.

4.12 Terms in section 10.17 are defined under subsection (2):

coastal waters of the State has the same meaning as in the *Interpretation Act 1987*, section 58.

...

offshore area of the state means the offshore area of New South Wales within the meaning of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* of the Commonwealth, section 8.

...

relevant development means the following, whether occurring in the coastal waters of the State or the offshore area of the state—

- (a) sea bed petroleum exploration or recovery,
- (b) sea bed mineral exploration or recovery, except for the recovery of sand for the purpose of beach nourishment permitted under the *Offshore Minerals Act 1999*, section 444A(2). (Emphasis added.)

4.13 The definition of 'coastal waters of the State' picks up the meaning under section 58 of the *Interpretation Act 1987*, which defines this term in reference to the area extending 3 nautical miles from the State Powers Act. Similarly, 'offshore area of the state' adopts the definition under section 8 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) (the 'Commonwealth Offshore Petroleum Act'), which defines the 'offshore area of New South Wales' to be the area 'beyond the outer limits of the coastal waters of that State' and 'within the outer limits of the continental shelf'.

4.14 The main issue presented by proposed section 10.17(1)(b) is that it engages the concept of the 'offshore area of the state', an area under responsibility of the Commonwealth. This is because the proposed section prohibits several kinds of 'development within the State' connected to 'relevant development'.

4.15 'Relevant development' is defined to include sea bed petroleum exploration or recovery in the *offshore area of the State*. The Environmental Defenders Office (EDO) submitted that in this way section 10.17(1)(b) attempts to prohibit any development in NSW that would support offshore petroleum activities in the offshore area of the State.¹²⁵

4.16 Proposed section 10.17(1)(a) would prohibit any relevant development 'within the coastal waters of the State'. As a result, although the definition of 'relevant development' includes activities in NSW coastal waters, proposed section 10.17(1)(b) could only prohibit developments which support 'relevant development' occurring in the offshore area of the State. This is because there could be no relevant development in NSW coastal waters where section 10.17(1)(b) would apply, as it would already be prohibited under section 10.17(1)(a).

4.17 The idea that section 10.17(1)(b) was drafted to apply to the offshore area of the State is also reflected in the second reading speech. For example, Mr Amon highlighted the definition of 'relevant development' under proposed section

¹²⁵ [Submission 46](#), EDO, p 8.

10.17(2) and said that the definition also captures 'activities in the offshore area of the state'.¹²⁶ He described the operation of this definition of 'offshore area of the state' as 'crucial' because it would apply the prohibition under section 10.17(1)(b) 'whether those activities are in the coastal waters of New South Wales, being within three nautical miles of our coast, or the offshore area of the state'.¹²⁷

4.18 Mr Amon described the effect of these definitions for the intended operation of proposed section 10.17(1)(b):

... while New South Wales' jurisdiction only extends to three nautical miles offshore, this bill would prohibit any development within the State of New South Wales itself, or the waters within its jurisdiction, to support mineral or petroleum exploration or mining off the coast of New South Wales in general. The bill, in effect, would prevent, as far as New South Wales law permits, any petroleum or mineral exploration or recovery off the coast of New South Wales.¹²⁸

4.19 The focus of section 10.17(1)(b) on the 'offshore area of the state' raises two potential constitutional issues outlined below: intergovernmental immunity and inconsistency.

Intergovernmental immunity

Summary

Proposed section 10.17(1)(b) may be constitutionally invalid under the doctrine of intergovernmental immunity, which protects the Commonwealth from interference by a state with its capacity to exercise its powers or fulfil its functions.

4.20 Proposed section 10.17(1)(b) may be constitutionally invalid on the grounds of intergovernmental immunity.

What is the doctrine of intergovernmental immunity?¹²⁹

To preserve the sovereignty of the states and the Commonwealth, the Australian Constitution implies that neither states nor the Commonwealth could be made subject to laws made by the other. The application of this doctrine was overturned in *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 CLR 129, and partly revived by *Melbourne Corporation v Commonwealth* (1947) 74 CLR 31.

¹²⁶ New South Wales, Legislative Assembly, [Parliamentary Debates \(proof\)](#), 22 June 2023 (Rory Amon, Member for Pittwater), p 2.

¹²⁷ New South Wales, Legislative Assembly, [Parliamentary Debates \(proof\)](#), 22 June 2023 (Rory Amon, Member for Pittwater), p 2.

¹²⁸ New South Wales, Legislative Assembly, [Parliamentary Debates \(proof\)](#), 22 June 2023 (Rory Amon, Member for Pittwater), p 2.

¹²⁹ T Mann (ed), *Australian Law Dictionary*, 3rd edn, Oxford University Press, 2022, p 484.

- 4.21 In this case, the intergovernmental immunity doctrine means a state law is invalid if it:
- (a) specially targets or discriminates against the Commonwealth, and
 - (b) imposes some special disability or burden on the Commonwealth's exercise of its executive capacities.
- 4.22 Proposed section 10.17(1)(b) may be constitutionally invalid because the prohibition would operate to impair the Commonwealth's capacity to exploit the natural resources in its sovereign territory (i.e. the offshore area of the State).

What is the law on intergovernmental immunity?

- 4.23 The principle of intergovernmental immunity was considered by the High Court in *Re Residential Tenancies Tribunal and Henderson; Ex parte the Defence Housing Authority* (1997) (the 'Henderson case'). In that decision, the majority stated that:
- ... the Constitution is predicated upon the continued separate existence of the Commonwealth and the States, not only in name, but as bodies politic to which the Constitution proceeds to distribute powers of government.¹³⁰
- 4.24 The majority in *Henderson* outlined how the principle distinctly applies to the Commonwealth on one hand, and the states on the other. Their Honours noted that the Commonwealth's legislative powers are 'supreme' and prevail over a state's laws under section 109 of the Constitution.¹³¹
- 4.25 Unlike the Commonwealth's powers and capacities, the majority highlighted that the states 'do not have specific legislative powers which might be construed as authorising them to restrict or modify the executive capacities of the Commonwealth'. They described the powers of the states to make laws as 'an undefined residue which, containing no such authorisation, cannot be construed as extending to the executive capacities of the Commonwealth.'¹³²

How are laws 'construed'/interpreted?¹³³

A key function that courts play is to 'construe' laws – this is the practice of 'statutory interpretation'. This is the process of courts giving meaning and content to the statutes (i.e. the laws of a state) and the words and phrases in them.

It is not just about literal interpretation of the words of an Act or law. The courts consider the ordinary meaning of words but are also aided by various rules and presumptions that come from statutory interpretation, and may turn to external materials to help interpret the statute.

¹³⁰ [Re Residential Tenancies Tribunal and Henderson; Ex parte the Defence Housing Authority](#) (1997) 190 CLR 410 (*Henderson*) at 440.

¹³¹ [Henderson](#) (1997) 190 CLR 410 at 440.

¹³² [Henderson](#) (1997) 190 CLR 410 at 440.

¹³³ LexisNexis Australia, [Encyclopaedic Australian Legal Dictionary, statutory interpretation](#), viewed 9 November 2023.

- 4.26 The majority in *Henderson* also held that a state law which is of 'general application' so that it applies to 'the Crown and its subjects alike' would not discriminate against the Commonwealth in a way that offends the intergovernmental immunity principle.¹³⁴
- 4.27 The High Court recently considered 'intergovernmental immunity' in *Spence v Queensland* (2019). The majority in that decision noted that determining whether a state law contravenes the immunity requires considering whether the state law is 'directed at the Commonwealth' in a way that would:
- ... impose some special disability or burden on the exercise of powers and fulfilment of functions of the Commonwealth which curtails the capacity of the Commonwealth to function as a government.¹³⁵

Constitutional inconsistency

Summary

Broadly speaking, a state law is inconsistent with a Commonwealth law if its operation and effect undermines the Commonwealth law. Proposed section 10.17(1)(b) may be constitutionally invalid as it may interfere with the Commonwealth's ability to exercise its authority under Commonwealth laws.

- 4.28 Aside from likely being constitutionally invalid on the grounds of intergovernmental immunity, proposed section 10.17(1)(b) is also likely to be invalid on grounds of constitutional inconsistency under section 109 of the Australian Constitution.

Constitutional inconsistency¹³⁶

Chapter V of the Australian Constitution (Cth) makes several provisions about the states. However, section 109 provides an important qualification to the states' law-making powers.

Section 109 states: *When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.*

Although the caselaw on constitutional inconsistency is complex, recent High Court decisions would indicate a state's law will be constitutionally inconsistent if it would conflict with or undermine a Commonwealth law.

- 4.29 Professor Twomey, Professor Emerita and former Professor of Constitutional Law at the University of Sydney, stressed that the law on section 109 inconsistency is complex. However, the High Court has recently preferred a test of whether a

¹³⁴ [Henderson](#) (1997) 190 CLR 410 at 442-3.

¹³⁵ [Spence v Queensland](#) (2019) 268 CLR 355 at [108].

¹³⁶ [Commonwealth of Australia Constitution Act \(The Constitution\)](#) (Cth) ch V, s 109; LexisNexis Australia, [Encyclopaedic Australian Legal Dictionary, inconsistency of laws](#), viewed 9 November 2023.

State law would 'alter, impair or detract from the operation of a law of the Commonwealth Parliament'.¹³⁷ Professor Twomey quoted the High Court's explanation of this test:

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.¹³⁸

- 4.30 It would appear that proposed section 10.17(1)(b) is intended to operate in a way that could interfere with petroleum and mineral activities in the offshore area of the State, an area under Commonwealth responsibility. As outlined in Chapter 3, any such activities in the offshore area must be authorised under Commonwealth laws, including the Commonwealth Offshore Petroleum Act and the Commonwealth Offshore Minerals Act.
- 4.31 Professor Michael Crommelin and Professor Anne Twomey both stated that the Bill may raise issues of inconsistency. According to Professor Crommelin, there is 'a very high risk of inconsistency' to any extent that the Bill attempts to:
- ... interfere in any way with the exploration, production and transportation, as well as any other developmental activities involving petroleum or minerals, in the offshore area of New South Wales.¹³⁹
- 4.32 Professor Twomey stated that there may be a 'broader inconsistency possibility' if the Bill would 'operate in a way that undermined the ability of Commonwealth legislation to operate'.¹⁴⁰ She also observed to the Committee 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'.¹⁴¹
- 4.33 Professor Crommelin noted that the inconsistency issue arises specifically around the offshore area of the State because the Commonwealth Acts are drafted to apply only to this offshore area. However, he also noted that the Commonwealth could amend these Acts and would not have to 'passively accept' the Bill's proposed prohibitions outside of the offshore area.¹⁴²
- 4.34 Professor Crommelin stated that the Acts deal with the approval and regulation of these activities in the offshore area of the State 'in very extensive terms'. He expressed concern that, to the extent it 'interfered' with these matters, the Bill 'if it became an Act, would be inoperative'.¹⁴³

¹³⁷ Professor Anne Twomey, [Transcript of evidence](#), 9 October 2023, p 19.

¹³⁸ Professor Twomey, [Evidence](#), 9 October 2023, p 19; [Work Health Authority v Outback Ballooning Pty Ltd](#) (2019) 266 CLR 428 at [32].

¹³⁹ Professor Michael Crommelin, [Transcript of evidence](#), 9 October 2023, p 22.

¹⁴⁰ Professor Twomey, [Evidence](#), 9 October 2023, p 20.

¹⁴¹ Professor Twomey, [Evidence](#), 9 October 2023, p 19.

¹⁴² Professor Crommelin, [Evidence](#), 9 October 2023, p 22.

¹⁴³ Professor Crommelin, [Evidence](#), 9 October 2023, p 22.

- 4.35 The Committee understands that whether an inconsistency arises from proposed section 10.17(1)(b) will depend on how the prohibition would impact activities authorised by the Commonwealth. In some circumstances, the prohibition may simply inconvenience petroleum or minerals activities in the offshore area by preventing supporting activities in NSW coastal waters.
- 4.36 However, there may be circumstances where a prohibition on supporting developments in adjacent coastal waters may render the relevant exploration or recovery activities authorised by the Commonwealth uneconomic - that is, more than a mere inconvenience. In these circumstances, a permit or licence holder may not be able to pursue activities that are authorised by the Commonwealth. Under this scenario, the prohibition under proposed section 10.17(1)(b) may practically render the Commonwealth's authorisation ineffective.
- 4.37 In summary, the proposed section could be seen as targeting the Commonwealth's power to authorise and regulate activities in the offshore area of a state. The provision could therefore be characterised as 'altering, impairing or detracting' from rights that have been conferred under Commonwealth laws. To this extent, proposed section 10.17(1)(b) may be inconsistent under section 109 of the Constitution.

The source of legislative power may determine the type of constitutional inconsistency

- 4.38 Underscoring the complexity of the constitutional issues raised, the inquiry has raised an additional consideration in relation to inconsistency. This is because if the Parliament passed the Bill, it would be relying on one of two sources of power: either its extraterritorial power under section 5 of the Constitution of NSW, or its powers under the *Coastal Waters (State Powers) Act 1980* (Cth) (the 'State Powers Act') as part of the Offshore Constitutional Settlement. This was outlined in Chapter 3.
- 4.39 The Committee heard that the source of legislative power may determine how a conflict could arise. Professor Twomey explained that:
- 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.¹⁴⁴
- 4.40 Section 7(c) of the State Powers Act clarifies that the Act does not:
- ... give any force or effect to a provision of a law of a State **to the extent of any inconsistency** with a law of the Commonwealth or with the Constitution of the Commonwealth of Australia or the Commonwealth of Australia Constitution Act. (Emphasis added)
- 4.41 The wording in section 7 closely follows the language of 'constitutional inconsistency' under section 109 of the Constitution (Cth). The Committee understands that any questions about 'inconsistency' arising from the Bill are

¹⁴⁴ Professor Twomey, [Evidence](#), 9 October 2023, p 19.

therefore likely to be resolved in a similar manner regardless of the source of power.

Proposed amendments to address constitutional issues

Summary

Some amendments to the Bill that were proposed may reduce the risks of constitutional invalidity. However, they may also undermine an express intent of the Bill to prevent petroleum activities occurring in the offshore area of the State.

Finding 9

The Bill could be amended to reduce the risk of constitutional invalidity. However, the amendments would undermine a core purpose of the Bill.

- 4.42 Some stakeholders proposed amendments to address the potential constitutional issues raised by the Bill. However, the Committee believes that these amendments are problematic or would undermine a core intent of the Bill.
- 4.43 For example, the Environmental Defenders Office (EDO) recommended that section 10.17 of the EPA Act proposed by the Bill be amended to:
- remove the words 'whether occurring in the coastal waters of the State or the offshore area of the state' from the definition of 'relevant development' in proposed section 10.17(2), and
 - insert the words 'in the coastal waters of the State or the offshore area of the state' at the end of subsection 10.17(1)(b)(i)-(iii).¹⁴⁵
- 4.44 They submitted that these recommended amendments would remove the uncertainty from the definition of development but would continue to apply the prohibition under subsection 10.17(1)(b) to 'development within the State for the ancillary purposes listed in s 10.17(1)(b)(i)-(iii), which are carried out to support "relevant development"' that occurs in the coastal waters or the offshore area of the State.¹⁴⁶
- 4.45 The Committee notes that the amendments may preserve the intended effect of impeding activities in the offshore area of the State under proposed section 10.17(1)(b). For the reasons discussed earlier, the Committee believes this may raise constitutional issues.
- 4.46 Professor Twomey also observed that the EDO's suggested amendments may not address the possibility of a 'broader inconsistency' that could arise if the Bill would 'operate in a way that undermined the ability of Commonwealth legislation to operate'.¹⁴⁷
- 4.47 Professor Crommelin was asked whether removing the words 'or the offshore area of the state' in the definition of 'relevant development' under proposed

¹⁴⁵ [Submission 46](#), EDO, p 9.

¹⁴⁶ [Submission 46](#), EDO, pp 9-10.

¹⁴⁷ Professor Twomey, [Evidence](#), 9 October 2023, p 20

section 10.17(2) would remove 'most of the inconsistency.' Professor Crommelin agreed, and remarked that 'it would take away a high risk factor that I think would occur on the current drafting.'¹⁴⁸

- 4.48 The Committee agrees that removing the words 'or the offshore area of the state' from the definition of 'relevant development' under proposed section 10.17(2) may reduce the risk of constitutional invalidity.
- 4.49 However, removing these words would also mean that proposed subsection (1)(b) would only apply to 'relevant development' occurring in coastal waters. As any 'relevant development in the coastal waters of the State' is already prohibited under proposed subsection (1)(a), the proposed amendment would render proposed subsection (1)(b) effectively pointless. Therefore, the Committee finds that the proposed amendment would undermine a core purpose of the Bill, which is to prevent petroleum activities in the offshore area of the State.

Unintended consequences

The history and significance of the Offshore Constitutional Settlement

Summary

After much negotiation, the states and the Commonwealth agreed to the Offshore Constitutional Settlement to determine how the territorial seas would be governed. This was a significant act of cooperative federalism.

- 4.50 During the inquiry, many references were made to the 'Offshore Constitutional Settlement' (the 'Settlement'). The Australian Attorney-General's Department describes the Settlement as 'an agreement of great importance for the settlement of contentious and complex offshore constitutional issues'.¹⁴⁹
- 4.51 The Committee considers it important to highlight the background to the agreement to appreciate the Settlement's significance.
- 4.52 As discussed in Chapter 3, the Settlement was an agreement reached by the Commonwealth and state governments after *New South Wales v Commonwealth (the Seas and Submerged Lands Case)* (1975) (the '*Seas and Submerged Lands case*').¹⁵⁰ The Attorney-General's Department states that the Settlement 'marked the solution of a fundamental problem that has bedevilled Commonwealth-State relations and represents a major achievement of the policy of co-operative federalism'.¹⁵¹
- 4.53 This 'fundamental problem' arose from the *Seas and Submerged Lands case*, which upheld the Commonwealth's asserted sovereignty over all of the territorial sea, including what was previously considered the territorial sea of the states

¹⁴⁸ Professor Crommelin, [Evidence](#), 9 October 2023, pp 21, 22.

¹⁴⁹ Australian Government Attorney-General's Department, [Offshore constitutional settlement a milestone in cooperative federalism](#), viewed 2 November 2023.

¹⁵⁰ [New South Wales v Commonwealth \(the Seas and Submerged Lands Case\)](#) (1975) 135 CLR 337.

¹⁵¹ Attorney-General's Department, [Offshore constitutional settlement: a milestone in co-operative federalism](#), Australian Government Publishing Service, Canberra, 1980, p 1.

extending out to 3 nautical miles. Professor Crommelin remarked on the context following this High Court decision, noting that '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'.¹⁵²

- 4.54 The Settlement 'is not set out in one single document but in legislation that implements it'.¹⁵³ Reflecting on the negotiations leading to the Settlement, the Attorney-General's Department noted that:

The talks at both Ministerial and adviser level have focused in a practical way—and in a spirit of co-operative federalism that has taken full account of international, national and State interests—on what matters are appropriate for Commonwealth or, on the other hand, State administration, what matters are appropriate for joint administration, and how the various agreed arrangements should be implemented.¹⁵⁴

The Bill may have unintended consequences for the Offshore Constitutional Settlement

Summary

The pipeline prohibition proposed by the Bill may be constitutionally valid. As agreed under the Offshore Constitutional Settlement, the Commonwealth has a right to pass its own laws to authorise pipeline licences running through coastal waters. If the Bill were to compel the Commonwealth to exercise this right, it could have consequences for how NSW and the Commonwealth share jurisdiction for territorial seas under the Settlement and may have wider consequences.

Finding 10

The Bill's prohibition of pipeline licences in NSW coastal waters would undermine the broader intent of the jurisdiction-sharing arrangements under the Offshore Constitutional Settlement and may have unintended consequences for these arrangements.

- 4.55 The Bill would amend the NSW Offshore Petroleum Act by inserting section 103A. Under proposed section 103A(1)(c), the NSW Minister for Natural Resources would be prohibited from granting a pipeline licence under Division 4. The Committee finds that this prohibition may have unintended consequences for the existing arrangements under the Offshore Constitutional Settlement.
- 4.56 However, it is first necessary to consider whether section 103A(1)(c) may raise any constitutional issues associated with inconsistency. This question was raised at the hearing.

¹⁵² Professor Crommelin, [Evidence](#), 9 October 2023, p 24.

¹⁵³ Australian Government Attorney-General's Department, [Offshore Constitutional Settlement](#), viewed 2 November 2023.

¹⁵⁴ Attorney-General's Department, [Offshore constitutional settlement: a milestone in co-operative federalism](#), Australian Government Publishing Service, Canberra, 1980, p 5.

Proposed section 103A(1)(c) is unlikely to be inconsistent with Commonwealth law

4.57 Professor Twomey directed the Committee to section 4(2) of the *Coastal Waters (State Title) Act 1980* (Cth) (the 'State Title Act') as an important qualification to the rights given to a state under the Settlement.¹⁵⁵ Section 4(2)(c) provides that the rights and title vested in a state under the Act is subject to:

... a right of the Commonwealth **to authorize the construction and use of pipelines for the transport across the sea-bed referred to in subsection (1)** [being the seabed in coastal waters] **of petroleum (including petroleum in gaseous form), recovered, in accordance with a law of the Commonwealth**, from any area of the sea-bed beyond the coastal waters of the State. (Emphasis added.)

4.58 Professor Twomey stated that this qualification may give rise to a potential issue. She observed that there is no inconsistency if there are no current Commonwealth laws 'about laying pipelines across coastal State waters'. However, Professor Twomey noted that:

... 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.¹⁵⁶

4.59 Marque Lawyers submitted that the prohibition under proposed section 103A(1)(c) would 'only' prohibit granting of a pipeline under Division 4 of the NSW Offshore Petroleum Act. They contend that this prohibition would not 'affect the ability of the Joint Authority to grant a license under the Commonwealth Petroleum Act.'¹⁵⁷

4.60 The Committee understands that while the issue of whether there is an inconsistency is debatable, the preferred view is that section 103A(1)(c) is not currently inconsistent with Commonwealth law.

4.61 It would appear that proposed section 103A(1)(c) may not conflict because the Commonwealth Act and the NSW Offshore Petroleum Act regulate the construction and operation of pipelines in distinct jurisdiction areas (the offshore area of the State and coastal waters respectively).

4.62 This is because the framework regulating pipelines is shared across state and Commonwealth laws. As the Commonwealth Offshore Petroleum Act only provides for approvals of pipelines in the offshore area of the State, the Commonwealth's scheme depends on the cooperation of the states if a pipeline travels through the State's coastal waters. This arrangement reflects the intent of the jurisdiction-sharing arrangements under the Settlement.

4.63 The Committee considers that the intent of the Settlement is also reflected in the absence of any Commonwealth laws that grant the Commonwealth a power to approve pipelines within a state's coastal waters. As noted, the Commonwealth retains the right to do so under section 4(2)(c) of the State Title Act. In not

¹⁵⁵ Professor Twomey, [Evidence](#), 9 October 2023, p 19.

¹⁵⁶ Professor Twomey, [Evidence](#), 9 October 2023, p 23.

¹⁵⁷ [Submission 39](#), Surfers for Climate, p 13.

'exercising' this right, it may be argued that the Commonwealth is upholding the principle of 'cooperative federalism' under the Settlement.

Unintended consequences of passing section 103A(1)(c)

- 4.64 Although proposed section 103A(1)(c) may not be constitutionally invalid on the grounds of inconsistency, the Committee understands that there are two risks associated with the provision.
- 4.65 Firstly, if the provision is enacted, the Commonwealth may be compelled to pass legislation that would provide it with the power to authorise the construction of pipelines in coastal waters of the State. This would be to overcome the effect of proposed section 103A(1)(c) to protect the utility of the Commonwealth's ability to approve pipelines in the offshore area of a state that may need to cross into NSW coastal waters. Professor Twomey stated that if the Commonwealth were to make a law to approve a pipeline within a state's coastal waters, section 4(2)(c) of the State Title Act 'would suggest that the State's ability to act to stop that would be limited.'¹⁵⁸
- 4.66 More fundamentally, section 103A(1)(c) proposed by the Bill if passed, calls into question the State's adherence to the aims of the Settlement. By legislating a prohibition on all pipeline licences in the coastal waters of the State, the NSW Parliament may be undermining the cooperation that underpins the approval regime shared with the Commonwealth.
- 4.67 The Commonwealth Parliament may also consider legislative changes that may vary the existing arrangements under the Settlement. It is possible that such legislative changes could impact all states and the Northern Territory who were parties to the Settlement. Given the complex nature of the Settlement and the negotiations that preceded it, this may be a significant unintended consequence.

¹⁵⁸ Professor Twomey, [Evidence](#), 9 October 2023, p 23.

Appendix One – Terms of reference

That the Committee on Environment and Planning inquire into and report on the Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023 (the bill), with particular reference to:

- a. any constitutional issues or unintended consequences raised by the bill, and whether any amendments may address those;
- b. whether there are other ways to achieve the intended outcomes of the proposed bill including through the New South Wales Government offshore exploration and mining policy;
- c. enforcement and compliance issues raised by the bill;
- d. environmental impacts of offshore drilling; and
- e. any other related matter.

Appendix Two – Conduct of inquiry

The Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023 was introduced in the Legislative Assembly on 22 June 2023 and referred by the Assembly to the Committee for inquiry on 29 June 2023. The terms of reference for that referral is at Appendix One.

The Committee resolved to accept the referral on 31 July 2023.

The Committee received two private briefings from Professor Emerita Anne Twomey on 21 August 2023, and Professor Emeritus Michael Crommelin AO on 31 August 2023.

Submissions to the inquiry closed on 31 August 2023. The Committee received 49 submissions from various stakeholders including the community, legal experts, government departments, Newcastle City Council, energy producers and environmental advocacy groups. A list of submission makers is at Appendix Three, and the submissions are available on the inquiry [webpage](#).

On 15 September 2023, the Committee resolved to request that independent legal advice be obtained by the Clerk on behalf of the Committee to assist with the inquiry. The resolution of the Legislative Assembly referring the inquiry noted that the Committee may seek independent legal advice.

A public hearing was held at Parliament House on 9 October 2023. The Committee heard from a range of witnesses representing local community and environmental advocacy groups, academics and legal experts, regulators, energy producers and the NSW Government. Appendix Four is a list of witnesses who appeared at the hearings. A transcript of evidence taken at the hearing is on the inquiry [webpage](#).

On Monday 23 October 2023, the Committee attended a conference with Ms Anna Ross, Partner and Isabelle Paton, Special Counsel, Corrs Chambers Westgarth; Mr Nicholas Owens SC, Barrister, Fifth Floor St James' Hall; Mr Brendan Lim, Barrister, Eleven Wentworth; and Mr Jackson Wherrett, Barrister, Eleven Wentworth regarding legal advice sought by the Committee for the inquiry. The memoranda of legal advice has not been published by the Committee but has informed this report.

Appendix Three – Submissions

No.	Author
1	Ms Julia Lee
2	Ray Lynch
3	Ms Glynn Glynn
3a	Ms Glynn Glynn
4	Confidential
5	Surfing Australia
6	Doctors for the Environment Australia
7	Surfrider Foundation Australia
8	Name suppressed
9	Dr Jonathan King
10	Mr Felix Williamson
11	Ms Diana Ryall
12	Ms Marita Macrae
13	Mr Fergus Gardiner
14	Dr Murray MacDonald
15	Mr Christian Kent
16	Mr David Donaldson
17	Mr Dick Clarke
18	Ms Melina Mura
19	Mr Gregory Dubler
20	Confidential
21	Mrs Brita Benjamin
22	Mr James Benjamin
23	City of Newcastle
24	Mr Peter Morris
25	Confidential
26	Mr Robert Bennett
27	Mr David Palmer
28	Save Our Coast

29	Dr John Barrenger
30	Vets for Climate Action
31	1 Million Women
32	Climate Action Network Australia
33	Mr Peter Moore
34	Australian Parents For Climate Action
35	Institute for Energy Economics and Financial Analysis (IEEFA)
36	National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA)
37	Lynn Benn
38	Australian Energy Producers (AEP)
39	Surfers for Climate
40	Confidential
41	Confidential
42	Confidential
43	Ms Jennifer Reddan
44	Mrs Jacqueline Scruby
45	Australian Marine Conservation Society
46	Environmental Defenders Office
47	Solutions for Climate Australia
48	Advent Energy Limited
49	The Wilderness Society

Appendix Four – Witnesses

9 October 2023

Macquarie Room, Parliament House

Witness	Position and Organisation
Dr Barry Traill AM	Director, Solutions for Climate Australia
Mr Kevin Morrison	Energy Finance Analyst, LNG/Gas Sector, Institute for Energy Economics and Financial Analysis (IEEFA)
Ms Louise Morris	Oil and Gas Campaign Manager, Australian Marine Conservation Society (AMCS)
Mr Joshua Kirkman	Chief Executive Officer, Surfers for Climate
Ms Belinda Baggs	Co-Founder & Director, Surfers for Climate
Ms Hannah Marshall	Partner, Marque Lawyers
Ms Rowan Hanley	Branch Secretary, Northern Beaches, Surfrider Foundation
Mr Brendan Donohoe	President, Northern Beaches, Surfrider Foundation
Mr Peter Morris	Director, Community & Environmental Group, Save Our Coast
Mr Brendan Dobbie	Managing Lawyer, Safe Climate, Environmental Defenders Officer (EDO)
Ms Emma Sestito	Senior Solicitor, Safe Climate, Environmental Defenders Officer (EDO)
Professor Emerita Anne Twomey	
Professor Emeritus Michael Crommelin AO	
Ms Sue McCarrey	Chief Executive Officer, National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA)
Mr Cameron Grebe	Head, Environment, Renewables and Decommissioning, National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA)
Mr David Breeze	Chief Executive Officer, Advent Energy Limited
Mr Victor Violante	General Manager, Policy & Advocacy, Australian Energy Producers
Ms Georgina Beattie	Chief Executive Officer, Mining, Exploration & Geoscience, Department of Regional NSW
Ms Jamie Tripodi	Executive Director Assessments & Systems, Mining, Exploration & Geoscience, Department of Regional NSW

Appendix Five – Extracts from minutes

MINUTES OF MEETING NO 2

2.10 PM, 31 July 2023

Room 1136 and videoconference

Members present

Mr Barr (Chair), Mrs Quinnell (Deputy Chair), Mrs Hannan, Ms Stuart (by videoconference) and Ms Sloane

Officers present

Stephanie Mulvey, Anna Tran, Sukhraj Goraya and Alex Read

1. Confirmation of minutes

Resolved, on the motion of Mrs Quinnell, seconded Ms Sloane: That the corrected minutes of the meeting of 29 June 2023 be confirmed.

2. Inquiry into Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023

The Committee considered the inquiry into the Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023.

2.1. Terms of Reference

The Committee noted the referral by the House of the Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023 in the following extract from the Legislative Assembly Votes and Proceedings no. 15 and considered the draft Terms of Reference:

Legislative Assembly Votes and Proceedings no. 15, 29 June 2023, entries no. 16 and 17:

The order of the day was read for the resumption of the interrupted debate, on the motion of Mr Alex Greenwich:

(1) That the Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023 (the bill) be referred to the Legislative Assembly Standing Committee on Environment and Planning for consideration and report, for the purpose of inquiring into:

(a) any constitutional issues or unintended consequences raised by the bill, and whether any amendments may address those;

- (b) whether there are other ways to achieve the intended outcomes of the proposed bill including through the New South Wales Government offshore exploration and mining policy;
- (c) enforcement and compliance issues raised by the bill;
- (d) environmental impacts of offshore drilling; and
- (e) any other related matter.

(2) The committee may seek independent legal advice.

(3) The committee report by 21 November 2023.

(4) The resumption of the debate on the second reading of the bill be restored to the Business Paper on the tabling of the committee's report.

...

Question put.

The House divided.

...

Question passed.

Resolved, on the motion of Mrs Hannan, seconded Mrs Quinnell: That the Committee inquire into and report on the *Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023*, with particular reference to:

- a) Any constitutional issues or unintended consequences raised by the bill, and whether any amendments may address those;
- b) Whether there are other ways to achieve the intended outcomes of the proposed bill including through the New South Wales Government offshore exploration and mining policy;
- c) Enforcement and compliance issues raised by the bill;
- d) Environmental impacts of offshore drilling; and
- e) Any other related matter.

2.2. Suggested inquiry timeline

Resolved, on the motion of Ms Stuart, seconded by Mrs Hannan:

- That the Committee meet and receive a private briefing with Professor Anne Twomey on 21 August 2023.
- That the Committee conduct a public hearing on 9 October 2023.

2.3. Submissions

The Committee considered a call for submissions and potential stakeholders to invite to make submissions.

Resolved, on the motion of Mrs Quinnell, seconded Mrs Hannan: That the Committee call for submissions to be received by 31 August 2023 and invite the following stakeholders to make a written submission:

Local community and advocacy groups

- Save our Coast
- Surfers for Climate
- Surfrider Foundation Australia
- Surf Life Saving NSW

Impacted local councils

- Newcastle City Council
- Central Coast Council
- Northern Beaches Council
- Lake Macquarie City Council

Aboriginal organisations

- Darkinjung Local Aboriginal Land Council
- Awabakal Local Aboriginal Land Council
- Worimi Local Aboriginal Land Council
- La Perouse Local Aboriginal Land Council
- NSW Aboriginal Land Council
- Coastal Traditional Owner groups (via NTSCORP)

Legal organisations and experts

- Environmental Defenders Office
- Constitutional legal experts
 - Professor George Williams
 - Professor Adrienne Stone
 - Professor Anne Twomey
- Law Society of NSW

- NSW Bar Association

Universities

- University of Newcastle

Resource industry groups

- Minerals Council of NSW
- Minerals Council Australia
- Advent Energy (owner of Asset Energy)
- Australian Petroleum Production Exploration Association

Environmental and advocacy groups

- Nature Conservation Council NSW
- The Climate Council
- Australian Marine Conservation Society
- Institute of Energy Economics and Financial Analysis
- Climate Works
- Blueprint Institute
- Solutions for Climate
- Australian Conservation Foundation
- Doctors for the Environment

NSW Government

- Department of Regional NSW
- Department of Planning and Environment
- NSW Environmental Protection Authority

Federal Government

- National Offshore Petroleum Safety and Environmental Management Authority
- National Offshore Petroleum and Titles Administrator
- Department of Industry, Science and Resources
- Department of Climate Change, Energy the Environment and Water
- Australian Maritime Safety Authority

2.4. Media release

The Committee noted the draft media release announcing the launch of the inquiry and calling for submissions.

2.5. Legal advice

The Chair provided an update about the process for seeking legal advice on behalf of the Committee.

3. ***

4. Next meeting

The Committee adjourned at 2.38 pm until 21 August 2023.

MINUTES OF MEETING NO 3

9.03 AM, 21 August 2023

Room 1136 and videoconference

Members present

Mr Barr (Chair), Mrs Quinnell (Deputy Chair), Mrs Hannan, Ms Stuart (by videoconference) and Ms Sloane

Officers present

Stephanie Mulvey, Anna Tran, Alex Read and Sukhraj Goraya

1. Confirmation of minutes

Resolved, on the motion of Mrs Hannan, seconded by Ms Sloane: That the minutes of the meeting of 31 July 2023 be confirmed.

2. ***

3. Inquiry into Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023

3.1. Submissions update

The Committee noted that three submissions have been received from individual members of the public.

3.2. Private briefing with Professor Twomey

Resolved, on the motion of Ms Sloane, seconded by Mrs Hannan: That the Committee admit Professor Twomey to the meeting to receive a private briefing.

Professor Twomey joined the meeting at 9.07 am and provided a private briefing on constitutional law. Professor Twomey left the meeting at 9.56 am.

The Committee agreed that the secretariat would circulate confidential notes provided by Professor Twomey to the committee.

3.3. Private briefing with Professor Crommelin

Resolved, on the motion of Mrs Quinnell, seconded by Mrs Hannan: That the Committee received a private briefing from Professor Michael Crommelin about mining laws, on a date and time to be agreed.

The Committee agreed that a draft confidential briefing note would be circulated to the Committee for comment, before being issued to Professor Crommelin.

4. Next Meeting

The meeting adjourned at 10.07 am until 15 September 2023 at 1.00 pm.

MINUTES OF MEETING NO 4

12.01 PM, 31 August 2023

Room 1254 and videoconference

Members present

Mr Barr (Chair) (by videoconference), Mrs Quinnell (Deputy Chair) (by videoconference), Mrs Hannan (by videoconference), Ms Stuart (by phone) and Ms Sloane

Officers present

Stephanie Mulvey, Anna Tran, Janelle Taouk and Abegail Turingan

1. Confirmation of minutes

Resolved, on the motion of Mrs Quinnell, seconded Ms Sloane: That the minutes of the meeting of 21 August 2023 be confirmed

2. ***

3. Inquiry into Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023

3.1. Submissions update

The Committee noted submissions received to date and that copies of the submissions will be circulated separately.

3.2. Private briefing with Professor Crommelin

Resolved, on the motion of Mrs Quinnell, seconded Ms Sloane: That the Committee admit Professor Crommelin to the meeting to receive a private briefing.

Professor Crommelin joined the meeting at 12.05 pm by Webex and provided a private briefing on constitutional law and offshore regulatory regime. Professor Crommelin left the meeting at 12.54 pm.

4. ***

5. **Next meeting**

The meeting adjourned at 1.10 pm until 15 September 2023 at 1.00 pm.

MINUTES OF MEETING NO 5

1.01 PM, 15 September 2023

Room 1136 and via videoconference

Members present

Mr Barr (Chair), Mrs Quinnell (Deputy Chair) (by videoconference), Mrs Hannan (by videoconference), Ms Stuart (by videoconference) and Ms Sloane (by videoconference)

Officers present

Stephanie Mulvey, Anna Tran, Sukhraj Goraya and Alex Read

1. **Confirmation of minutes**

Resolved, on the motion of Mrs Hannan, seconded Ms Stuart: That the minutes of the meeting of 31 August 2023 be confirmed.

2. ***

3. ***

4. **Inquiry into Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023**

4.1. **Submissions update**

The Committee considered accepting and publishing submissions received (previously circulated) in accordance with the attached publications status table.

Resolved, on the motion of Ms Stuart, seconded Mrs Hannan:

- That the Committee accept and publish submissions 1-3a, 6,7, 9-19, 21-24, 26-39, 43 and 45-48.
- That the Committee accept and publish submission 5 as partially confidential with redactions of private social media usernames, web advertisements and other unrelated graphics on pages 3-5 and 7-10.
- That the Committee accept and publish submission 8 as partially confidential with name suppressed.
- That the Committee accept and keep confidential submissions 4, 20, 25, 40, 41 and 42.

- That the Committee accept and publish submission 44 as partially confidential with redactions of Appendix A at pages 7-16 and Appendix B at pages 17-23, pending receipt of written confirmation regarding the publication of these Appendices and/or revised copy of submission.
- That the Committee accept and publish submission 49 as partially confidential with a redaction of Appendix 1 at pages 8-57, pending receipt of written confirmation regarding the publication of Appendix 1 and/or revised copy of submission.

4.2. Public Hearing

The Committee discussed potential witnesses to be invited to give evidence at the public hearing on Monday 9 October 2023.

Resolved, on the motion of Mrs Quinnell, seconded Ms Sloane: That the Committee invite stakeholders as agreed by email to appear at a public hearing on Monday 9 October 2023.

4.3. Independent legal advice

The Committee received an update about the process for getting legal advice and considered the next steps.

Resolved, on the motion of Mrs Quinnell, seconded Mrs Hannan: That the Clerk be requested to instruct an appropriately qualified legal practitioner to obtain independent legal advice on behalf of the Committee to assist with the inquiry, and that a conference be arranged for the Committee to discuss matters.

5. ***

6. Next meeting

The meeting adjourned at 1.27 pm until 9 October 2023 at 9 am.

MINUTES OF MEETING NO 6

9.34 AM, 9 October 2023

Macquarie room and via videoconference

Members present

Mr Barr (Chair), Mrs Quinnell (Deputy Chair), Mrs Hannan, Ms Stuart and Ms Sloane

Officers present

Stephanie Mulvey, Alex Read, Isabella Ciampa, Mohini Mehta

1. Confirmation of minutes

Resolved, on the motion of Mrs Hannan, seconded Ms Sloane:

That the minutes of the meeting of 15 September 2023 be confirmed.

2. ***

3. Inquiry into Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023 (Attachment C)

Pre-hearing deliberative meeting

3.1. Public hearing witnesses

The Committee considered the notice of hearing attached and witnesses who have agreed to appear at the public hearing.

The Committee also noted email from Chair to Committee dated 28 September asking for any objections to the request that Surfers for Climate appear at the hearing alongside Marque Lawyers, who contributed to the legal aspects of their submission.

Resolved, on the motion of Ms Stuart, seconded Mrs Quinnell: That the Committee admit Ms Hannah Marshall from Marque Lawyers to appear alongside Surfers for Climate to give evidence in respect to the matters raised in their advice attached to submission 39.

The Committee also noted an email from the Secretariat dated 21 September suggesting that Professor Michael Crommelin and Professor Anne Twomey appear at the hearing to provide expert legal evidence.

Resolved, on the motion of Mrs Hannan, seconded Ms Sloane: That the Committee admit Professor Michael Crommelin and Professor Anne Twomey to appear to give legal expert evidence.

3.2. Media orders for public hearing

The Committee considered permitting the media to record, photograph and broadcast the day's public hearing.

Resolved, on the motion of Mrs Quinnell, seconded Mrs Hannan: That the Committee authorises the audio-visual recording, photography and broadcasting of the public hearing on 9 October 2023, in accordance with the Legislative Assembly's resolution of 9 May 2023; and the Assembly's guidelines for coverage of proceedings for parliamentary committees administered by the Legislative Assembly.

3.3. Answers to questions taken on notice and supplementary questions

The Committee considered the time taken for which witnesses are to return answers to questions taken on notice and any additional questions.

Resolved, on the motion of Mrs Hannan, seconded Ms Sloane:

- That the Committee adopt the following process in relation to supplementary questions:
 - Members to email any proposed supplementary questions for witnesses to be secretariat by 4pm, Tuesday 10 October 2023;

- Secretariat to then circulate all proposed supplementary questions to Committee, with members to lodge any objections to the questions by 4pm, Wednesday 11 October 2023.
- That witnesses be requested to return answers to questions taken on notice and any supplementary questions within 7 days of the date on which the questions are forwarded to witnesses.

3.4. Update regarding legal advice

The Committee noted the email from the secretariat to the Committee dated 5 October 2023 providing an update regarding legal advice and requests from Counsel.

Resolved, on the motion of Mrs Quinnell, seconded Ms Stuart:

- That the Clerk obtain legal advice on the proposed revised questions, as agreed by the Committee via email on 5 October 2023.
- That the notes prepared by Professor Twomey and the summary of Professor Crommelin's briefing prepared by the secretariat be provided to the legal advisors, as agreed by the Committee via email on 5 October 2023.

3.5. Public hearing – Inquiry into the Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure

The Chair opened the public hearing at 10:00am and made a short opening statement.

The following witnesses were admitted:

- 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, affirmed and examined.
- Dr Barry Traill, AM, Director – Solutions for Climate Australia, affirmed and examined.

Evidence concluded; the witnesses withdrew.

The following witnesses were then admitted:

- 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.

Evidence concluded; the witnesses withdrew.

The following witness were then admitted:

- Professor Michael Crommelin, affirmed and examined.
- Professor Anne Twomey, sworn and examined.
- Ms Emma Sestito, Senior Solicitor, Safe Climate – Environmental Defenders Officer, affirmed and examined.
- Mr Brendan Dobbie, Managing Lawyer, Safe Climate, Environmental Defenders Officer, affirmed and examined.

Evidence concluded; the witnesses withdrew.

The following witnesses were then admitted:

- Ms Sue McCarrey, Chief Executive Officer – National Offshore Petroleum Safety and Environmental Management Authority, sworn and examined.
- Mr Cameron Grebe, Head, Environment, Renewables and Decommissioning – National Offshore Petroleum Safety and Environmental Management Authority, affirmed and examined.

Evidence concluded; the witnesses withdrew.

The following witnesses were then admitted:

- Mr David Breeze, Chief Executive Officer – Advent Energy Limited, sworn and examined.
- Mr Victor Violante, General Manager, Policy and Advocacy – Australian Energy Producers, affirmed and examined.

Evidence concluded; the witnesses withdrew.

The following witnesses were then admitted:

- 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.

Evidence concluded; the witnesses withdrew.

The Chair closed the public hearing at 4:00pm.

Post-hearing deliberative meeting

The Chair opened the deliberative meeting at 4:08pm.

3.6. Publication orders

Resolved, on the motion of Ms Stuart, seconded Mrs Quinnell: That the corrected transcript of public evidence given today be authorised for publication and uploaded on the Committee's webpage.

3.7. Acceptance and publication of tendered documents (if any)

Resolved, on the motion of Ms Sloane, seconded Mrs Hannan:

That the Committee accept the following documents tendered by David Breeze of Advent Energy:

- Article from the Australian on 3 October 2023 titled "Cut gas, fuel poverty: King"
- Article from the Herald Sun on 10 September 2023 titled "Why other Australian states won't follow Daniel Andrew's gas ban in Victoria, and
- Department of Industry, Science and Resources "Future Gas Strategy consultation paper" published on 3 October 2023.

4. ***

5. Next meeting

The meeting adjourned at 4.17 pm until a date to be determined.

MINUTES OF MEETING NO 7

1.36 PM, 23 October 2023

Room 1136 and via videoconference

Members present

Mr Barr (Chair), Mrs Quinnell (Deputy Chair) (by videoconference), Mrs Hannan (by videoconference) and Ms Sloane (by videoconference)

Officers present

Helen Minnican, Stephanie Mulvey, Anna Tran, Alex Read, Sukhraj Goraya

Apologies

Ms Stuart

1. Confirmation of minutes

Resolved, on the motion of Mrs Quinnell, seconded Mrs Hannan: That the minutes of the meeting of 9 October 2023 be confirmed.

2. Inquiry into Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023

2.1. Answers to questions on notice and supplementary questions

Resolved, on the motion of Mrs Quinnell, seconded Mrs Hannan:

- Ms Leah Wilson, NOPSEMA, received 17 October 2023
- Ms Belinda Baggs, Surfers for Climate, prepared by Marque Lawyers, received 18 October 2023
- Mr David Breeze, Advent Energy Ltd, received 18 October 2023
- Mr Victor Violante, Australian Energy Producers, received 19 October 2023.

3. ***

4. Inquiry into Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023 (Attachment C)

4.1. Independent legal advice

Committee attended a conference with Ms Anna Ross, Partner, Corrs Chambers Westgarth; Isabelle Paton, Special Counsel, Corrs Chambers Westgarth; Mr Nicholas Owens SC, Barrister, Fifth Floor St James' Hall; Mr Brendan Lim, Barrister, Eleven Wentworth; and Mr Jackson Wherrett, Barrister, Eleven Wentworth concerning legal advice sought on behalf of the Committee to assist with the inquiry.

5. ***

6. Next meeting

The meeting adjourned at 2.30 pm until 17 November 2023 at 2 pm.

UNCONFIRMED MINUTES OF MEETING NO 8

2.24 PM, 17 November 2023

Room 1136 and via videoconference

Members present

Mr Barr (Chair), Mrs Quinnell (Deputy Chair) (by videoconference), Mrs Hannan, Ms Sloane and Ms Stuart (by phone)

Officers present

Stephanie Mulvey, Anna Tran, Alex Read, Sukhraj Goraya, Caitlin Bailey

1. Confirmation of minutes

Resolved, on the motion of Mrs Quinnell, seconded Mrs Hannan: That the minutes of the meeting of 23 October 2023 be confirmed.

2. ***

3. Inquiry into Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023

3.1. Consideration of Chair's draft report (previously circulated)

Resolved on the motion of Mrs Hannan, seconded Ms Sloane: That the Committee consider the report chapter by chapter.

Discussion ensued.

Resolved on the motion of Ms Sloane, seconded Mrs Hannan: That the Committee consider the report by going through the amendments proposed by Ms Sloane.

Ms Sloane moved: That Finding 5 on page 22 be omitted from the report.

The question was put. The Committee divided.

Ayes: Ms Sloane

Noes: Mr Barr, Mrs Quinnell, Mrs Hannan and Ms Stuart.

The question was resolved in the negative.

Resolved, on the motion of Mrs Hannan: That the words "This means it is unlikely that offshore petroleum activities will be approved in NSW coastal waters." be omitted from the summary on page 22.

Ms Sloane moved: That the words "not pass" be replaced with "pass with amendments" in Recommendation 2 on page 26.

The question was put. The Committee divided.

Ayes: Ms Sloane and Mrs Hannan

Noes: Mr Barr, Mrs Quinnell and Ms Stuart

The question was resolved in the negative.

Ms Sloane moved: That the words " a core" be replaced with "one" in Finding 9 on page 43.

The question was put. The Committee divided.

Ayes: Ms Sloane

Noes: Mr Barr, Mrs Quinnell, Ms Stuart and Mrs Hannan.

The question was resolved in the negative.

Ms Sloane moved that the word "would" be replaced with "could" in Finding 10 on page 45.

The question was put. The Committee divided.

Ayes: Ms Sloane and Mrs Hannan

Noes: Mr Barr, Mrs Quinnell and Ms Stuart.

The question was resolved in the negative.

Resolved on the motion of Ms Sloane, seconded Mrs Hannan: That paragraph 4.3 on page 26 be amended as follows:

- The words "the majority of" be inserted after the word "Therefore", and
- The words "This was not the unanimous view of the Committee, and the Committee acknowledges that Ms Kellie Sloane, MP, Member for Vacluse, and Mrs Judy Hannan MP, Member for Wollondilly, supports the passage of the Bill with amendments." be inserted at the end of the paragraph.

Resolved on the motion of Mrs Quinnell, seconded Ms Stuart:

1. That the draft report as amended be the report of the Committee and that it be signed by the Chair and presented to the Legislative Assembly.
2. That the Chair and committee staff be permitted to correct stylistic, typographical and grammatical errors.
3. That, once tabled, the report be published on the Committee's webpage.

4. ***

5. Next meeting

The meeting adjourned at 4.16 pm until a time and date to be determined.