

The Senate

Economics Legislation Committee

Offshore Petroleum (Laminaria and
Corallina Decommissioning Cost Recovery
Levy) Bill 2021 [Provisions] and Treasury
Laws Amendment (Laminaria and
Corallina Decommissioning Cost Recovery
Levy) Bill 2021 [Provisions]

November 2021

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Miss Joti Saini, Administrative Officer

PO Box 6100

Phone: 02 6277 3540

Parliament House

Fax: 02 6277 5719

Canberra, ACT 2600

email: economics.sen@aph.gov.au

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Chapter 1

Introduction

Referral of the inquiry

- 1.1 The Offshore Petroleum (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021 (the OP levy bill) and the Treasury Laws Amendment (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021 (the TLAB levy bill) were introduced in the House of Representatives and read a first time on 20 October 2021.¹
- 1.2 On 21 October 2021, the Senate referred the provisions of the bills to the Senate Economics Legislation Committee (Legislation Committee) for inquiry and report by 18 November 2021.²

Purpose of the bills

- 1.3 The purpose of the bills is to implement a new, temporary levy on offshore petroleum production to recover the Commonwealth's costs of decommissioning and remediating the Laminaria and Corallina oil fields and related infrastructure,³ including the *Northern Endeavour*.⁴
- 1.4 The intent of the changes was explained by the Assistant Treasurer, the Hon Michael Sukkar MP, on 20 October 2021:

This bill imposes a temporary levy on offshore petroleum production. The purpose of the levy is to recover the costs of decommissioning the Laminaria-Corallina oilfields and associated infrastructure. It will ensure that taxpayers are not left to pay these costs....

The levy will be in place until the net costs associated with the decommissioning have been recovered or 30 June 2030 at the latest. Once net costs have been recovered, the levy will cease.⁵
- 1.5 The levy will apply at a rate of \$0.48 per barrel of oil equivalent produced, based on the annual physical production at the wellhead. It will apply to petroleum

¹ The Hon Michael Sukkar MP, Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing, *House of Representatives Proof Hansard*, 20 October 2021, pp. 6–7.

² Senator Dean Smith, Government Whip in the Senate, *Senate Proof Hansard*, 21 October 2021, p. 19.

³ *Explanatory Memorandum (EM)*, pp. 1 and 5.

⁴ *EM*, p. 3.

⁵ The Hon Michael Sukkar MP, *House of Representatives Proof Hansard*, 20 October 2021, p. 6.

produced on or after 1 July 2021 and will be levied annually in arrears⁶ with the first payment due the first half of 2022–23.⁷

- 1.6 The levy will remain in place until all costs are covered, up until the financial year commencing 1 July 2029, with a mechanisms to terminate the levy early or lower the levy to prevent 'over-collection' by the Government.⁸ The levy will not be deductible for any other form of Commonwealth taxation, including company tax, petroleum resource rent tax, the North West Shelf royalty or crude oil excise.⁹

Background

- 1.7 Following events leading to the shutting down of the *Northern Endeavour* offshore oil and gas floating production storage and offtake facility (FPSOF) in 2019–2020 and placing it into 'lighthouse mode',¹⁰ the federal government in February 2020, stepped into ensure the safety and security of the facility. The government committed to decommissioning the facility and remediating the marine environment, with the project undertaken in three phases and forecast to take several years:

- Phase 1: decommissioning and disconnection of the facility from the subsea equipment
- Phase 2: permanent plugging and abandonment of wells
- Phase 3: removal of subsea infrastructure and remediation.¹¹

- 1.8 In July 2021, the government sought expressions of interest for Phase 1 and repairs and maintenance are being undertaken to prepare the facility for decommissioning.¹²

⁶ *EM*, pp. 1 and 4–7.

⁷ DISER, [Laminaria-Corallina oilfields decommissioning levy: discussion paper](#), p. 2 (accessed 25 October 2021).

⁸ *EM*, pp. 1 and 4–6.

⁹ *EM*, p. 4; see also: DISER, [Laminaria-Corallina oilfields decommissioning levy: discussion paper](#), p. 2 (accessed 25 October 2021).

¹⁰ Department of Industry, Science, Energy and Resources (DISER), [Independent review into the circumstances leading to the administration and liquidation of Northern Oil and Gas Australia \(NOGA\) \(Walker review website\)](#), August 2020 (accessed 25 October 2021).

¹¹ DISER, *Decommissioning the Northern Endeavour*, <https://www.industry.gov.au/policies-and-initiatives/decommissioning-the-northern-endeavour> (accessed 25 October 2021).

¹² DISER, *Decommissioning the Northern Endeavour*, <https://www.industry.gov.au/policies-and-initiatives/decommissioning-the-northern-endeavour> (accessed 25 October 2021).

- 1.9 A cost recovery levy was announced on 11 May 2021 as part of the 2021–22 Budget measures and the bills give full effect to the measure *Decommissioning Costs—Laminaria-Corallina oil fields and associated infrastructure*.¹³
- 1.10 The government budgeted \$75.344 million over two years for the program, including nearly \$9 million to Woodside for the provision of expert advice.¹⁴

Other relevant reviews and inquiries

- 1.11 As part of the development of the enhanced decommissioning framework DISER told the committee during 2020–2021 Budget Estimates, that in 2018 financial securities, including bonds, were considered by the department as a possible mechanism to recoup any Commonwealth costs. DISER noted that 'where similar offshore renewable energy frameworks are being developed internationally, it is common for security, such as a bond, to be required prior to construction commencing'.¹⁵
- 1.12 The Productivity Commission's (PC) 2020 review of resources sector regulation found that:
- Surety arrangements for rehabilitation generally have been inadequate, but are being strengthened. Bonds that cover the full cost of providing rehabilitation offer the highest level of financial assurance for governments, and provide companies with full incentives to complete rehabilitation in a timely way. Surety requirements should be adjusted to reflect and encourage progressive rehabilitation. Jurisdictions are heading in this direction, but a leading practice jurisdiction has not been identified.¹⁶
- 1.13 The PC also noted that having financial assurance arrangements in place provides incentives for companies to meet their obligations and reduces the risk of costs being borne by the government,¹⁷ and hence taxpayers.
- 1.14 The Senate Economics References Committee is presently undertaking an inquiry into Australia's oil and gas reserves. It received evidence and considered matters relating to future decommissioning of oil and gas infrastructure, the *Northern Endeavour* and a subsequent review by

¹³ Explanatory Memorandum (EM) *Offshore Petroleum (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021 and the Treasury Laws Amendment (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021*, pp. 1 and 3; The Hon Keith Pitt MP, '[Boosting jobs and maximising growth to secure Australia's recovery](#)', Media release, 11 May 2021 (accessed 25 October 2021).

¹⁴ DISER, Answer to question on notice BI-2, Senate Budget Estimates 2020–2021, 28 October 2020 (received 10 December 2020).

¹⁵ DISER, Answer to question on notice BI-1, Senate Budget Estimates 2020–2021, 28 October 2020 (received 10 December 2020).

¹⁶ Productivity Commission (PC), [Resources Sector Regulation: Productivity Commission Study report overview](#), November 2020, p. 26 (accessed 25 October 2021).

¹⁷ PC, [Resources Sector Regulation: Productivity Commission Study report overview](#), November 2020, p. 48 (accessed 25 October 2021).

Mr Steve Walker, and options for decommissioning cost recovery, including a levy. The inquiry's report is due to be tabled on 2 December 2021.¹⁸

Provisions of the bills

Overview of the amendments

1.15 The new, temporary decommissioning cost recovery levy is given effect through two bills, which share an Explanatory Memorandum (EM):

- Offshore Petroleum (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021 (the OP levy bill); and
- Treasury Laws Amendment (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021 (the TLAB levy bill).

1.16 The OP levy bill implements a new, temporary levy on offshore petroleum production to recover the Commonwealth's costs of decommissioning and remediating the Laminaria and Corallina oil fields and related infrastructure,¹⁹ including the *Northern Endeavour*.²⁰

1.17 The OP levy bill contains a number of provisions which enable the levy, noting that there is no equivalent current law.²¹ These include:

- the application of the levy to registered holders of petroleum production licences under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*;
- setting the levy rate at 48 cents per barrel of oil equivalent produced each levy year;
- a mechanism to prevent over collection of levy over and above the Commonwealth's unrecovered costs;
- the establishment of the period of operation for the financial years beginning between 1 July 2021 and 1 July 2029; and
- a mechanism to terminate the levy once the Resources Minister is satisfied that public costs have been recovered.²²

1.18 The TLAB levy bill has one schedule and amends the *Income Tax Assessment Act 1997*, the *Petroleum Resource Rent Tax Assessment Act 1987* and the

¹⁸ Parliament of Australia, Australia's oil and gas reserves, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Australiasoilandgas (accessed 25 October 2021); see, for example: 350.org Australia, Submission to the Senate References Committee inquiry into Australia's oil and gas reserves, *Submission 48*, p. 2; DISER, *Decommissioning the Northern Endeavour*, <https://www.industry.gov.au/policies-and-initiatives/decommissioning-the-northern-endeavour> (accessed 25 October 2021).

¹⁹ EM, pp. 1 and 5.

²⁰ EM, p. 3.

²¹ EM, p. 5.

²² EM, pp. 3–4.

Tax Administration Act 1953 to specify administrative features of the cost recovery levy, including those relating to:

- modification of the *Income Tax Assessment Act 1997* to specify that the levy is non-deductible;
- modification of the *Petroleum Resource Rent Tax Assessment Act 1987* to add payments of levy to the list of excluded expenditure. 'This ensures, amongst other things, that the levy is an excluded cost for the purposes of calculating upstream and downstream costs under the residual pricing method';²³ and
- modification of the *Tax Administration Act 1953* to limit the objection period and period of review for the levy, specify that the levy is payable to the Commissioner of Taxation, and to ensure that ordinary tax collection and recovery provisions apply.²⁴

Detailed explanation of the new laws

Offshore Petroleum (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021

1.19 The bill introduces the *Offshore Petroleum (Laminaria and Corallina Decommissioning Cost Recovery Levy) Act 2021*.

1.20 The bill also makes provision for the development of regulations.²⁵

Who is liable to pay the levy

1.21 The levy will apply to all registered holders of a petroleum production licence during the levy year.²⁶

When the levy is payable

1.22 A levy year is each financial year beginning between 1 July 2021 and 1 July 2029.²⁷

Levy payable

1.23 The levy rate is the lesser of:

- 48 cents per barrel of oil equivalent of petroleum recovered at the wellhead by an entity in offshore licence areas during the licence period; and
- the Commonwealth's unrecovered costs at the end of the levy year, divided by the total barrels of oil equivalent of petroleum produced under all

²³ EM, p. 4.

²⁴ EM, p. 4.

²⁵ Proposed section 13 of the Offshore Petroleum (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021.

²⁶ Proposed section 6 of the Offshore Petroleum (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021.

²⁷ EM, p. 5.

licences in the levy year (the distributed levy rate), based on information reported to or available to the Commissioner of Taxation.²⁸

- 1.24 Petroleum has the same meaning as defined in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.²⁹
- 1.25 The EM notes that barrel of oil equivalent is not defined in the bill, but that it is commonly understood in the industry to be a unit of energy approximately equal to one barrel of crude oil (158.8973 litres) and can be applied to both oil and natural gas production.³⁰
- 1.26 The Society of Petroleum Engineers' 'commonly used calculation method for gas conversion for intercompany comparison purposes is: 1 barrel of oil equivalent = 5.8 thousand standard cubic feet (Mscf) or 164.24 cubic metres (cu.m) of gas at STP (15°C and 1 atm)'.³¹

Mechanisms to prevent levy over-collection

- 1.27 The bill provides two mechanisms designed to prevent over-collection of the levy from relevant entities:
- determination by the Resources Minister in relation to the Commonwealth's unrecovered costs (leading to the application of the distributed levy rate); and
 - early termination of the levy.³²
- 1.28 Under the unrecovered costs mechanism, the Commonwealth's total unrecovered costs incurred by decommissioning-related activities—or the amount by which the total amount of the levy assessed for previous levy years falls short of the net decommissioning costs—is calculated within six months after the end of the levy year.³³
- 1.29 The distributed levy rate (less than 48 cents per barrel of oil equivalent) is then applied to prevent over-collection of the levy.³⁴

²⁸ EM, pp. 5–6; proposed subsections 11(1) and (2) of the Offshore Petroleum (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021.

²⁹ Proposed section 6 of the Offshore Petroleum (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021.

³⁰ EM, p. 6.

³¹ EM, p. 6.

³² EM, pp. 5–6.

³³ Proposed section 8 of the Offshore Petroleum (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021.

³⁴ Proposed subsection 11(1) of the Offshore Petroleum (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021.

- 1.30 The EM advises that it is not anticipated that this mechanism will be used in the first few levy years, but that it is expected to be applied towards the end of the levy to ensure that the total levy collected approximately equates to the Commonwealth's decommissioning costs.³⁵
- 1.31 Under the early termination mechanism, the Resources Minister may determine by legislative instrument that no financial year after the current year (up until 1 July 2028) is a levy year, effectively terminating the levy as of 30 June following the determination.³⁶
- 1.32 The minister is only permitted to make this determination if they are satisfied that the total decommissioning cost at the end of the current year would not exceed the total of the levy collected and that further decommissioning related costs are unlikely to be incurred beyond the current year.³⁷
- 1.33 The EM notes that this mechanism is limited in its application to ensure that the levy achieves its core purpose of recovering Commonwealth costs:

Due to the uncertain nature of the decommissioning and remediation activities, it is not possible to provide for an early termination mechanism on the face of the law because doing so would add significant complexity and risk the legislation not achieving its core purpose.³⁸

Treasury Laws Amendment (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021

- 1.34 The bill's only schedule, Schedule 1, proposes to amend the *Income Tax Assessment Act 1997*, the *Petroleum Resource Rent Tax Assessment Act 1987* and the *Tax Administration Act 1953* to specify administrative features of the cost recovery levy.

Income Tax Assessment Act 1997

- 1.35 The bill inserts proposed section 26-96 preventing the Laminaria and Corallina decommission levy paid being deducted from an entity's assessable income when calculating taxable income.³⁹
- 1.36 The bill also makes consequential amendments to definitions.⁴⁰

³⁵ EM, p. 6.

³⁶ Proposed section 7 of the Offshore Petroleum (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021; EM, p. 7.

³⁷ Proposed subsection 7(4) of the Offshore Petroleum (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021.

³⁸ EM, p. 7.

³⁹ Proposed section 26-96 of the *Income Tax Assessment Act 1997*; subsection 4-15(1) of the *Income Tax Assessment Act 1997*.

⁴⁰ Proposed subsection 995-1(1) of the *Income Tax Assessment Act 1997*; subsection 4-15(1) of the *Income Tax Assessment Act 1997*.

Petroleum Resource Rent Tax Assessment Act 1987

1.37 The bill inserts proposed paragraph 44(1)(ga) which defines levy payments as excluded expenditure. The EM states that 'this ensures, amongst other things, that the levy is an excluded cost for the purposes of calculating upstream and downstream costs under the residual pricing method'.⁴¹

Tax Administration Act 1953

1.38 The bill proposes to modify the *Tax Administration Act 1953* to:

- limit the period within which an objection to an assessment of the levy amount can be lodged to 60 days after the levy assessment is provided. This period is intended to provide certainty to both the government and industry about the amount of levy required to be paid and help ensure appropriate collection of the levy;⁴²
- specify a requirement to give the Commissioner of Taxation a return relating to the Laminaria and Corallina decommissioning levy within 6 months after the end of the financial year, even if the levy liable to be paid is nil.⁴³ This timeframe provides sufficient time to accurately report production figures for the levy year;⁴⁴
- specify that the Commissioner of Taxation will make assessments and issue notices of assessment to liable entities, based on production figures and the standard rate of 48 cents per barrel of oil equivalent or, if the Resources Minister has made a determination, based on the distributed levy rate⁴⁵
- specify that the levy is payable to the Commissioner of Taxation within 21 days of provision of the notice of assessment or amended notice of assessment;⁴⁶
- limit the standard period of review for an assessment of the levy amount to six months;⁴⁷ and

⁴¹ EM, p. 4.

⁴² EM, p. 8; proposed paragraph 14ZW(1)(gb) amendments and proposed paragraph 14ZW(1)(bga) to the *Tax Administration Act 1953*.

⁴³ Proposed Schedule 1 Part 3-17, Division 125, section 125-5 to the *Tax Administration Act 1953*.

⁴⁴ EM, p. 7.

⁴⁵ Proposed Schedule 1 Part 3-17, Division 125, subsection 125-10(1) to the *Tax Administration Act 1953*; proposed Schedule 1 Part 3-17, Division 125, section 125-15 to the *Tax Administration Act 1953*.

⁴⁶ Proposed Schedule 1 Part 3-17, Division 125, subsections 125-10(1) and (2) to the *Tax Administration Act 1953*.

⁴⁷ Proposed Schedule 1 Part 3-17, Division 125, subsections 125-15(1) and (2) to the *Tax Administration Act 1953*.

- define the levy and shortfall interest charge as tax-related liabilities⁴⁸ and ensure that ordinary taxation collection and recovery provisions apply in relation to the levy, including, for example, confidentiality obligations, objections, reviews and appeals, and use of the Commissioner of Taxation's enforcement and penalty powers.⁴⁹

1.39 The bill also makes provision for a person to be liable for shortfall and general interest charges on amended assessments and outstanding payments to ensure they do not benefit 'in the form of a free loan over those who assess correctly',⁵⁰ and consequential amendments to definitions.⁵¹

Consultation

1.40 The EM does not reference any consultation activities in relation to the bills. However, DISER conducted consultation in relation to the levy and its operation⁵² and Treasury conducted public consultation on the exposure bills between 16 and 23 September 2021. Responses have not been published for either consultation.⁵³

1.41 During his second reading speech, the Assistant Treasurer, the Hon Mr Sukkar MP told the House of Representatives that the government had conducted public consultation and worked with the oil and gas industry in relation to the design and operation of the levy:

Public consultation occurred, and the government accepted a number of recommendations put forward by industry in the final design and operation of the levy.

As such, the final design of the levy ensures it's temporary, targeted and effective at recovering costs with as little regulatory burden as possible.⁵⁴

⁴⁸ Proposed Schedule 1 Part 3-17, Division 125, subsection 250-10(2) to the *Tax Administration Act 1953*.

⁴⁹ Proposed Schedule 1 Part 3-17, Division 356, section 356-15 and subsection 357-55(fe) to the *Tax Administration Act 1953*; EM, p. 8.

⁵⁰ Proposed subsection 8AAB(4) amendments and proposed Schedule 1 Part 3-17, Division 125, subsections 125-10(3) and (4) to the *Tax Administration Act 1953*; *Tax Administration Act 1953*, s. 280-50.

⁵¹ Proposed subsection 2(1) amendments to the *Tax Administration Act 1953*.

⁵² DISER, *Laminaria-Corallina oilfields decommissioning levy: consultation open*, 24 June 2021, <https://www.industry.gov.au/news/laminaria-corallina-oilfields-decommissioning-levy-consultation-open> (accessed 25 October 2021); DISER, *Laminaria-Corallina oilfields decommissioning levy: discussion paper*, pp. 1–2 (accessed 25 October 2021).

⁵³ Treasury, *Laminaria-Corallina Decommissioning Levy*, <https://treasury.gov.au/consultation/c2021-201956> (accessed 25 October 2021).

⁵⁴ The Hon Michael Sukkar MP, Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing, *House of Representatives Proof Hansard*,

Commencement

- 1.42 The OP levy bill commences on the day after Royal Assent.
- 1.43 The amendments to the various acts enabled by the TLAB levy bill commence at the same time as the OP levy bill, and apply in relation to financial years starting on or after 1 July 2021.⁵⁵

Financial impact

- 1.44 The financial impact of the bills on recipients of the measure is 'not for publication reflecting commercial sensitivities'. The compliance cost impact was assessed as minimal.⁵⁶

Regulatory impact

- 1.45 The EM is silent on any regulatory impact and no Regulatory Impact Statement has been published in relation to the bills.⁵⁷

Human rights implications

Statement of Compatibility with Human Rights

- 1.46 As discussed in the EM, the Statement of Compatibility with Human Rights (Compatibility Statement) states that the bills are compatible with the human rights and freedoms recognised in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, and thus do not raise any human rights issues.⁵⁸

Human rights scrutiny report

- 1.47 The Parliamentary Joint Committee on Human Rights has not yet considered the two bills, however to date the secretariat has not identified any issues that are likely to engagement human rights, promote human rights, and/or permissibly limit human rights.⁵⁹

20 October 2021, p. 6; see also: The Hon Keith Pitt MP, '[Northern Endeavour to be decommissioned](#)', *Media release*, 14 December 2020 (accessed 25 October 2021).

⁵⁵ EM, p. 9.

⁵⁶ EM, p. 1.

⁵⁷ Office of Best Practice Regulation, Department of the Prime Minister and Cabinet, *Published Impact Analyses*, 25 October 2021, <https://obpr.pmc.gov.au/published-impact-analyses-and-reports> (accessed 25 October 2021).

⁵⁸ EM, p. 11.

⁵⁹ Parliamentary Joint Committee on Human Rights, conversation with secretariat 2 November 2021.

Conduct of the inquiry

1.48 The committee advertised the inquiry on its website and wrote to relevant stakeholders and interested parties inviting written submissions by 8 November 2021.

Submissions and public hearings

1.49 The committee received a total of 14 submissions which are listed in Appendix 1. The committee also received additional information, including answers to questions taken on notice (as listed in Appendix 1).

1.50 Evidence provided to the inquiry into Australia's oil and gas reserves, undertaken by the References Committee, was also considered by this committee in the development of its report.

1.51 A public hearing was held on 8 November 2021. The names of witnesses who appeared at the hearings are listed at Appendix 2.

Acknowledgements

1.52 The committee thanks all the individuals and organisations who assisted with the inquiry, especially those who made written submissions and participated in the public hearing. The committee also notes its appreciation to References Committee for their consideration of matters relating to the levy and secretariat members for their research into the bills.

Chapter 2

Views on the bill

Summary of the issues

- 2.1 This chapter examines the views held by stakeholders on the provisions of the Offshore Petroleum (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021 (the OP levy bill); and Treasury Laws Amendment (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021 (the TLAB levy bill). It is based on the bills' explanatory materials and submissions received by this inquiry, including a public hearing in Canberra on 8 November 2021, and additional material submitted to the committee.
- 2.2 Submissions showed widespread support for the bills in a modified form. A small number of submitters did not support the bills. Submissions also raised a number of issues in relation to the bills which are not directly related to their provisions. These issues are discussed later in the chapter:
- consultation conducted in relation to the bills;
 - regulation of the Laminaria-Corallina fields decommissioning and implications for the environment and safety;
 - levy transparency measures;
 - issues relating to the transfer of the Laminaria-Corallina fields to the Democratic Republic of Timor-Leste; and
 - capability opportunities and a just transition away from fossil fuels for communities.
- 2.3 This chapter provides an indicative, although not exhaustive, account of the key issues relating to both bills. It concludes with the committee's views and recommendations on the bills.

Overall support for the bills

Majority support with modification

- 2.4 The majority of submissions to the inquiry supported the bills and their intent to impose a levy on oil and gas production to meet Commonwealth decommissioning costs associated with the Laminaria-Corallina fields.¹

¹ See, for example: Wilderness Society, *Submission 2*, p. [2]; Offshore Alliance, *Submission 3*, p. 6; Friends of the Earth Australia, *Submission 4*, p. 1; Australasian Centre for Corporate Responsibility (ACCR), *Submission 7*, p. 1; Jubilee Australia, *Submission 8*, p. 3; Publish What You Pay Australia, *Submission 10*, p. 1; Mr Benjamin Cronshaw, *Submission 12*, p. 1; Australia Institute, *Submission 13*, p. 3.

- 2.5 Offshore Alliance thought that it was unacceptable for Australian taxpayers to pay for the decommissioning work, and welcomed the bills effecting the levy:

The Offshore Alliance very much supports the legislation. The *Northern Endeavour* must be removed, all associated wells properly plugged, the subsea oil and gas equipment removed, and any damage these activities have caused to the seabed and subsoil must be remediated.

...

It is completely unacceptable that after many years of profitable operation any industry cost should be borne by taxpayers – yet the government has already paid or committed to pay over \$200 million to operate the former Woodside Floating Production, Storage and Offtake (FPSO) vessel *Northern Endeavour*, and the total bill after decommissioning could reach \$1 billion.²

- 2.6 Likewise, Friends of the Earth Australia wrote that 'the levy is a welcomed response to the absence of industry responsibility over the decommissioning of the *Northern Endeavour*.'³ Ms Jess Lerch from the Wilderness Society, noted their support for the bill:

We support this levy. I think we are all aware that the *Northern Endeavour* mess tracks back to Woodside. Now the government has to clean up that mess, and we strongly important the important precedent that the industry must pay these clean-up costs, not the taxpayer.⁴

- 2.7 Most of the submissions supporting the bills also recommended amendments to the bills before they are passed in order to ensure full decommissioning and rehabilitation, and in order to ensure the Commonwealth's costs are fully covered. Possible amendments are discussed in more detail below.

- 2.8 The Offshore Alliance recommended that the object of the OP levy bill be made explicit thorough the insertion of additional wording reflecting the object and purpose of the levy for the removal of subsea infrastructure and remediation, along the following lines:

The object of this Act is to impose a temporary levy on all leviable entities to recover the costs of the Australian Government of plugging all wells, removing oil and gas equipment and property, providing for the conservation and protection of natural resources, and making good any associated damage to the seabed or subsoil in the Laminaria and Corallina oil fields, and establishing infrastructure in Australia to facilitate this work.⁵

² Offshore Alliance, *Submission 3*, pp. 6–7.

³ Friends of the Earth, *Submission 4*, p. 1.

⁴ Ms Jess Lerch, Corporate Campaign Manager, Wilderness Society, *Proof Committee Hansard*, 8 November 2021, p. 8.

⁵ Offshore Alliance, *Submission 3*, p. 16.

- 2.9 When the levy was announced the media reported that the oil and gas labelled the levy as 'over the top and extreme' and were unhappy that the levy was to be applied to all offshore production, not just Woodside.⁶

Alternative solutions

- 2.10 The inquiry received two submissions which did not fully support the passing of the bills, from the Australian Petroleum Production and Exploration Association (APPEA) and Chevron Australia.⁷

- 2.11 On behalf of its members, APPEA expressed concerns at the impact of the levy on the oil and gas industry, suggesting that it would increase uncertainty and have a stifling effect on investment at a time when the industry is trying to invest in new energy supply and emissions reduction technologies. APPEA also thought that the bills would force liabilities to be borne by all Australian oil and gas operators 'despite the failures of regulation, regulators and a few industry participants', including operators who derived no economic benefit from the resource.⁸

- 2.12 APPEA submitted that it would have preferred another solution to the recovery of government-incurred decommissioning costs, and that there was an opportunity to make the levy more efficient and effective:

... we would prefer the government to work with industry to find a sensible solution, and a levy is a fairly blunt tool. That said, that's what's before us now. The decision has been made to implement a levy, so our focus is now on ensuring that the levy, in its design and its operation, is as effective and as efficient as it can be.⁹

- 2.13 Chevron Australia told the committee that it is 'strongly opposed' to the levy:

In its current form, the levy punishes Chevron and other responsible resource holders for the failings of others. Chevron has already demonstrated its commitment to best practice decommissioning and has properly provisioned for its own decommissioning liabilities. Chevron is also being asked to pay via the levy a substantial portion of the decommissioning costs of the LamCor [Laminaria-Corallina] assets, thereby subsidising the failings of the companies that participated in and benefited from the production of the asset.¹⁰

⁶ See, for example: Mike Foley and Nick Toscano, '[Woodside hits out at rig clean-up levy as industry rift with government widens](#)', *Sydney Morning Herald*, 18 July 2021 (accessed 26 October 2021); APPEA, '[New NOGA levy is extreme](#),' *Media release*, 29 June 2021 (accessed 26 October 2021); Ben Butler, '[Oil and gas industry fights Morrison government levy of up to \\$1b to decommission rig](#),' *The Guardian*, 12 May 2021 (accessed 26 October 2021).

⁷ APPEA, *Submission 6*, p. 1; Chevron Australia, *Submission 9*, p. 1.

⁸ APPEA, *Submission 6*, pp. 1 and 14.

⁹ Mr Andrew McConville, APPEA, *Proof Committee Hansard*, 8 November 2021, p. 14.

¹⁰ Chevron Australia, *Submission 9*, pp. 1–2.

- 2.14 Chevron Australia noted that it did not benefit in any way from the oil and gas profits from the Laminaria-Corallina field but is forecast to pay more than one-fifth of the total estimated costs—around 70 per cent more than Woodside, the next largest levy payer,¹¹ and the previous owner of the *Northern Endeavour*.
- 2.15 The Department of Industry, Science, Energy and Resources' (DISER) submission to the committee maintained that 'the levy will ensure taxpayers are not left to pay these costs, sharing the burden equitably among industry based on their production'.¹²

Offshore Petroleum (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021

Definitions

- 2.16 A number of witnesses raised concerns with the definition of 'decommissioning' in the bill, noting that the term is not defined in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act).¹³
- 2.17 The OPGGS Act uses the terms 'removal of property', 'plugging or closing off of wells', 'conservation and protection of natural resources' and 'making good of damage to the seabed or subsoil' when referring to decommissioning activities undertaken by operators.¹⁴
- 2.18 In their submission to the inquiry the ACCR noted that
- Section 572 of the *Offshore Petroleum and Greenhouse Gas Storage (OPGGS) Act 2006* refers to the 'maintenance and removal of property' (s.572) and stipulates that titleholders 'must remove from the title area all structures that are, and all equipment and other property that is, neither used nor to be used in connection with the operations' (s.572, 3). NOPSEMA's [National Offshore Petroleum Safety and Environmental Management Authority] maintenance and removal of property regulatory policy (November 2020) also refers clearly to the 'maintenance and removal of property'.¹⁵

¹¹ Chevron Australia, *Submission 9*, p. 2.

¹² DISER, *Submission 5*, p. 3.

¹³ See, for example: Mr Taylor Rundell, National Economist, Australian Workers' Union (AWU), *Proof Committee Hansard*, 8 November 2021, p. 5; Offshore Alliance, *Submission 3*, p. 15; ACCR, *Submission 7*, p. 2.

¹⁴ Note: the OPGGS Act uses the term decommissioning only in relation to directions, safety, agency functions and regulations. See, for example: *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, para. 780A(5)(f); para. 592(2)(g); subpara. 699(1)(a)(vi); Schedule 3, subpara. 4(1)(b)(v).

¹⁵ ACCR, *Submission 7*, p. 2.

2.19 The bill provides a new definition of decommissioning as follows:

... decommissioning includes all activities associated with or connected to the decommissioning of the *Northern Endeavour*, including:

- (a) the disconnection, removal and disposal of the *Northern Endeavour*; and
- (b) the suspension, plugging (whether temporary or permanent) and abandonment of wells in the Laminaria and Corallina oil fields and flushing of associated pipelines; and
- (c) removal or any other treatment of subsea infrastructure from the Laminaria and Corallina oil fields; and
- (d) associated environmental remediation.¹⁶

2.20 In the course of receiving evidence from witnesses during the public hearing the committee observed that the definition of decommissioning changed between the release of the OP levy bill exposure draft and the bill presented to the Parliament. The exposure draft bill defined decommissioning as including 'the removal of subsea infrastructure'.¹⁷ The OP levy bill defines decommissioning as including 'removal or any other treatment of subsea infrastructure'.

2.21 Ms Marie Illman, General Manager at DISER, told the committee that the term 'decommissioning' was used in the proposed act as it is a more modern term, which is readily understood and used in the oil and gas industry, under the broader concept of removal of property and remediation of the environment. DISER requested the definitional change to ensure that there is flexibility in the options available, enabling the best environmental outcome.¹⁸

2.22 The Treasury advised that the definition is intended to reflect the range of potential costs that may be incurred by the government, and did not seek to impose any requirements on how the decommissioning may be undertaken. The Treasury advised that consultation in relation to the bill, undertaken with DISER,¹⁹ comprised targeted consultation with APPEA and its members before the exposure draft of the bill was released for public consultation.²⁰

2.23 APPEA told the committee that it had not specifically lobbied for the definition change for 'decommissioning' and highlighted that flexibility in decommissioning was important to ensure the best environmental outcomes:

¹⁶ Proposed section 6, OP levy bill.

¹⁷ See, for example: Senator Dorinda Cox, Senate Economics Legislation Committee, *Proof Committee Hansard*, 8 November 2021, p. 17; Senator Anthony Chisholm, Deputy Chair, Senate Economics Legislation Committee, *Proof Committee Hansard*, 8 November 2021, p. 28; Proposed section 6, OP levy bill, Exposure draft.

¹⁸ Mr Paul Trotman, Head of Division, Resources Division, DISER, Correspondence received 15 November 2021.

¹⁹ See also: DISER, *Submission 5*, pp. 3–4.

²⁰ Mr Simon Winckler, Director, Special Tax Regimes, Treasury, *Proof Committee Hansard*, 8 November 2021, p. 34.

In some instances, the best environmental outcome may be to leave some of those assets in situ. That's an assessment that needs to be made by the regulator. What it was designed to do was to ensure that all those options are considered to deliver the best environmental outcome. If it were a specific statement that said, 'This was required,' then you may actually, by virtue of legislation, be forced into a worst environmental outcome. The removal of it actually provides the flexibility to ensure that what is going to deliver the best outcome is fully considered.²¹

'Removal or other treatment' and 'abandonment of wells'

2.24 Several submitters drew the committee's attention to their concern that the definition of 'decommissioning' used by the OP levy bill, and in particular the inclusion of the words 'removal *or any other treatment* [emphasis added] of subsea infrastructure' moderates NOPSEMA's default position of complete removal, and that full removal of infrastructure may not occur.²² They thought that this, combined with the alternative regulatory arrangement would set an unwelcome precedent, noting that DISER's tender documentation said the project 'will set the standard for future similar activities in Australian waters'.²³

2.25 NOPSEMA advised the committee of the potential for subsea infrastructure and other structures to contain a range of plastics, metals and other contaminants, noting that they present potential environmental risks:

The breakdown of subsea umbilicals and other structures may result in the release of materials (including plastics and metals) over differing timescales. A range of impacts and risks may be associated with release of these materials, such as:

- impacts to marine water quality, benthic communities and habitats from the release of contaminants and plastics to the water column;
- lethal or sublethal effects to marine fauna from ingestion or entanglement; and
- risk to human health through bioaccumulation of contaminants through the food chain.²⁴

2.26 The ACCR²⁵ and the Wilderness Society agreed that the standards used for this project would set a precedent for future decommissioning work and argued that the work should be of the highest standard, with the Wilderness Society writing:

It is our view that, like it or not, the standard to which the *Northern Endeavour* is decommissioned is likely to set the upper benchmark for future decommissioning — and must be considered in the context of the

²¹ Mr McConville, APPEA, *Proof Committee Hansard*, 8 November 2021, p. 17.

²² ACCR, *Submission 7*, p. 2.

²³ Offshore Alliance, *Submission 3*, p. 9.

²⁴ NOPSEMA, Answer to question on notice, Number 8, 8 November 2021 (received 15 November 2021).

²⁵ ACCR, *Submission 7*, p. 1.

scale of the challenge this industry is facing in relation to completing the very substantial amount of decommissioning liabilities coming down the line, as well as existing concerns about cost cutting and substandard maintenance issues in the industry.²⁶

- 2.27 The ACCR also thought that the ability for companies to apply for a 'deviation from removal requirements' under the enhanced decommissioning framework,²⁷ where they can demonstrate 'equal or better environmental outcomes' was failing. They also thought that it was unclear whether this would apply to the decommissioning of the *Northern Endeavour*.²⁸
- 2.28 The Offshore Alliance submitted that the new definition raises unprecedented risks associated with decommissioning by permitting 'any other treatment' of infrastructure, 'with potentially devastating long-term environmental consequences'. While the Offshore Alliance suggested that the definition may be used to broaden the government's authority to spend funds which can be recouped by the levy, it speculated that 'the concern is that these additional words may foreshadow an intention by the government to not completely remove the subsea infrastructure, or for industry to apply the new definition in other circumstances'.²⁹
- 2.29 Likewise, the Offshore Alliance, Maritime Union of Australia (MUA), Australian Workers' Union (AWU)³⁰ and Friends of the Earth Australia³¹ told the committee of its concerns with the definition, including allowing 'the suspension, plugging (whether temporary or permanent) and abandonment of wells in the Laminaria and Corallina oil fields and flushing of associated pipelines' and the potential for considerable environmental damage. The Offshore Alliance thought that this inclusion did not align with accepted language in the OPGGS Act or NOPSEMA Directions and must be removed

²⁶ Wilderness Society, *Submission 2*, pp. 1–2.

²⁷ NOPSEMA advised the committee that it is currently considering seven Environment Plans (EPs) under assessment where a deviation from removal requirements is being sought, in relation to: Montara 1,2,3 and Skua-1 Wellheads; Thebe-1 Wellhead; Calthorpe-1 Wellhead; Woollybutt field; Balnaves field; Echo Yodel Capella field; and West Tryal Rocks 2 wellhead. NOPSEMA, Answer to question on notice, Number 7, 8 November 2021 (received 15 November 2021).

²⁸ ACCR, *Submission 7*, p. 2.

²⁹ Offshore Alliance, *Submission 3*, p. 15.

³⁰ Offshore Alliance, MUA, AWU, Answer to question on notice, Number 1, 8 November 2021 (received 12 November 2021).

³¹ Friends of the Earth Australia, *Submission 4*, p. [2].

from the bill, stating that work completed under the levy must involve the permanent plugging of wells.³²

- 2.30 The Wilderness Society and the ACCR questioned the environmental outcomes associated with leave in place decommissioning, with the ACCR submitting that:

Oil and gas companies are highly motivated to minimise their rehabilitation costs and the industry has often advocated for 'rigs to reefs'. ACCR notes there is a lack of independent and peer-reviewed research into the environmental benefits of leaving oil and gas structures in Australian waters. Current concerns include physical damage to existing benthic habitats (should the asset be moved and dropped from its original location), undesired impacts on marine food chains, the facilitation of the spread of invasive species and the release of contaminants as rigs corrode.³³

- 2.31 The Wilderness Society and Mr Taylor Rundell of the AWU suggested that removal of infrastructure should be the baseline of any purpose of the act to support full decommissioning.³⁴ The Offshore Alliance recommended that the current definition of 'decommissioning' be amended to refer to 'decommissioning costs' and that the provisions of the OPGGS Act and existing NOPSEMA policies be used to guide the work.³⁵
- 2.32 A number of submitters suggested that the definition of 'decommissioning' be expanded to include the recycling of facilities in order to create additional jobs in transport and dismantling, as well as providing raw materials.³⁶

Commonwealth's decommissioning costs

- 2.33 There was some discussion by witnesses as to the total anticipated costs associated with decommissioning the Laminaria-Corallina fields, impacting on the implementation of provisions relating to the levy period, the levy rate and early termination of the levy.
- 2.34 DISER advised that does not have a final cost for the remediation and decommissioning³⁷ and that it cannot disclose what the government's costs will

³² Offshore Alliance, MUA, AWU, Answer to question on notice, Number 1, 8 November 2021 (received 12 November 2021).

³³ ACCR, *Submission 7*, pp. 2–3.

³⁴ Wilderness Society, *Submission 2*, p. [2]; Mr Rundell, AWU, *Proof Committee Hansard*, 8 November 2021, p. 5.

³⁵ Offshore Alliance, *Submission 3*, pp. 15–16; Mr Rundell, AWU, *Proof Committee Hansard*, 8 November 2021, p. 5.

³⁶ Offshore Alliance, *Submission 3*, p. 16; ACCR, *Submission 7*, p. 2; Wilderness Society, *Submission 2*, p. 1.

³⁷ Mr Paul Trotman, Head of Division, Resources Division, DISER, *Proof Committee Hansard*, 8 November 2021, p. 26.

be, given it is currently running a global procurement. Mr Paul Trotman, Head of Division at DISER, told the committee that:

As part of that, it would be very difficult for us to put a number out in the public realm because it would potentially jeopardise the ability for the government to get best value for money if the figure was out there. But there has been a lot of speculation in the media around what the costs of the total levy might be.³⁸

- 2.35 Similarly, the Treasury advised that the total expected to be collected through the levy—or the government's decommissioning costs—are not for publication due to the commercial sensitivities of the procurement process. Further, the Treasury advised that it had not separately costed or modelled what decommissioning costs would be, but it relied on costings and estimates developed through the Department of Finance and DISER.³⁹
- 2.36 DISER anticipated that it would have a better idea of costs once expression of interest and request for proposal processes are completed, with benchmarking and independent expert advice providing assurance that the decommissioning is obtaining value for money and not wasting funds.⁴⁰

Costs covered by the levy

- 2.37 DISER and the Treasury told the committee that a range of direct and indirect costs are expected to be covered by the levy including but not limited to:
- costs associated with operating and maintaining the *Northern Endeavour* including wells and infrastructure, including before decommissioning commences;
 - preparing for decommissioning and decommissioning processes (such as disconnection, removal and disposal of the *Northern Endeavour* as well as plugging the wells and removal of any subsea infrastructure and associated environmental remediation);
 - any costs arising from spending in emergency circumstances, such as a significant oil spill;
 - insurances;
 - procurement and assessment of any alternative proposals put forward by industry;
 - obtaining legal advice in preparing contracts to undertake the works and other costs associated with the Commonwealth having to establish the Northern Endeavour Taskforce as a result of the Australian Government action to keep the Laminaria and Corallina oilfield, including legal costs

³⁸ Mr Trotman, DISER, *Proof Committee Hansard*, 8 November 2021, p. 26.

³⁹ Mr Winckler, Treasury, *Proof Committee Hansard*, 8 November 2021, pp. 35–36.

⁴⁰ Mr Shane Gaddes, Head of Liquid Fuels and Northern Endeavour Division, DISER, *Proof Committee Hansard*, 8 November 2021, p. 30.

associated with current legal proceedings in the New South Wales Supreme Court;

- administrative expenditure paid by DISER to external parties;
- costs of the Northern Endeavour Taskforce; and
- regulatory costs incurred by NOPSEMA.⁴¹

2.38 The Treasury confirmed that it does not cover costs such as Commonwealth financing costs or departmental costs.⁴²

2.39 Mr Shane Gaddes from DISER, advised the committee that around \$148 million had been spent on decommissioning the Laminaria-Corallina fields to date,⁴³ with \$230 million in contracts committed to maintaining the *Northern Endeavour* as at March 2021.⁴⁴

Cost-efficiencies and cost-cutting

2.40 Chevron Australia thought that the levy, as currently structured, does not provide an incentive for the government to manage its costs in a cost-efficient manner,⁴⁵ and clearly remained concerned at the amount the levy would collect from oil and gas producers which were not responsible for the events leading to the government takeover of the *Northern Endeavour* and associated responsibilities.

2.41 The committee heard evidence that Upstream Production Solutions' (UPS) costs associated with operating the *Northern Endeavour* in lighthouse mode appear to be more than double KPMG's production mode costs. Senator Rex Patrick queried whether this was providing value for taxpayers. Mr Gaddes advised the committee that the engagement of UPS was done in accordance with the Commonwealth Procurement Rules and that the scope of work undertaken in lighthouse mode was 'vastly different' to normal operations, with additional decommissioning readiness incurring additional costs. The department was unable to comment further due to legal proceedings.⁴⁶

⁴¹ Mr Trotman, DISER, *Proof Committee Hansard*, 8 November 2021, p. 23; Mr Gaddes, DISER, *Proof Committee Hansard*, 8 November 2021, pp. 25–26; Mr Winckler, Treasury, *Proof Committee Hansard*, 8 November 2021, p. 36; NOPSEMA, *Submission 11*, p. [2]; Treasury, Answer to question on notice, Levy cost coverage, 8 November 2021 (received 12 November 2021).

⁴² Mr Winckler, Treasury, *Proof Committee Hansard*, 8 November 2021, p. 36.

⁴³ Mr Gaddes, DISER, *Proof Committee Hansard*, 8 November 2021, pp. 25–26.

⁴⁴ DISER, Answer to question on notice, AI–21, 2020–21 Additional Estimates, 25 March 2021 (received 20 May 2021).

⁴⁵ Chevron Australia, *Submission 9*, p. 2.

⁴⁶ Senator Rex Patrick, Senate Economics Legislation Committee and Mr Gaddes, DISER, *Proof Committee Hansard*, 8 November 2021, p. 32; DISER, Answer to question on notice, Number 7, 8 November 2021 (received 15 November 2021).

2.42 Some witnesses thought that the government would be under considerable pressure from the oil and gas industry to reduce costs, and thereby the total amount levied on the industry.⁴⁷ Mr Liam O'Brien Assistant Secretary of the Australian Council of Trade Unions (ACTU) told the committee of the potential for cost-cutting:

As I'm sure others have noted and the committee is very aware of, decommissioning of assets is not something that businesses or operators will profit from and therefore it is highly likely that it's exposed to cost-cutting practices. Others have talked about experiences elsewhere throughout the industry and how this has often played out, but it should not be understated that the issues that face decommissioning of these assets are really increased by the economic situation.⁴⁸

2.43 This view was supported by Mr Rod Campbell of the Australia Institute:

Returning again to what Saul Kavonic told the Petroleum Club NT, he said: 'As many in the audience would know, companies have not really been decommissioning, even once the facility comes to the end of its life. They're just mothballing it and ticking it over and pushing it down the road. I would argue that, other things being equal, we won't see a mooted decommissioning boom looming. If anything, companies have no appetite for spending decommissioning dollars while the oil price is low.' What we're seeing is, wherever possible, oil and gas companies will try and pass decommissioning costs on to other smaller companies and eventually on to the taxpayer, as the *Northern Endeavour* debacle has shown.⁴⁹

Levy period and termination

2.44 Proposed section 7 of the OP levy bill considers the levy period and early termination mechanism. Submitter views on the levy period and termination focussed on how the levy period was calculated and whether this would allow sufficient time for government costs to be recouped, restriction of the levy period to four years, the suggestion of a permanent levy and the powers of the minister in relation to early levy termination.

Need for a permanent levy

2.45 A number of submissions discussed their concerns about the wider decommissioning liabilities and wave of decommissioning work that will be required as facilities in Australian waters age and fields stop producing.⁵⁰ The Offshore Alliance explained the size of the challenge:

⁴⁷ Dr Penny Howard, National Research Officer, Maritime Union of Australia and Offshore Alliance, *Proof Committee Hansard*, 8 November 2021, p. 6; Ms Lerch, Wilderness Society, *Proof Committee Hansard*, 8 November 2021, p. 9.

⁴⁸ Mr Liam O'Brien, Assistant Secretary, ACTU, *Proof Committee Hansard*, 8 November 2021, p. 6.

⁴⁹ Mr Campbell, The Australia Institute, *Proof Committee Hansard*, 8 November 2021, p. 18.

⁵⁰ See, for example: Wilderness Society, *Submission 2*, p. [3]; Offshore Alliance, *Submission 3*, pp. 11–12; Friends of the Earth Australia, *Submission 4*, p. [2]; ACCR, *Submission 7*, p. 2.

A report for National Energy Resources Australia in February on total decommissioning liability found that decommissioning would cost \$52 billion AUD (\$40.5 billion US), based on total removal of all offshore equipment, and there are:

- 1,008 offshore wells;
- 57 fixed facilities with 237,000 tonnes topside and 518,000 tonnes underwater;
- 82 pipelines with a total length of 4,960km, plus 205 infield flowlines (1,700km);
- 130 umbilicals with a length of 1,500km; and
- 535 subsea structures such as manifolds.⁵¹

2.46 A number of submissions expressed concerns that the oil and gas industry would not take full responsibility for the costs associated with decommissioning, with the potential for costs to be borne by taxpayers, worker safety and the environment.⁵² They argued for the levy to be extended or made permanent.

2.47 The Australia Institute thought that provision should be made for the levy to be extended in the event of future abandonments, or other costs arising, such as the later discover of substandard work, or future innovations in decommissioning or changed expectations around decommissioning standards, recommending changes to the bill:⁵³

The bigger picture is that we're concerned that this narrow focus on this one incident is, perhaps, if not blinding the committee, certainly narrowing the focus of discussion to one incident, whereas, really, there is a massive and industry-wide task ahead of us. So ensuring that this legislation could either be changed or extended to help address some of that wider problem would be really useful, in our view.⁵⁴

2.48 350.org Australia welcomed the application of the temporary levy and recommended that a permanent levy be implemented to cover decommissioning costs and reduce public risk:

... [the levy] is being heavily fought by the petroleum industry and lobby groups, who have called the minor, 1 per cent per barrel, or 48 cent levy 'extreme' and it seems it would prefer to see the public bear the costs of cleaning up after the oil and gas industry. A permanent levy is needed or an

⁵¹ Offshore Alliance, *Submission 3*, p. 11.

⁵² The Australia Institute, *Submission 13*, pp. 3 and 6–7. See, for example: Jubilee Australia, *Submission 8*, p. 3; Wilderness Society, *Submission 2*, p. [3]; Offshore Alliance, *Submission 3*, pp. 11–12; Friends of the Earth Australia, *Submission 4*, p. [2]; ACCR, *Submission 7*, p. 2.

⁵³ The Australia Institute, *Submission 13*, pp. 3 and 6–7.

⁵⁴ Mr Campbell, The Australia Institute, *Proof Committee Hansard*, 8 November 2021, p. 19; The Australia Institute, *Submission 13*, p. 6.

overhaul of the legislative framework is needed to ensure that clean-up costs are carried by the companies who have profited from infrastructure.⁵⁵

- 2.49 This opinion was shared by the Wilderness Society and Mr Benjamin Cronshaw,⁵⁶ with the Wilderness Society advising that a permanent levy would offset the risks associated with Australia's rapidly ageing and end of production facilities and full removal decommissioning.⁵⁷
- 2.50 The Offshore Alliance told the committee that when the levy was first announced there was as no end date and that subsequently an end date of 2029–30 was inserted into the bill, with no mechanism for extension. It noted that no information about how the levy period was calculated has been made publicly available and speculated that 'there is no evidence that the decommissioning task will be completed by then'. The Offshore Alliance recommended that the levy should remain in place until all decommissioning work is completed.⁵⁸
- 2.51 NOPSEMA provided evidence to the committee that, unless otherwise approved in an environmental plan (EP), all property and equipment is required to be removed in accordance with the provisions of the OPGGS Act, and that there are currently six EPs that include petroleum activities for the removal or otherwise satisfactorily dealing with property. NOPSEMA also noted that it conducted an initial series of inspections to support its Decommissioning Compliance Strategy and that it has stepped up its regulatory response to non-compliance and lack of planning in relation to oil and gas decommissioning:

This identified a range of situations where little or no planning for removal was in place for facilities near or past the end of operations.

In response, NOPSEMA has issued a number of General Directions to titleholders to plug or close off wells, remove property and provide for the conservation and protection of natural resources. These notices are published on NOPSEMA's website. NOPSEMA has developed and published a Compliance Plan outlining steps to be taken to bring all titleholders into compliance using a tiered approach.⁵⁹

Termination of the temporary levy

- 2.52 Treasury told the committee that the levy end date was fixed in order to send 'a clear signal that the levy is a temporary measure', and that the 2029–30 end date was a conservative choice of date which would ensure that all costs are

⁵⁵ 350.org Australia, Submission to the Senate References Committee inquiry into Australia's oil and gas reserves, *Submission 48*, p. 2.

⁵⁶ Mr Cronshaw, *Submission 12*, p. [1].

⁵⁷ Wilderness Society, *Submission 2*, pp. [3–4].

⁵⁸ Offshore Alliance, *Submission 3*, p. 17.

⁵⁹ NOPSEMA, Answers to questions on notice, Numbers 10 and 11, 8 November 2021 (received 15 November 2021).

recovered.⁶⁰ When asked what would happen if costs had not been fully recovered by 2029–30 the Treasury that this would be a decision for the government of the time.⁶¹

2.53 DISER advised that the ability to terminate the levy early was an important design feature of the levy, and it would 'support the department in undertaking this large and unprecedented project [by matching levy collection with project spending], without over-collecting monies from industry'. DISER did, however, note that during consultation stakeholders raised policy objections to some key features of the levy, including in relation to the timeframe and the total amount collected.⁶²

2.54 During the public hearing, Senator Dorinda Cox asked how the government will measure when the removal and remediation are complete. In response Mr Gaddes said that it was too early for DISER to determine that and that:

Any approvals that we would be operating under—for example, the environment plan and the well operations management plan from NOPSEMA—and also any conditions that are attached to the EPBC Act [*Environment Protection and Biodiversity Conservation Act 1999*] approval by the environment minister will guide when we finish decommissioning. So it's too early for us to tell what conditions the regulators will apply and when those conditions will be met.⁶³

2.55 Friends of the Earth Australia⁶⁴ and the Offshore Alliance expressed concern that the levy could be terminated early. The Offshore Alliance thought that the potential for an early end date may:

...lead to cost pressure, particularly as the levy does not include any other requirements on the quality of work, or independent checks to ensure removal and remediation are completed. All of the details in the legislation are about limiting cost.⁶⁵

2.56 The AWU were blunt in their assessment of the levy end date:

... the time frame is set for the end of this levy by 2029 but we have no idea whether the task will be done by 2029. Further, as Adrian's mentioned, the resources minister can decide that the levy ends at any point and he'll be under great pressure to do [so]. The levy should apply while it's needed. There shouldn't be an opportunity to end it before the need for it is gone.⁶⁶

⁶⁰ Mr Winckler, Treasury, *Proof Committee Hansard*, 8 November 2021, p. 33.

⁶¹ Mr Winckler, Treasury, *Proof Committee Hansard*, 8 November 2021, p. 37.

⁶² DISER, *Submission 5*, pp. 4–5.

⁶³ Mr Gaddes, DISER, *Proof Committee Hansard*, 8 November 2021, p. 30.

⁶⁴ Friends of the Earth Australia, *Submission 4*, p. [2].

⁶⁵ Offshore Alliance, *Submission 3*, p. 18.

⁶⁶ Mr Rundell, AWU, *Proof Committee Hansard*, 8 November 2021, p. 5.

2.57 APPEA, supported by Chevron Australia,⁶⁷ recommended that the levy apply for no more than four years, ending on 30 June 2025. It estimated that a 2025 end-date would result in the collection of \$1.6 billion. It also noted that 'in our view, the collections that result from the levy will increase as production increases and new offshore projects come online', 'providing significant coverage of the government's costs' and limiting the potential for overpayments.⁶⁸

Powers of the Resources Minister

2.58 Mr Simon Winckler from Treasury told the committee that the ability of the Resources Minister to terminate the levy early was suitable mechanism, designed to balance the government's desire to fully recover costs—which remain uncertain—with the need for the levy to end once costs have been recouped.⁶⁹

2.59 APPEA also questioned the termination mechanism for the levy, noting that any such decision would be a disallowable instrument. It advised that this would create uncertainty for oil and gas operators, impacting negatively on 'financial accounts, reserves assessments, investment decisions and what should be contemplated at end of a field life'.⁷⁰

2.60 The Offshore Alliance thought that the Resources Minister should not have complete discretion to decide what decommissioning work is done and when the levy should end. They thought that a more rigorous process should be put in place and that a single minister should not have the power to terminate the levy⁷¹ but that any change to the end date or the amount of the levy should only be made by a disallowable Parliamentary instrument, accompanied by a 'publicly-available inspection report to verify the work required under the EPBC Act referral and any other nominated legislation is complete'.⁷²

Alternative mechanisms

2.61 APPEA also recommended that the levy auto-terminate once all costs had been recovered to prevent the levy continuing beyond the period required to recover costs. It contended that the provisions of the bill make it difficult to terminate the levy early, with the need to satisfy multiple conditions, including that the

⁶⁷ Chevron Australia, *Submission 9*, p. 2.

⁶⁸ APPEA, *Submission 6*, p. 3; APPEA, Answer to question on notice, Number 1, 8 November 2021 (received 12 November 2021).

⁶⁹ Mr Winckler, Treasury, *Proof Committee Hansard*, 8 November 2021, p. 34.

⁷⁰ APPEA, *Submission 6*, p. 3.

⁷¹ Offshore Alliance, *Submission 3*, p. 18.

⁷² Offshore Alliance, MUA, AWU, Answer to question on notice, Number 1, 8 November 2021 (received 12 November 2021).

Commonwealth would be 'unlikely' to incur further costs, and because of parliamentary processes. APPEA thought that, without further guidance or threshold, in relation to the term 'unlikely' it would be difficult for the Resources Minister to make a determination for early termination and that any such decision would be open to regulatory challenge.⁷³

- 2.62 The Australia Institute thought that the levy should have been applied to the entities involved in the *Northern Endeavour* project, with the levy backdated to ensure that all those entities involved were held responsible.⁷⁴

Levy rate and calculation of levy amount

- 2.63 The levy rate is set at 48 cents per barrel of oil equivalent (BOE) produced, as measured at the wellhead.⁷⁵ The Treasury advising the committee that this rate reflects a 'a judgement' about the anticipated decommissioning costs and the collection of funds to cover these costs 'within a reasonable time frame from the government's perspective' and taking account of the amount of production anticipated amongst levy holders in the levy years.⁷⁶

Ability to vary the levy rate

- 2.64 The Treasury also clarified that the Resources Minister has the power to lower the rate of the levy where they make a determination that in a given year unrecovered costs would be over recovered if the levy remained at 48 cents per BOE.⁷⁷
- 2.65 APPEA were of the view that the Australian Tax Office (ATO) should be able to vary the rate down 'in circumstances where the amount collected by the levy in any year would exceed total unrecovered costs without the need for a legislative instrument'. They argued that this would help ensure the collection of appropriate amounts and help prevent overpayments.⁷⁸
- 2.66 APPEA observed that the Resources Minister has the ability to vary the levy rate down to zero cents per BOE via disallowable instrument, effectively terminating the levy. However, it noted that this would raise regulatory issues as oil and gas producers would still be required to comply with their reporting obligations under the bill, even if no levy was imposed.⁷⁹

⁷³ APPEA, *Submission 6*, pp. 3–4.

⁷⁴ Mr Campbell, The Australia Institute, *Proof Committee Hansard*, 8 November 2021, p. 19.

⁷⁵ Mr Trotman, DISER, *Proof Committee Hansard*, 8 November 2021, p. 23.

⁷⁶ Mr Winckler, Treasury, *Proof Committee Hansard*, 8 November 2021, p. 33.

⁷⁷ Mr Winckler, Treasury, *Proof Committee Hansard*, 8 November 2021, p. 33.

⁷⁸ Mr McConville, APPEA, *Proof Committee Hansard*, 8 November 2021, p. 13.

⁷⁹ APPEA, *Submission 6*, p. 4.

2.67 The Wilderness Society's Ms Lerch, told the committee that there should be scope for the levy rate to be increased 'if or when' the current rate is demonstrated to be insufficient to recoup government spending on the Laminaria-Corallina fields.⁸⁰

Overpayments

2.68 In relation to overpayments, APPEA thought that the bill in its current form risks the collection of overpayments, despite the ability for the minister to vary the levy rate and termination date. It thought that overpayment mechanisms should be included in the bill to ensure that:

- overpayments are returned to levy payers (along with interest);
- amounts returned are not later assessable for income tax and the Petroleum Resource Rent Tax (PRRT);
- any interest on overpayments should also not be assessable; and
- any interest on funds held due to overpayments or timing differences should be reported and either returned or reinvested.⁸¹

Calculation point

2.69 Chevron Australia raised concerns in relation to calculation of the levy on the basis of production at the well-head due to inaccuracies in this approach. It told the committee that the material passing through the well-head consists of not only hydrocarbons, but also inert gasses and water, and potentially sand, and that there is no way to measure hydrocarbons specifically. Chevron Australia submitted that this would lead to 'inaccurate' and 'potentially erratic results'. As an alternative it suggested that production be measured after impurities have been removed—at the point the oil and gas is sent to the liquified natural gas or condensate storage tanks and domestic gas rundown, at their respective custody transfer points, or at other locations where the operator can demonstrate confidence in the accuracy of the measurement.⁸²

Treasury Laws Amendment (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021

2.70 Submitters had no comments on the operation of the bill in relation to assessments, issue of notices, payment of the levy, periods of review or interest charges. Witnesses raised concerns with three main issues resulting from this bill.

⁸⁰ Ms Lerch, Wilderness Society, *Proof Committee Hansard*, 8 November 2021, p. 8.

⁸¹ APPEA, *Submission 6*, pp. 5–6.

⁸² Chevron Australia, *Submission 9*, pp. 2–3.

Deductibility of the levy

- 2.71 APPEA, with support from Chevron Australia,⁸³ was concerned that levy payments would not be tax deductible for other tax purposes, such as income tax, PRRT, the North West Shelf royalty or crude oil excise.⁸⁴
- 2.72 DISER indicated that non-deductibility is a design feature of the levy, aimed at ensuring taxpayers do not pay for decommissioning costs.⁸⁵ However, APPEA observed that this approach is punitive, discriminatory, and inconsistent with the general deductible treatment of levies, rents and royalties not linked to taxable income, such as the Major Bank Levy.
- 2.73 APPEA argued for levy payments to be made explicitly tax deductible, or that the levy be made deductible under general deductibility provisions, in alignment with 'normal taxation and accounting outcomes that would have occurred under a normal decommissioning arrangement.'⁸⁶
- 2.74 APPEA advised that additional costs for industry will need to be collected by operators from customers, or investments, costs and expenditure reduced in order to meet the costs of the levy:

We also observe that the fiscal impact of the levy extends beyond the levy itself with the impact compounded by the imposition of a 'tax-on-tax' by denying legitimate deductions for the levy. We would submit this creates a dilemma for the government arising from its capacity to profit from a failure to adequately regulate the circumstances whereby those who benefit from a petroleum project, remediate the project. If the levy remains not deductible for broad taxation purposes (economically equivalent to a 58 per cent net 'tax-on-tax'), taxpayers subject to the levy will need to collect additional revenue of \$238 plus GST for every \$100 of levy ($\$100 / (1-58 \text{ per cent})$) to fund the levy (or reduce deductible expenditure by the same amount) or reduce costs and expenditure by the same amount. This additional revenue or cost cutting will shift the burden of the levy and 'tax-on-tax' to customers and communities while the government will receive nearly 2.5 times the cost of decommissioning.⁸⁷

Assessability of any payments made to producers

- 2.75 If the levy remains non-deductible, APPEA recommended that any payments or receipts received by producers in association with the levy be treated as non-assessable non-exempt income for taxation purposes, including in relation to

⁸³ Chevron Australia, *Submission 9*, p. 2.

⁸⁴ Mr McConville, APPEA, *Proof Committee Hansard*, 8 November 2021, p. 17; see also: DISER, *Submission 6*, p. [7].

⁸⁵ DISER, *Submission 6*, p. 4.

⁸⁶ APPEA, *Submission 6*, p. 4.

⁸⁷ APPEA, Answer to question on notice, Number 3, 8 November 2021 (received 12 November 2021).

any refunded amounts. It argued that this would 'help reduce the impact of the levy on consumers'.⁸⁸

Excluded expenditure for the PRRT purposes

2.76 APPEA was also concerned that the levy would impact the Residual Pricing Method (RPM) used to calculate the price for gas at the PRRT taxing point. It thought that the levy should be specified as an excluded cost in the *PRRT Assessment Regulation 2015* to ensure that taxable receipt amounts subject to PRRT are not inflated, resulting in the collection of an additional 40 cents for each dollar of the levy paid.⁸⁹

Other issues raised in relation to the bills

2.77 Submissions also raised a number of issues not directly related to the provisions of the bills, discussed in more detail below.

Consultation on the bills

2.78 DISER confirmed that a range of consultation rounds were facilitated in the course of the bills' development, aimed at streamlining administration of the levy and minimising the regulatory burden, including:

- development and distribution of a levy discussion paper. This was provided to APPEA on 4 June 2021 and released on the department's website on 24 June 2021, with Minister Pitt writing directly to a range of domestic and international stakeholders;
- two meetings between DISER, Treasury, APPEA and its members in June–July 2021; and
- ad-hoc consultation with non-APPEA members and the public; and
- Treasury public release of exposure drafts of the bills for comment in September 2021.⁹⁰

2.79 DISER noted that the consultation process did not reach a consensus view on some aspects of the bills, including where production should be measured, the implications of using the different measurement points and the units of volume used. It also noted that stakeholders raised policy objections to key features of the levy including:

- application of the levy to all oil and gas producers;
- the impact of the levy on future oil and gas investments;
- the non-deductible nature of the levy and the flow on impacts;
- the inability for titleholders to access any PRRT credits that former titleholders paid in relation to the project; and

⁸⁸ APPEA, *Submission 6*, p. 7.

⁸⁹ APPEA, *Submission 6*, p. 7.

⁹⁰ DISER, *Submission 5*, pp. 3–4; Mr Trotman, DISER, *Proof Committee Hansard*, 8 November 2021, p. 25.

- the timeframe and amount to be collected by the levy.⁹¹
- 2.80 DISER stated that it provided feedback obtained during consultation to the Treasury and assisted the Treasury in the formulation key aspects of the legislation.⁹²
- 2.81 The committee queried a number of witnesses about their involvement in the consultation process, which appeared to have been largely targeted at oil and gas industry stakeholders, and whether the consultation had been sufficient. Dr Penny Howard, from the MUA, told the committee:
- ... [it] was a bit unusual. We made a consultation to the department's enhanced decommissioning framework consultation that ran December-January last year. That was fairly widely advertised and did have a reasonable length of time attached to it. Quite unusually, when submissions opened on these other aspects of the decommissioning task, there were actually very brief consultation periods and we weren't notified of them either. There weren't any notifications sent to any of our organisations about them and, because the period was only a couple of weeks for each of them, we did actually miss them. It was a missed opportunity on our part, but we also think that the government should have made a greater attempt to contact organisations representing the workforce carrying out these projects.⁹³
- 2.82 However, even the oil and gas industry was dissatisfied with the consultation, with APPEA noting 'a large component of the recommendations made were disregarded without feedback or reasoning'.⁹⁴

Options other than a levy

- 2.83 The Australia Institute suggested that an alternative to the levy could be decommissioning bonds, with Australian states successfully using this mechanism for the rehabilitation of mine sites. Although it noted that NSW holds \$3 billion in bonds while the costs of filling coal mine voids in the Hunter Valley is projected to cost \$25 billion. It suggested that:

... a well-designed system would provide an incentive for each operator to make adequate provision for decommissioning. We recommend that the committee investigate the potential for expanding the proposed levy into a system of decommissioning bonds.⁹⁵

⁹¹ DISER, *Submission 5*, p. 5.

⁹² DISER, *Submission 5*, p. 4; see also: Mr Trotman, DISER, *Proof Committee Hansard*, 8 November 2021, p. 23.

⁹³ Dr Howard, MUA, *Proof Committee Hansard*, 8 November 2021, pp. 6–7.

⁹⁴ APPEA, Answer to question on notice, Number 5, 8 November 2021 (received 12 November 2021).

⁹⁵ The Australia Institute, *Submission 13*, p. 7.

2.84 The Wilderness Society also supported the notion of bonds, with money set aside for decommissioning, with Mr Tim Beshara telling the committee that bonds could be a useful longer-term solution where industry has to bear the risk, as has been done in other jurisdictions.⁹⁶ He pointed to the United States Bureau of Ocean Energy Management and the Alberta Energy Regulator (Canada), both of which require financial assurance or bonds to fund decommissioning activities. He did, however, note that even with an industry-managed fund in place in Alberta, it is anticipated that this will not be sufficient to meet future liabilities.⁹⁷

2.85 The Treasury confirmed that options other than a levy were considered by government, but that it was unable to disclose details as it was a decision of the Cabinet.⁹⁸

Levy transparency measures

2.86 Numerous submitters raised the need to improve transparency in relation to the bills, in particular relating to:

- the government's costs associated with decommissioning and remediating and rehabilitating the Laminaria-Corallina fields;
- reporting on the amount of levy collected; and
- overall tax transparency for the oil and gas industry.

Government costs and processes

2.87 As discussed earlier in the chapter, the government has not released the forecast spending on the decommissioning work. Witnesses provided various estimates, with the Australia Institute estimating government costs of between \$200 million and \$1 billion. It forecast that the levy would raise between \$300 million and \$400 million per annum, based on DISER production forecasts.⁹⁹ APPEA estimated the government's costs at around \$1.2 billion and forecast that the levy would collect approximately \$3.4 billion over nine years—far in excess of the costs incurred.¹⁰⁰

2.88 Publish What You Pay Australia, the Australia Institute, the Offshore Alliance, the AWU and APPEA noted its concerns at the lack of transparency around the

⁹⁶ Mr Tim Beshara, Manager of Policy and Strategy, Wilderness Society, *Proof Committee Hansard*, 8 November 2021, p. 11.

⁹⁷ Mr Beshara, Wilderness Society, Answer to question on notice, 8 November 2021, received 12 November 2021.

⁹⁸ Mr Winckler, Treasury, *Proof Committee Hansard*, 8 November 2021, pp. 34–35; Treasury, Answer to question on notice, Other options considered, 8 November 2021 (received 12 November 2021).

⁹⁹ Mr Campbell, The Australia Institute, *Proof Committee Hansard*, 8 November 2021, p. 18; The Australia Institute, *Submission 13*, pp. 5 and 7–8.

¹⁰⁰ APPEA, *Submission 6*, p. 5.

decommissioning process, as well as forecast government costs,¹⁰¹ with Mr Campbell of the Australia Institute stating that:

This kind of secrecy reduces public confidence in the industry and regulators and limits the public's ability to have input into this policy response. Also, we recommend improving the transparency of how this levy would operate and how much money it might raise.¹⁰²

2.89 APPEA also thought that the secrecy around the anticipated costs was of concern to operators:

Whilst we acknowledge there is a tendering process underway and there are commercial sensitivities with that process, the current drafting of legislation signals to those participating in the procurement process that government is willing to spend almost three times that which is needed by the government to perform the decommissioning and remediating activities to a high standard.¹⁰³

2.90 The Offshore Alliance and ACCR recommended a quarterly report on the government's decommissioning work, including costs, progress of works and any safety or environmental issues to improve transparency and improve industry, investor, worker and community understanding of the activities.¹⁰⁴

Levy collected

2.91 APPEA, Jubilee Australia and the AWU also recommended transparency improvements in relation to the amount of levy collected,¹⁰⁵ with Mr Rundell from the AWU telling the committee:

We'd like to see that those activities are reported on so that industry, workers and those paying the levy understand what is happening as a result of it, that it's not just money going into a black box.¹⁰⁶

2.92 APPEA recommended an annual transparency review and reconciliation process that would disclose the amount of decommissioning expenditure incurred, the amount expected to be incurred in the following 12 months, and the amount recovered through the levy to that point in time.¹⁰⁷

¹⁰¹ Publish What You Pay Australia, *Submission 10*, p. 2.; Mr Campbell, The Australia Institute, *Proof Committee Hansard*, 8 November 2021, pp. 19–20; Offshore Alliance, *Submission 3*, pp. 20–21; Mr Rundell, AWU, *Proof Committee Hansard*, 8 November 2021, p. 5; Mr Simon Staples, Director, Commercial, APPEA, *Proof Committee Hansard*, 8 November 2021, p. 16.

¹⁰² Mr Campbell, The Australia Institute, *Proof Committee Hansard*, 8 November 2021, p. 19.

¹⁰³ APPEA, Answer to question on notice, Number 2, 8 November 2021 (received 12 November 2021).

¹⁰⁴ Offshore Alliance, *Submission 3*, pp. 5 and 20–21; ACCR, *Submission 7*, p. 3.

¹⁰⁵ Mr Staples, APPEA, *Proof Committee Hansard*, 8 November 2021, p. 16; Jubilee Australia, *Submission 8*, p. 3; Mr Rundell, AWU, *Proof Committee Hansard*, 8 November 2021, p. 5.

¹⁰⁶ Mr Rundell, AWU, *Proof Committee Hansard*, 8 November 2021, p. 5.

¹⁰⁷ Mr McConville, APPEA, *Proof Committee Hansard*, 8 November 2021, p. 13.

- 2.93 The ACCR and the Offshore Alliance also recommended annual reporting from the ATO in relation to the amount of levy collected, including the amount collected from each leviabale entity.¹⁰⁸
- 2.94 The Australia Institute recommended involving a range of stakeholders in the oversight of the levy and the wider decommissioning task, including using the existing Extractive Industries Transparency Initiative (EITI) stakeholder group, noting that the oil and gas industry has been broadly supportive of the EITI:
- One possibility would be using Australia's existing Extractive Industries Transparency Initiative and its multistakeholder group which is already set up and has a long track record of meeting and working constructively despite the government's recent reluctance to use it. So there is a body there that is sitting on the shelf just waiting to be used.¹⁰⁹
- 2.95 Jubilee Australia and Publish What You Pay Australia also supported Australia's uptake of the EITI to improve transparency.¹¹⁰
- 2.96 The Australia Institute suggested that the committee make recommendations to improve transparency and to ensure that details of levy payments are available to the public through measures such as the ATO's corporate tax transparency release.¹¹¹ However, the Treasury confirmed that the levy would not form part of these disclosures, but that the government could publish aggregated information about levy collections once they commenced.¹¹²

Wider decommissioning transparency

- 2.97 Publish What You Pay Australia¹¹³ and the Wilderness Society raised issues with wider decommissioning transparency, stating that information about decommissioning liabilities and workplans needs to be more readily available, including for investors in oil and gas companies, communities, and the government. Ms Lerch thought that this information was vital to investors making more informed decisions, with a role for the Australian Securities and Investments Commission in improving reporting. Ms Lerch said:

It's quite hard to invest in developing such a new and large amount of necessary capacity when you don't have a transparent understanding of what works are being composed and when.

So I think that that is one way that we could improve the situation—look at something very similar in terms of dedicated, committed work programs on

¹⁰⁸ ACCR, *Submission 7*, p. 3; Offshore Alliance, *Submission 3*, pp. 20–21.

¹⁰⁹ Mr Campbell, The Australia Institute, *Proof Committee Hansard*, 8 November 2021, pp. 19–20.

¹¹⁰ Jubilee Australia, *Submission 8*, p. 3; Publish What You Pay Australia, *Submission 10*, p. 3.

¹¹¹ Mr Campbell, The Australia Institute, *Proof Committee Hansard*, 8 November 2021, p. 20.

¹¹² Mr Winckler, the Treasury, *Proof Committee Hansard*, 8 November 2021, pp. 35–36.

¹¹³ Publish What You Pay Australia, *Submission 10*, p. 2.

which the government can take action if they're not met, in the same way that we do for exploration.¹¹⁴

- 2.98 Publish What You Pay Australia wanted to see transparency in relation to the wider decommissioning liabilities in Australia, including how much money is being set aside for this work.
- 2.99 In addition to using the EITI stakeholder group, the Australia Institute thought that there was scope to improve overall decommissioning transparency with an approach more like that used by NSW in relation to coalmine rehabilitation liabilities.¹¹⁵
- 2.100 When asked about the possible need for greater transparency in relation to decommissioning, particularly where this is associated with public risk, Mr McConville from APPEA advised that decommissioning requirements had been examined recently through the development of the enhanced framework and amended OPGGS Act earlier in 2021 and that the industry meets all its regulatory requirements, including regularly advising and reviewing with the regulator how they are going to conduct decommissioning of the fields they own and operate and the requirement to demonstrate financial assurance to meet costs.¹¹⁶

Regulation of the Laminaria-Corallina fields decommissioning

- 2.101 A number of submitters drew the issue of responsibility for regulation of the Laminaria-Corallina decommissioning to the committee's attention, with submitters telling the committee that any uncertainty as to who the legally responsible regulator is needs to be resolved urgently.¹¹⁷

Alternative regulatory arrangements

- 2.102 DISER and NOPSEMA told the committee that because there is no titleholder or registered operator for the *Northern Endeavour* the OPGGS Act does not apply, meaning that, NOPSEMA is unable to issue enforcement actions.¹¹⁸
- 2.103 Under the current arrangement DISER has a deed of standing offer with NOPSEMA to provide advice on the activities in relation to the *Northern Endeavour*, and DISER has a contractual arrangement with the current operator UPS which seeks to emulate the regulatory framework. The activities

¹¹⁴ Ms Lerch and Mr Beshara, Wilderness Society, *Proof Committee Hansard*, 8 November 2021, pp. 10–11.

¹¹⁵ Mr Campbell, The Australia Institute, *Proof Committee Hansard*, 8 November 2021, p. 20.

¹¹⁶ Mr McConville, APPEA, *Proof Committee Hansard*, 8 November 2021, pp. 14–15; APPEA, Answer to question on notice, Number 7, 8 November 2021 (received 12 November 2021).

¹¹⁷ See, for example: Wilderness Society, *Submission 2*, p. [3].

¹¹⁸ Mr Karl Heiden, Head of Division, Corporate and Financial Assurance, NOPSEMA, *Proof Committee Hansard*, 8 November 2021, p. 27.

of UPS cannot be inconsistent with the accepted well operations management plan and the environment plan; and the department expects UPS to act in accordance with the previously accepted safety case and operate consistent with good oilfield practice.¹¹⁹

2.104 Mr Gaddes from DISER further advised the committee that the work will be assured through normal NOPSEMA processes and inspections, a range of Lloyd's class inspections, and additional inspections by a member of the Northern Endeavour Taskforce. This will be done through the normal processes under the OPGGS Act, with NOPSEMA then providing advice back to the Northern Endeavour Taskforce as though it were a regulated entity, and then expected to implement that plan.¹²⁰

2.105 The Treasury told the committee that it is not the role of the bills to impose requirements around decommissioning standards or regulation, but merely to capture the range of expenditures that the Commonwealth might incur.¹²¹

2.106 In relation to environmental matters DISER advised the committee that it holds two exemptions under the EPBC Act in relation to the *Northern Endeavour* and that the full decommissioning work will be subject to a referral under the EPBC Act to ensure regulatory requirements are met:

The first one ends at the end of this calendar year and that was for 'lighthouse operations'. Obviously, when you take over a project like this, you don't have the long lead time that most proponents would have to get their regulatory approvals in place. It's not a project that's being put forward by the Commonwealth; it's one that they've taken over. So we now have an exemption for lighthouse operations. The Minister for the Environment recently approved a second exemption for that until the end of 2022. That one is slightly different in make-up. It allows for the limited injection of wells that we might need to do in an emergency or as part of decommissioning. That covers the lighthouse activities and the activities that we have under way at the moment.¹²²

2.107 Jubilee Australia, ACCR and the Offshore Alliance were not satisfied with the current arrangements and recommended that separate safety and environmental regulators be nominated, given the hazardous nature of the decommissioning work, stating that:

Effectively, this puts the Government in the extraordinary position of undertaking decommissioning activity without being required to comply with regulations that would apply to a private company. No regulator for

¹¹⁹ Mr Gaddes, DISER, *Proof Committee Hansard*, 8 November 2021, pp. 28–29.

¹²⁰ Mr Gaddes, DISER, *Proof Committee Hansard*, 8 November 2021, p. 29; Mr Stuart Smith, Chief Executive Officer, NOPSEMA, *Proof Committee Hansard*, 8 November 2021, p. 29.

¹²¹ Mr Winckler, The Treasury, *Proof Committee Hansard*, 8 November 2021, p. 34.

¹²² Mr Gaddes, DISER, *Proof Committee Hansard*, 8 November 2021, p. 29.

safety or environmental issues is nominated in the Bill for work carried out using the levy that it creates.¹²³

Safety issues

2.108 The increased safety risks associated with decommissioning were of concern to several submitters, with the Wilderness Society suggesting that 'ineffective, incomplete, delayed and/or cost cutting decommissioning (and maintenance)' could result in poor worker safety outcomes.¹²⁴

Application of Australian standards and requirements

2.109 The Offshore Alliance observed the risks to workers associated with decommissioning the *Northern Endeavour*, risks associated with the nature of the work, workforce qualifications, and the state of the facility and recommended that Australian standards should apply to all work undertaken and equipment funded by the levy.¹²⁵ It noted that 'a significant amount' of the work would need to be conducted in water depths ranging between 350 metres and 410 metres, with most of the decommissioning spend related to labour costs.¹²⁶ It noted that the project provided an opportunity to establish best practices for decommissioning work:

Rigorous decommissioning requirements will be an important source of jobs for workers in the oil and gas industry as the energy transition takes place. The new levy and associated legislation and direct spend of up to \$1 billion by the Department of Industry, Science, Energy and Resources (DISER) is an opportunity to ensure the Australia's decommissioning task is set up properly to ensure best practices in creating jobs and ensuring excellent safety and environmental outcomes.¹²⁷

2.110 The Electrical Trades Union of Australia (ETUA) also submitted that Australian standards should apply and that workers should be appropriately qualified and licensed, particularly given the facility is offshore, remote, may contain dangerous materials such as asbestos and polychlorinated biphenyls (PCBs), and specific electrical hazards.¹²⁸

2.111 The Offshore Alliance also raised the potential risk that onshore or inshore workers with limited experience would be employed at cheaper rates, potentially compromising the safety and quality of the work done, and

¹²³ Jubilee Australia, *Submission 8*, p. 4; ACCR, *Submission 7*, p. 3; Offshore Alliance, *Submission 3*, p. 14.

¹²⁴ Wilderness Society, *Submission 2*, pp. [2–3].

¹²⁵ Offshore Alliance, *Submission 3*, pp. 4 and 6–7.

¹²⁶ Offshore Alliance, *Submission 3*, pp. 10–11.

¹²⁷ Offshore Alliance, *Submission 3*, pp. 6–7.

¹²⁸ Mr Matthew Murphy, National Industry Coordinator, ETUA, *Proof Committee Hansard*, 8 November 2021, p. 4.

recommended that decommissioning work be carried out by companies with at least 10 years' experience.¹²⁹

Decommissioning risks and incidents

2.112 The Offshore Alliance raised issues with the current condition and working arrangements on the *Northern Endeavour*. It submitted that facility has been the subject of seven NOPSEMA directions between 2016 and 2019 in relation to safety and environmental issues, in addition to the prohibition notice and the general direction to shut the facility down. The Offshore Alliance also noted a dangerous occurrence on the facility in July 2019 and that some workers on board do not have appropriate safety qualifications.¹³⁰ It submitted that:

Because the *Northern Endeavour* has been allowed to fall into disrepair, new hazards have emerged for those working around the vessel or doing maintenance work for the vessel. Also in August 2021, the *Mermaid Searcher* was towing the offtake hose of the *Northern Endeavour*. Rigging gear from the *Northern Endeavour*, reportedly not inspected for 2 years, parted, resulting in a dangerous rapid retraction and a broken window on the *Mermaid Searcher*. It was only luck that avoided injuries or fatalities in this incident.¹³¹

2.113 The higher risks associated with decommissioning work were highlighted in July 2021 when workers on a caisson and nearby vessel narrowly missed injury when decommissioning Santos' Sinbad platform off the coast of Western Australia. The platform was originally installed in 1993 and ceased production in 2006. It had been inactive for 15 years before being decommissioned.¹³²

2.114 In Australia, other injuries and near misses have been reported due to lack of maintenance on ageing facilities, increasing risks associated with worker safety and the environment, with *BoilingCold* reporting that there are:

... two incentives that drive the current standard response from the industry to decommissioning: constant delay. The owners first benefit by pushing back expenditure, and then if the ageing asset falls into disrepair, they can argue it is too dangerous to decommission fully.¹³³

¹²⁹ Offshore Alliance, MUA, AWU, Answer to question on notice, Number 2, 8 November 2021 (received 12 November 2021).

¹³⁰ Offshore Alliance, *Submission 3*, pp. 7–9.

¹³¹ Offshore Alliance, *Submission 3*, p. 9.

¹³² Peter Milne, '[Out of control lift of Santos platform off WA could have killed](#)', *BoilingCold*, 29 July 2021 (accessed 13 November 2021).

¹³³ Peter Milne, '[Regulator blasts ExxonMobil's Bass Strait maintenance, orders huge decommissioning push](#)', *BoilingCold*, 20 May 2021 (accessed 14 November 2021).

Laminaria-Corallina fields and Australia's northern neighbours

Environmental outcomes

- 2.115 Mr Adrian Evans, Assistant National Secretary of the Construction Forestry, Maritime, Mining and Energy Union (CFMMEU) and Jubilee Australia¹³⁴ raised concerns about the environmental impacts of the decommissioning work on West Timor, Timor-Leste and Indonesia, including on their fishing industries, given their close proximity to the fields.
- 2.116 Mr Evans noted that in March 2021, 1,500 Indonesian seaweed farmers won a Federal Court class action on the basis that their crops have not recovered after the Australian 2009 Montara oil spill.¹³⁵ The class action representative was awarded IDR 416,289,624 (around A\$40,000), with findings in relation to other farmers yet to be determined. Jubilee Australia noted that fishing grounds in the region were also significantly affected following the spill, affecting the livelihoods of local fishermen. In total the impact of fishing and seaweed industries is estimated at an economic loss of around A\$1.5 billion per annum.¹³⁶
- 2.117 Mr Evans emphasised the importance of decommissioning work being carried out to the highest standards in order to protect the environment and livelihoods of these communities.¹³⁷
- 2.118 Jubilee Australia shared Mr Evan's view:

We are concerned that in the event that any damage were to originate from the *Northern Endeavour* and Laminaria-Corallina fields, that communities in Timor-Leste, West Timor and surrounding islands would bear the catastrophic impacts, and face similar challenges in being able to access justice and receive compensation.

It is therefore absolutely essential that decommissioning processes—and the financing of decommissioning infrastructure—is undertaken in a manner that is adequately resourced, adequately regulated, and adequately funded.¹³⁸

Transfer to Timor-Leste

- 2.119 In 2018 Australia and the Democratic Republic of Timor-Leste signed the Maritime Boundary Treaty, under the United Nations Convention on the Law of the Sea, resolving a long-running dispute between the two countries. The

¹³⁴ Jubilee Australia, *Submission 8*, p. 1.

¹³⁵ Mr Adrian Evans, Assistant National Secretary, CFMMEU, *Proof Committee Hansard*, 8 November 2021, p. 2.

¹³⁶ Jubilee Australia, *Submission 8*, p. 2.

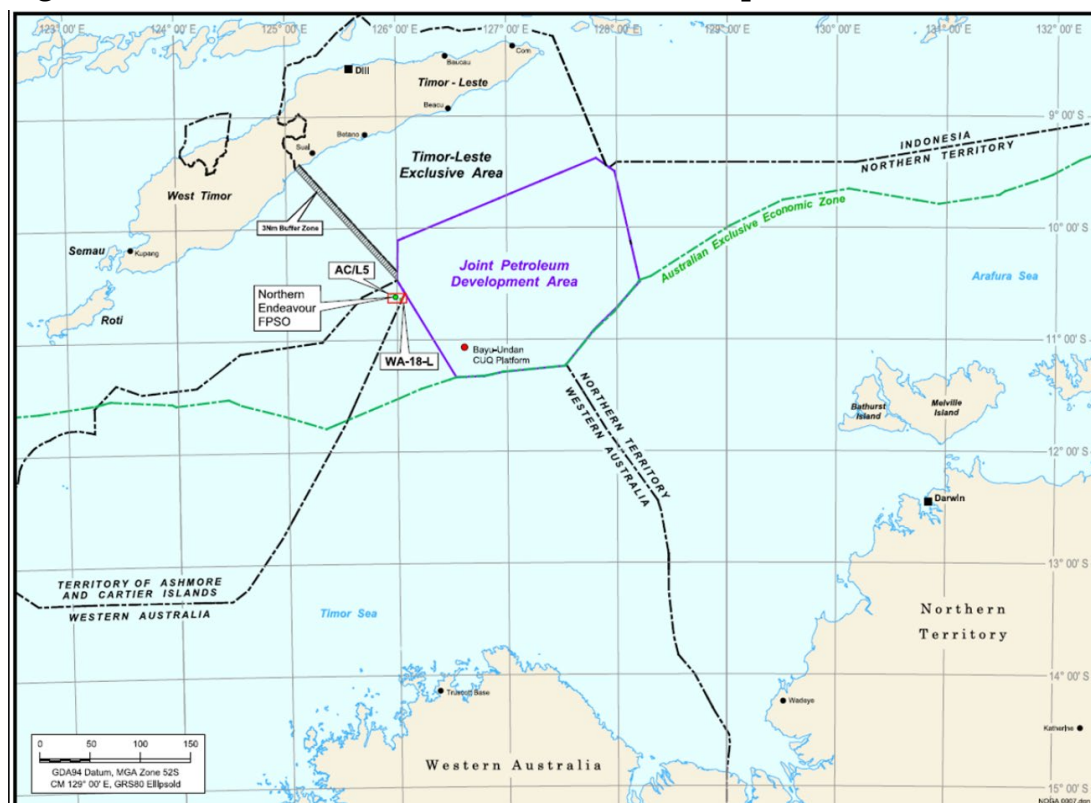
¹³⁷ Mr Evans, CFMMEU, *Proof Committee Hansard*, 8 November 2021, p. 2; see also: Maurice Blackburn Lawyers, 'Montara oil spill class action', <https://www.mauriceblackburn.com.au/class-actions/current-classactions/montara-oil-spill-class-action/> (accessed 13 November 2021).

¹³⁸ Jubilee Australia, *Submission 8*, p. 3.

treaty establishes permanent maritime boundaries between the countries in the Timor Sea and recognises sovereign rights and creates a special regime for the joint development, exploitation, and management of the Greater Sunrise gas fields.¹³⁹

- 2.120 The *Northern Endeavour* is located in the Timor Sea in the Territory of Ashmore and Cartier Islands, outside of the Australian Exclusive Economic Zone. It is approximately 550 kilometres northwest of Darwin.¹⁴⁰

Figure 2.1 Laminaria-Corallina fields location map



NOPSEMA¹⁴¹

- 2.121 Mr Robert Cook from OFM Consulting told the committee that the Laminaria-Corallina fields and associated production facilities should be assigned in their current condition to the government of Timor-Lest. Mr Cook advised that the fields should not be decommissioned given that they are still viable. Evidence provided by Mr Cook showed that an additional 30 million barrels of oil could be expected to be recovered from the fields using enhanced oil recovery

¹³⁹ Department of Foreign Affairs and Trade, [Australia and Timor-Leste maritime boundaries: rules-based order in action](#), March 2018, pp. [1–2] (accessed 11 November 2021); Department of Foreign Affairs and Trade, [Australia's maritime arrangements with Timor-Leste](#), <https://www.dfat.gov.au/geo/timor-leste/australias-maritime-arrangements-with-timor-leste> (accessed 11 November 2021).

¹⁴⁰ Offshore Alliance, *Submission 3*, p. 10.

¹⁴¹ NOPSEMA, *Activity—Northern Endeavour FPSO*, https://info.nopsema.gov.au/activities/65/show_public (accessed 12 November 2021).

technology. Mr Cook told the committee that he has tried to interest both the Australian and Timor-Leste governments in further exploitation of the fields but that:

The Australian Government has no appetite for anything but abandonment of LamCor. The decommissioning including the plug and abandonment of the wells, will mean the irreversible loss of the reserves that otherwise could have been recovered by tertiary recovery technology as demonstrated above by the Corallina simulation.¹⁴²

2.122 He also recommended that funds collected by the levy also transferred to Timor-Leste to aid their enhanced oil recovery (EOR) development and eventual decommissioning of the fields, telling the committee that 'this would appear to be a just and fitting approach to rectifying past perceived inequities while honouring the terms of the 2018 Maritime Boundary Treaty'.¹⁴³

2.123 DISER told the committee that when the government took over the FPSO it sought advice on whether there was scope to restart production, or whether the facility should be decommissioned. Woodside and UPS provided relevant advice to the department, with this work peer reviewed by Gaffney Cline. DISER advised 'that information went to government before government made the decision that the safest and most efficient way to deal with the FPSO and the fields was to decommission them with a levy'.¹⁴⁴ The Department stated that the reports are Cabinet documents and are unable to be made public.¹⁴⁵

2.124 Moreover, Ms Illman from DISER told the committee that two conditions have to be met for the transition of the Laminaria-Corallina fields to Timor-Leste to occur, with this forming part of the boundary treaty negotiations:

There are two conditions in the treaty between Australia and Timor-Leste for that situation to occur, the commercial depletion of the LamCor fields and the delimitation of maritime boundaries between Indonesia and Timor Leste. The timing of that set of activities is a matter for the countries, Timor-Leste and Indonesia. The treaty with Timor-Leste provides for those two conditions to be met for that transition to occur.¹⁴⁶

Capability opportunities and a just transition

2.125 Several submitters saw opportunities for the development of a dedicated decommissioning yard in Australia, creating employment and industry expertise, which could be initiated by the Laminaria-Corallina decommissioning.

¹⁴² Mr Robert Cook, OFM Consulting, *Submission 1*, pp. [1–3].

¹⁴³ Mr Cook, OFM Consulting, *Submission 1*, p. [3].

¹⁴⁴ Mr Gaddes, DISER, *Proof Committee Hansard*, 8 November 2021, p. 31.

¹⁴⁵ DISER, Answer to question on notice, Number 1, 8 November 2021 (received 15 November 2021).

¹⁴⁶ Ms Illman, DISER, *Proof Committee Hansard*, 8 November 2021, p. 24.

2.126 National Energy Resources Australia (NERA) outlined the size of the decommissioning work over the next 50 years:

Australia's offshore petroleum industry has an estimated US\$40.5 billion decommissioning workload over the next 50 years. Over half of this work is forecast to take place by 2030 and 73 per cent by 2040 ... This infrastructure is distributed across Western Australia (North Carnarvon, Browse and Perth basins), Victoria (Gippsland, Otway and Bass basins) and the Northern Territory (Bonaparte basin).¹⁴⁷

2.127 NERA also highlighted that it worked with seven of Australia's largest operators to set up the Centre for Decommissioning Australia, aimed at achieving a 35 per cent reduction in decommissioning costs, investigating recycling and reuse opportunities, optimising local and Australia participation and the building of a competitive local decommission industry. It calculated that creating local disposal or recycling pathways could save approximately US\$1.5 billion in decommissioning costs.¹⁴⁸

2.128 Mr Rundell, National Economist at the AWU told the committee that the union would like to see the development of a dedicated decommissioning yard, incorporating training and capability development:

...otherwise a large part of this work in the future is not going to be done here in Australia and is likely to go to South-East Asia. We'd like to see the government work with industry to establish training packages and potentially fund an institution with an ongoing training program. We would also like to see the opportunities for economic benefits and job creation from this project maximised. We'd like to see that all tenderers for this project participate in Australian industry participation plans and also comply with rigorous standards for local industry. We set those out in more detail in the submission, but those go to making sure that the operators are fit and proper and also that they take whatever opportunity they can to develop Australian jobs.¹⁴⁹

2.129 The Offshore Alliance highlighted the potential for this work to create employment:

Most of the spend will be labour costs. Most of the spend will be labour costs for divers, seafarers, crane operators, riggers, scaffolders, and mechanical and electrical trades. The other main expense will be hiring vessels, including large vessels with cranes and capacity to carry removed equipment, dive vessels, and towage vessels for large pieces that can be floated. Other trades will be needed to safely dismantle equipment in yards, and prepare the steel for recycling. There will also be shore based roles in

¹⁴⁷ NERA, *Submission 14*, p. 1.

¹⁴⁸ NERA, *Submission 14*, pp. 2–3.

¹⁴⁹ Mr Rundell, AWU, *Proof Committee Hansard*, 8 November 2021, p. 5.

safety, environmental and vessel management. This means a very significant number of jobs.¹⁵⁰

- 2.130 NERA highlighted that many decommissioning jobs would be in regional areas, leading to regional development.¹⁵¹ Publish What You Pay Australia,¹⁵² Friends of the Earth Australia,¹⁵³ and the ACCR highlighted the importance of providing workers and communities opportunities to contribute to and benefit from decommissioning processes, with the ACCR suggesting that this could mitigate the effects of transition away from oil and gas to low-emissions energy, creating a more just transition for these Australians.¹⁵⁴
- 2.131 APPEA was supportive of the idea of setting up an Australian yard to build specific expertise warranted exploration, particularly given the increasing number of projects reaching the decommissioning stage, and noted that there is significant expertise in the Asian region, including Singapore.¹⁵⁵
- 2.132 Mr O'Brien from the ACTU told the committee that unions would also like to see Australian industry participation plans for all work over \$1 million in order to maximise the economic benefit for Australian industry and workers, creating domestic capacity to meet the forthcoming decommissioning wave, and to ensure that appropriately skilled and qualified workers are used.¹⁵⁶
- 2.133 The Offshore Alliance submitted that unless there are specific measures to ensure Australian industry participation the work would likely go offshore to Indonesia, Singapore, Malaysia, and Thailand.¹⁵⁷

Committee view

- 2.134 The committee notes the broad support for the OP levy and TLAB levy bills and is satisfied that these bills be passed without further comment. The bills are vital to ensuring that costs which the Government has incurred, and will incur, since stepping in to take responsibility for decommissioning the *Northern Endeavour* and associated infrastructure and remediating and rehabilitating the Laminaria-Corallina fields are not borne by Australian taxpayers.

¹⁵⁰ Offshore Alliance, *Submission 3*, pp. 11–12.

¹⁵¹ NERA, *Submission 14*, pp. 2 and 4.

¹⁵² Publish What You Pay Australia, *Submission 10*, p. 2.

¹⁵³ Friends of the Earth Australia, *Submission 4*, p. [2].

¹⁵⁴ ACCR, *Submission 7*, p. 3.

¹⁵⁵ Mr McConville, APPEA, *Proof Committee Hansard*, 8 November 2021, p. 16; APPEA, Answer to question on notice, Number 6, 8 November 2021 (received 12 November 2021).

¹⁵⁶ Mr O'Brien, ACTU, *Proof Committee Hansard*, 8 November 2021, p. 6.

¹⁵⁷ Offshore Alliance, MUA, AWU, Answer to question on notice, Number 2, 8 November 2021 (received 12 November 2021).

- 2.135 The committee recognises the issues raised by submitters in relation to tax transparency. The committee is of the opinion that there is enough flexibility within existing arrangements and administrative processes to address the concerns expressed. Nonetheless, there is utility in the ATO maintaining a dialogue with stakeholders and interested parties to ascertain if further fine tuning is necessary during implementation, and once payments commence.
- 2.136 Other issues raised by submitters in relation to regulation, decommissioning standards, safety, the total size of Australia's decommissioning liability and in relation to Timor-Leste are covered by other arrangements such as the Deed of Standing Offer between NOPSEMA and DISER, the enhanced offshore oil and gas decommissioning framework, and the offshore oil and gas safety review policy framework and beyond the scope of matters covered by the provisions of the bills.
- 2.137 The committee is satisfied that the bills will deliver on their intent with regard to decommissioning the Laminaria-Corallina fields and associated infrastructure at no cost to the taxpayer, and with the lowest reasonably practical burden on industry. Accordingly, the committee recommends that the bills be passed.

Recommendation 1

2.138 The committee recommends that the bills be passed.

Senator Paul Scarr

Chair

Liberal Senator for Queensland

Appendix 1

Submissions and additional information

- 1 Mr Robert Cook
- 2 The Wilderness Society (Inc)
- 3 Offshore Alliance (Australian Workers' Union, Maritime Union of Australia)
- 4 Friends of the Earth Australia
- 5 Department of Industry, Science, Energy and Resources
- 6 Australian Petroleum Production and Exploration Association
- 7 Australasian Centre for Corporate Responsibility
- 8 Jubilee Australia
- 9 Chevron Australia
- 10 Publish What You Pay Australia
- 11 NOPSEMA
- 12 Mr Benjamin Cronshaw
- 13 The Australia Institute
- 14 National Energy Resources Australia

Answer to Question on Notice

- 1 Robert Cook: Answer to a question on notice from a public hearing in Canberra on 8 November 2021(received 10 November 2021).
- 2 Wilderness Society: Answer to question on notice from a public hearing in Canberra on 8 November 2021 (received 10 November 2021).
- 3 Department of Treasury: Answer to a question on notice from a public hearing in Canberra on 8 November 2021(received 12 November 2021)
- 4 Department of Treasury: Answer to a question on notice from a public hearing in Canberra on 8 November 2021(received 12 November 2021).
- 5 Department of Treasury: Answer to a question on notice from a public hearing in Canberra on 8 November 2021(received 12 November 2021).
- 6 Department of Treasury: Answer to a question on notice from a public hearing in Canberra on 8 November 2021(received 12 November 2021).
- 7 Department of Treasury: Answer to a question on notice from a public hearing in Canberra on 8 November 2021(received 12 November 2021).
- 8 Offshore Alliance: Answer to a question on notice from a public hearing in Canberra on 8 November 2021(received 12 November 2021).
- 9 The Australian Petroleum Production and Exploration Association: Answer to a question on notice from a public hearing in Canberra on 8 November 2021(received 12 November 2021).
- 10 The Australian Petroleum Production and Exploration Association: Answer to a question on notice from a public hearing in Canberra on 8 November 2021(received 12 November 2021).

- 11 Department of Industry, Science, Energy and Resources: Answer to a question on notice from a public hearing in Canberra on 8 November 2021 (received 15 November 2021).
- 12 Department of Industry, Science, Energy and Resources: Answer to a question on notice from a public hearing in Canberra on 8 November 2021 (received 15 November 2021).
- 13 Department of Industry, Science, Energy and Resources: Answer to a question on notice from a public hearing in Canberra on 8 November 2021 (received 15 November 2021).
- 14 Department of Industry, Science, Energy and Resources: Answer to a question on notice from a public hearing in Canberra on 8 November 2021 (received 15 November 2021).
- 15 Department of Industry, Science, Energy and Resources: Answer to a question on notice from a public hearing in Canberra on 8 November 2021 (received 15 November 2021).
- 16 Department of Industry, Science, Energy and Resources: Answer to a question on notice from a public hearing in Canberra on 8 November 2021 (received 15 November 2021).
- 17 Department of Industry, Science, Energy and Resources: Answer to a question on notice from a public hearing in Canberra on 8 November 2021 (received 15 November 2021).
- 18 National Offshore Petroleum Safety and Environmental Management Authority: Answer to a question on notice from a public hearing in Canberra on 8 November 2021(received 15 November 2021).
- 19 Department of Industry, Science, Energy and Resources: Answer to a question on notice from a public hearing in Canberra on 8 November 2021 (received 15 November 2021).

Appendix 2

Public hearings

Monday, 8 November 2021

Main Committee Room (1R0)

Parliament House

Canberra

Australian Workers' Union & Offshore Alliance

- Mr Zach Duncalfe, National Oil and Gas Director
- Mr Taylor Rundell, National Economist

Maritime Union of Australia and Offshore Alliance

- Mr Adrian Evans, Deputy National Secretary
- Dr Penny Howard, National Research Officer

Australian Council of Trade Unions

- Mr Liam O'Brien, Assistant Secretary

Electrical Trades Union of Australia (CEPU)

- Mr Matthew Murphy, National Industry Coordinator

The Wilderness Society

- Ms Jess Lerch, National Corporate Campaign Manager
- Mr Tim Beshara, Manager of Policy and Strategy

Australian Petroleum, Production and Exploration Association (APPEA)

- Mr Andrew McConville, Chief Executive
- Mr Simon Staples, Director - Commercial
- Mr Ashley Wells, Director - Government

The Australia Institute

- Mr Rod Campbell, Research Director
- Mr Mark Ogge, Principal Advisor

The Department of Industry, Science, Energy and Resources

- Mr Paul Trotman, Head of Division - Resources Division
- Ms Marie Illman, General Manager, Offshore Resources Branch, Resources Division
- Mr Shane Gaddes, Head of Division, Liquid Fuels & Northern Endeavour Division

*National Offshore Petroleum Safety and Environmental Management Authority
(NOPSEMA)*

- Mr Stuart Smith, Chief Executive Officer
- Mr Karl Heiden, Head of Division, Corporate and Financial Assurance

The Treasury

- Ms Susan Bultitude, Acting Principal Adviser, Corporate Tax Branch
- Mr Simon Winckler, Director, Special Tax Regimes Unit

Additional comments – Labor Senators

- 1.1 Labor supports these bills and agrees that the taxpayers should not be left to pay for the decommissioning and remediation of these sites.
- 1.2 However, decommissioning is something that the government has known about for years and has, as always been too slow to act on.
- 1.3 The committee has heard about the dangers of decommissioning work. In evidence to the committee the conditions on the *Northern Endeavour* have deteriorated and there has been a number of near misses including on the *Mermaid Searcher* which was working around the *Northern Endeavour* as well as incidents on nearby platforms. More recently the risks posed in this sector were laid bare by a tragic incident onboard a Libyan floating storage and offloading unit (FSO) which, during preparations for the vessel to be towed, a chain snapped, killing three workers who were thrown overboard and maiming one. Another worker remains missing after the incident, with questionable prospects of survival.¹
- 1.4 The government needs to ensure that workers who participate in the decommissioning process are appropriately trained and kept safe while also ensuring there is the appropriate levels of regulatory oversight.
- 1.5 As the Department of Industry, Science, Energy and Resources (DISER) tender in July 2021 said, that the removal of the *Northern Endeavour* 'will set the standard for future similar activities in Australian waters'.² As the report noted there were a number of submitters who highlighted their concerns about the definition of decommissioning, which included the works or any other treatment.
- 1.6 While, on the face of it, re-purposing petroleum platforms to be an artificial reef may sound fine, it could open the door for producers to undertake less than full removal, which could present environmental risks particularly given the materials involved in the construction of these projects.
- 1.7 Labor accepts that under certain circumstances artificial reefs that are built up on this infrastructure can have positive impacts however, it is critical that removal of assets remains the objective of proper decommissioning.
- 1.8 The powers this bill grants the Minister for Resources in relation to their ability to vary the rate and length of the levy is concerning. It is important to ensure

¹ ['Three Killed While Decommissioning Aging FSO Off Libya'](#), *The Maritime Executive*, 8 November 2021 (accessed 18 November 2021).

² Offshore Alliance, *Submission 3*, p. 9.

that the levy doesn't end before the work is complete, and ensure no costs fall on the tax payers.

- 1.9 The government needs to ensure there is also clear oversight from a regulatory agency. The evidence that was presented by DISER and the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) was that due to the fact that there was no titleholder or operator, the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* does not apply. This means that NOPSEMA is unable to issue enforcement actions. This is also contrary to evidence the Treasury presented which suggested 'the bills do not regulate the standards to which decommissioning and remediation activities are to be undertaken. The standards for decommissioning and remediation are regulated by the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* and related legislation'.³
- 1.10 Mr Gaddes from DISER suggested that 'we enforce those through the contract we have with the provider on the vessel, Upstream Production Solutions. There's no regulatory framework in legislation. We enforce it through the contract'.⁴
- 1.11 While there may be contractual arrangements with the current operator it is concerning that there is no clear process to issue enforcement actions during this decommissioning process given the high-risk work environment and the broader environmental impacts mentioned throughout the report.
- 1.12 Finally, Labor believes there needs to be greater transparency in relation to the amount collected by the levy and reporting in relation to the decommissioning process.
- 1.13 Labor recognises the key role gas plays in creating economic growth and export income earnings for Australia. Labor also recognises the many thousands of jobs the industry creates and sustains.
- 1.14 Labor supports the legislation, but it is important that the government ensures there is proper oversight and transparency of the decommissioning and there is no burden placed on taxpayers.

³ Department of the Treasury, Answer to written question on notice, IQ21-000105, 8 November 2021 (received 12 November 2021).

⁴ Mr Shane Gaddes, Head of Liquid Fuels and Northern Endeavour Division, DISER, *Proof Committee Hansard*, 8 November 2021, p. 29.

Recommendation 1

1.15 Labor Senators recommend the government consider amending the bills to give NOPSEMA a legislated duty to provide safety and environmental regulatory oversight over the Laminaria-Corallina decommissioning.

Recommendation 2

1.16 Labor Senators recommend that the government consider amending the bills to include a requirement for the Resources Minister to table in Parliament an annual report on the Laminaria-Corallina decommissioning, including receipts for the levy, progress in decommissioning work, anticipated receipts for the coming year, and a forward work plan.

**Senator Anthony Chisholm
Deputy Chair
Labor Senator for Queensland**

**Senator Jess Walsh
Member
Labor Senator for Victoria**

Additional comments—Australian Greens Senators

- 1.1 The Australian Greens support the introduction of a levy on offshore oil and gas production to recover decommissioning costs for the Laminaria and Corallina oil fields and associated infrastructure. However, as demonstrated through evidence to the committee, there are several ways in which this legislation needs to be strengthened.
- 1.2 These bills represent a significant opportunity to set strong standards for best practice decommissioning.¹ In light of the significant decommissioning challenges facing Australia, it is essential that the gas and oil industry are responsible for full costs of decommissioning.
- 1.3 As noted by the Australia Institute, the oil and gas industry will try to defer the costs of decommissioning indefinitely and pass these costs onto smaller companies or the taxpayer, as demonstrated through the *Northern Endeavour*.² In this context, it is essential that we have strong regulatory and legislative frameworks in place to counter the preference of gas companies to push costs, externalities and risks onto others.
- 1.4 The bill provides the Minister for Resources with the power to reduce the rate of the levy, or terminate the levy early. The Australian Greens echo the concerns raised by stakeholders that the government could submit to pressure from industry to use this power prematurely before decommissioning is fully complete. As noted by Mr Adrian Evans, Assistant National Secretary, Maritime Division, Construction, Forestry, Maritime, Mining and Energy Union:

The Resources Minister has the unilateral ability to reduce the amount of the levy and end it early, and we are quite sure that they will be under significant pressure from industry to do so.³

- 1.5 In place of a temporary levy, the Wilderness Society called for the levy to be made permanent to ensure industry meets the costs of decommissioning challenges coming down the line. As explained by Ms Jess Lerch, National Corporate Campaign Manager, Wilderness Society:

My strong view is that, by maintaining this levy in a permanent way, we can do two things. One is that we can provide some real financial assurance into the future for the Treasury and the Australian taxpayer, for problems in the

¹ Australasian Centre for Corporate Responsibility, *Submission 7*, p. 1; Wilderness Society Inc, *Submission 2*, pp. [2-3].

² The Australia Institute, *Submission 13*, p. 6.

³ Mr Adrian Evans, Assistant National Secretary, Maritime Division, Construction, Forestry, Maritime, Mining and Energy Union, *Proof Committee Hansard*, 8 November 2021, p. 2.

future. We don't want to deal with them all on a case-by-case basis as they come up—and we have had to deal with the *Northern Endeavour*. I also think it means that we could potentially use any additional funds available to build the capacity that is going to be required to actually do this work, which the industry and the regulator have both identified is a significant challenge.⁴

1.6 Friends of the Earth Australia further noted:

We recommend an adjustment to this clause, establishing a permanent extension of the levy in order to finance all future decommissioning. Doing this will ensure that decommissioning is done, jobs are secured to do the work and that it will be financed by the industry that has created the problem, not the taxpayer.⁵

1.7 The Australian Greens support the need for a permanent levy to ensure that decommissioning is undertaken according to best practice environmental and social standards, and safeguarded from cost-cutting.

1.8 The committee heard wide-ranging concerns about the definition of decommissioning used in the bill, which deviates from the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* and the National Offshore Petroleum Safety and Environmental Management Authority's policies that refer to the full removal of infrastructure. The Australian Petroleum Production and Exploration Association claimed that 'in some instances, the best environmental outcome may be to leave some of those assets in situ.'⁶

1.9 However, the Australasian Centre for Corporate Responsibility noted in its submission that 'there is a lack of independent and peer-reviewed research into the environmental benefits of leaving oil and gas structures in Australian waters'.⁷

1.10 The Wilderness Society further noted:

We consider that any decision to leave any structure, equipment or property in situ must only occur in the most extreme of situations (ie. in a theoretical instance in which it provides critical habitat for a listed threatened species) and as a very limited exception, if ever, given the marine pollution risks associated with much offshore petroleum infrastructure and the impact that the dumping or abandonment of industrial structures and equipment has on the wilderness values of our marine environments.⁸

⁴ Ms Jess Lerch, National Corporate Campaign Manager, Wilderness Society, *Proof Committee Hansard*, 8 November 2021, p. 9.

⁵ Friends of the Earth Australia, *Submission*, 4, p. 2.

⁶ Mr Andrew McConville, Chief Executive Officer, Australian Petroleum Production and Exploration Association, *Proof Committee Hansard*, 8 November 2021, p. 17.

⁷ Australasian Centre for Corporate Responsibility, *Submission 7*, p. 1; Wilderness Society Inc, *Submission 2*, p. 2.

⁸ Wilderness Society Inc, *Submission 2*, p. [3].

- 1.11 The Australian Greens have strong concerns about the option of 'any other treatment' being applied to the decommissioning of the Laminaria and Corallina oil fields and the risks this will pose to the environment. We are also concerned that the government has not yet determined how it will measure when the removal and remediation of the oil fields are complete.⁹
- 1.12 The bills also highlight the significant accountability and transparency gaps around decommissioning in Australia. There is little to no public reporting on the costs of decommissioning or decommissioning liabilities by industry or government.
- 1.13 As noted by Publish What You Pay Australia:
- The risk of further stranded assets related to the energy transition, including offshore gas and oil infrastructure, will require greater transparency and accountability from the federal government and companies. This includes adequately informing communities of the economic, social and environmental impacts and costs.¹⁰
- 1.14 There are also no requirements for the government to publish how much money the levy will generate:
- Noting that the levy is payable to the Commissioner of Taxation annually, is not clear on how companies or the government will report on payments related to levy. Whilst the end date is set at 2029, we are not sure on the exact amount required for this specific decommissioning. This lack of transparency risks keeping companies, communities and government unsure as to the effectiveness and quantum of the levy and the workings of the oil, gas and mining sectors more broadly.¹¹
- 1.15 The Australian Greens believe these bills should be used as an opportunity to strengthen the appalling lack of transparency around the realities of offshore decommissioning in Australia. Public reporting on financial, environmental, and social outcomes is essential to improving transparency and accountability in the area of decommissioning.
- 1.16 Finally, in light of the fact that the Laminaria-Corallina fields are due to be transferred to Timor-Leste, it is imperative that the Australian Government ensures decommissioning is undertaken 'in a manner that is adequately resourced, adequately regulated, and adequately funded'.¹²

⁹ Mr Shane Gaddes, Head of Liquid Fuels and Northern Endeavour Division, Department of Industry, Science, Energy and Resources, *Proof Committee Hansard*, 8 November 2021, p. 30.

¹⁰ Publish What You Pay Australia, *Submission 10*, p. 2.

¹¹ Publish What You Pay Australia, *Submission 10*, p. 2.

¹² Jubilee Australia, *Submission 8*, p. 3.

Recommendation 1

1.17 That the government undertake public reporting on the amount of the levy that is collected each year.

Recommendation 2

1.18 That the government require gas and oil companies to publicly report on their decommissioning liabilities each year.

Recommendation 3

1.19 That the government makes the levy permanent to ensure industry are responsible for the full costs of decommissioning now and into the future.

Recommendation 4

1.20 That the government implements a long-term solution to ensure industry covers the full cost of offshore decommissioning, informed by overseas models that are underpinned by transparency and accountability.

**Senator Dorinda Cox
Participating Member
Greens Senator for Western Australia**