

Mr Stephen Palethorpe
Secretary
Standing Committee on Education and Employment
Parliament House
CANBERRA ACT 2600

Via email: eec.sen@aph.gov.au


Dear Secretary

Re: Inquiry into the prevention, investigation and prosecution of industrial deaths in Australia

I refer to your correspondence of 11 July 2018 and provide the following evidence in response to the submission from the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) to the inquiry into the prevention, investigation and prosecution of industrial deaths in Australia.

NOPSEMA takes adequate enforcement action

NOPSEMA has a robust suite of graduated enforcement measures. Where NOPSEMA determines a breach of the legislation, NOPSEMA proactively takes enforcement action requiring the duty holder to rectify the breach and to implement measures to prevent a recurrence and to act as a deterrent to future non-compliance. Since NOPSEMA was formed in 2012, it has taken 198 OHS related enforcement actions against duty holders in the oil and gas industry. These enforcement actions cover a range of measures including notices, directions and prosecutions.

NOPSEMA has pursued prosecution in the case of fatalities, serious injuries and other circumstances. For example prosecutions have been pursued in both incidents involving fatalities since the National Offshore Petroleum Safety Authority (NOPSA) was established as the predecessor to NOPSEMA in 2005.

In addition to prosecutions, NOPSEMA is active in pursuing enforcement actions such as improvement notices, prohibition notices and general directions. NOPSEMA publishes these notices in accordance with the *Offshore Petroleum Greenhouse Gas Storage Act 2006* (OPGGs Act).

Notices and directions impose timely legal obligations on duty holders to correct unsafe infrastructure, systems and behaviours. Importantly the identified offence is clearly stated on the published enforcement notice. The use of these enforcement tools often results in significant financial and reputational impacts to the duty holder and may involve the suspension of the offshore petroleum activity. Estimates of monetary loss can be in the millions of dollars per day and are often far higher than pecuniary penalties that may be achieved through a prosecution.

NOPSEMA has no objection to harmonisation of penalty regimes, providing the harmonisation does not lead to a lessening of potential penalties. It is noted in this regard that the OPGGS Act penalty regime surpasses the model WHS Act. Under the model WHS Act failure to comply with an improvement notice, in the case of an individual is \$50,000 and \$250,000 for a body corporate. Under the OPGGS Act, failure to comply with an improvement notice carries a maximum penalty of \$270,000 for a person and up to \$360,000 for a body corporate.

Penalties, including custodial penalties, for OHS offences under the OPGGS Act are already harmonised with, or made greater (as appropriate) than the *Commonwealth Work Health and Safety Act 2011* which is based on the model WHS Act, to reflect the greater consequences in a major hazard industry.

NOPSEMA takes prosecution of duty holders

NOPSEMA and NOPSAs have pursued prosecutions for both offshore petroleum safety incidents involving fatalities since 2005. Prosecutions have also been pursued for serious injuries arising from the carrying out of an offshore petroleum activity.

Karratha Spirit incident 2008

NOPSA pursued prosecution of an incident resulting in the fatality of a worker on board the *Karratha Spirit*. NOPSA investigated the incident and prepared a brief of evidence and referred it to the Commonwealth Director of Public Prosecutions (CDPP) against the operator Teekay Shipping Australia (Pty Ltd) and the Master of the *Karratha Spirit*. The CDPP advised NOPSA that a prosecution could not be conducted arising from difficulties associated with the incident and proving the criminal elements of the offence. The legislation has since been amended so that this issue will not reoccur. This outcome was communicated to the family of the deceased by NOPSA.

Stena Clyde incident 2012

NOPSEMA pursued prosecution of an incident resulting in the fatality of two (2) offshore workers on the *Stena Clyde* mobile offshore drilling unit in the Bass Strait on 27 August 2012. This case was prosecuted in September 2015, where the Magistrates' Court of Victoria imposed a criminal penalty of \$330,000 on *Stena Drilling (Australia)*.

Serious injury prosecutions

NOPSEMA also pursued prosecutions involving another incident where a diver suffered a serious arm injury. In relation to this prosecution, on 25 July 2014, Technip Oceania Pty Ltd (Technip) was convicted and fined \$70,000 by the Perth Magistrates Court for failing as the employer of the injured diver, to take all reasonably practicable steps to implement and maintain systems of work that were safe and without risk to health. Technip also failed to provide employees with the information, instruction, training and supervision necessary for them to carry out their work in a manner that was safe and without risk to health.

For the same incident, in December 2015, another action in the Magistrates' Court of Perth resulted in a criminal penalty of \$20,000 being imposed on Hammelmann Australia, as the supplier of high pressure water jetting equipment that was responsible for an accident on 30 March 2011 where a diver suffered a serious arm injury.

NOPSA also initiated other OHS prosecutions. On 5 December 2007, in the case of the prosecution of the Jabiru Venture FPSO incident where a worker was injured during a fall, the Northern Territory Magistrate's Court fined the employer the amount of \$180,000 for breaching health and safety regulations.

On 21 August 2009, in the case of the prosecution of the PTTEP Montara well head platform blowout, the Northern Territory Magistrate's Court fined PTTEP AA the amount of \$510,000. At that time this was the highest amount for any OHS related offences in Australia.

Other prosecutions

NOPSEMA, through the CDPP, is currently pursuing prosecution of Technip for failing to comply with the Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009. The matter is currently progressing through the Perth Magistrates Court of Western Australia, with a trial expected to proceed in December 2018.

NOPSEMA requires workforce engagement for safety cases

Under the OPGGS Act and associated regulations, workforce consultation and participation is mandatory during the development of a safety case. There are a number of safety cases that will exist during the life cycle of a facility, reflecting multiple circumstances where members of the workforce are consulted. These permissioning documents will include written evidence of those members of the workforce, who made themselves available, to be consulted on hazards and risks to which they may be exposed on the facility.

Any member of the workforce, including Health and Safety Representatives, can at any time raise any concerns with NOPSEMA about the safety case and its adequacy. This can occur prior, during or post inspections, during office hours and via a 24 hour hotline. NOPSEMA inspectors readily make themselves known and available and provide direct contact numbers to members of the workforce. All conversations can be kept confidential. NOPSEMA has many examples where members of the workforce have raised concerns about the adequacy of the safety case of a facility, and these matters have formed part of inspections and further examination and regulatory action taken by NOPSEMA.

NOPSEMA actively engages the MUA and other Union bodies

Since the formative years of NOPSA, in 2007 a tripartite working group was established comprising NOPSA, industry associations, unions and the workforce to develop industry guidelines. NOPSEMA has maintained ongoing union engagement through regular bilateral meetings and ad hoc meetings. NOPSEMA has consistently emphasised willingness to meet with unions on workforce safety matters.

Harmonisation of WHS legislation

The OPGGS Act aligns with the principles of the model WHS Act and continues to prove that it provides a robust safety regulatory framework. The Department of Industry, Innovation and Science (DIIS) is undertaking a scheduled anniversary review of the safety regime and NOPSEMA will consult with DIIS on opportunities to improve the legislation.

If you require any further information please do not hesitate to contact NOPSEMA

Yours sincerely

Stuart Smith

Chief Executive Officer

17 July 2018