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Daniel Walton National Secretary



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Senate Standing Committee on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary,

Senate inquiry into the work health and safety of workers in the offshore petroleum industry

The Australian Workers' Union (AWU) is a broad-based Union with members covered by over 80 of the 120 National Awards, a significant number of Workplace Agreements and a depth of experience in acting as an employee-bargaining representative in the Oil & Gas Industry. For this reason, along with having a substantial number of workers both in onshore and offshore petroleum, we are uniquely placed to communicate the challenges both members and health and safety representatives in the offshore petroleum industry face in their workplace.

Of particular interest to both this inquiry and our members is the regulatory environment operated by the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA). The Union receives regular feedback from both workers and health and safety representatives (HSRs) in the industry on their dealings with and concerns for the regulatory environment and NOPSEMA.

In conjunction with the recommendations made in this submission, the AWU supports the submission by the Australian Council of Trade Unions (ACTU) on both the discussion points it raises and the recommendations it makes.

The following submission is made in accordance with the terms of reference

b. the effectiveness of the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) and equivalent state and territory offshore petroleum regulators (the regulators) in promoting the work health and safety of persons engaged in offshore petroleum operations;

Planned inspection model

At present, the NOPSEMA conduct planned safety inspections of all offshore rigs at least twice per year. Currently there are no scheduled random inspections unless otherwise provoked by a health and safety breach on an offshore facility.

It is customary for the NOPSEMA to issue an inspection brief more than two weeks prior to an inspection. This generally provides the duty holder with information on the aspects of the facility that will be inspected. Due to the customary nature of these inspections, as well as the briefing process which precede them, management of the offshore rig are reasonably able to distinguish whether an inspection is a matter of due process or has been provoked by a safety breach by a HSR or otherwise.

There are two problems with this scheduling model:

- **Gaming of the process by employers** – by issuing an inspection brief that, as our members understand, includes a detailed scope of work of what will be inspected, management at the facility has a minimum of two weeks to prepare the site in effort to ameliorate potential breaches. Naturally there is concern that workers on offshore facilities are exposed to breaches in safety by means of management optimising the actions they take on falling safety standards over a facility's operational life.
- **Process allows for easy identification of HSRs** – By nature of the role an offshore facility will have approximately 1-3 HSRs on site at any one time. In addition, many of these HSRs are contracted by labour hire companies and as such are not protected by any employment contract restricting employers against wrongful dismissal. Any inspections occurring outside of a scheduled and customary inspection, as well as inspection briefs containing specific information on what breaches will be investigated, allows management considerable scope in identifying which representative or otherwise has raised a breach with the NOPSEMA. Our members note that this provokes a culture of fear of persecution from management if a breach is to be raised by a HSR.

Contacting and communicating with and amongst HSRs

Our members understand that the NOPSEMA also does not keep a consolidated list of all HSRs currently working in the industry, and by implication a list of HSRs on each site, contact details, and other generic information. For this reason there is

limited scope for the NOPSEMA to oversee any potential behavior from employers in favouring an HSR that will tolerate breaches in exchange for job security.

Outside of official breaches raised by HSRs, there are no official channels of communication between the NOPSEMA and HSRs. By implication there are also no official forms of communication between HSRs themselves.

Working on an offshore facility can limit HSRs from exposure to alternative workplace standards and/or expectations of conduct in different workplace cultures. By fostering communication throughout the industry the NOPSEMA could enhance the efficiency of information flows between the agency and representatives, as well as raise the effectiveness of regulation.

Safety cases

A facility cannot be constructed, installed, operated, modified or decommissioned without a safety case in force for that stage in the life of the facility. The safety case is central to the objectives-based regulatory approach adopted in Australia's offshore petroleum industry. The NOPSEMA's operational practice is therefore strongly focused on compliance with controls identified in safety cases.

In many instances HSRs cannot adequately recognise a breach on an offshore facility without reference to the site's safety case. The process to review safety cases at most facilities is formal and requires oversight from management, as well as the logging of personnel that access the safety case. As such, there is no unidentifiable access to a safety case by HSRs which, alongside the predictable nature of a NOPSEMA inspection, exacerbates fear of persecution and reduces the capability of HSRs to conduct their job effectively.

Penalising repeat offenders

The NOPSEMA has demonstrated an overreliance on the lower levels of the regulatory pyramid, as demonstrated by its unwillingness to sensibly penalise or prosecute repeat offenders. For example, the NOPSEMA has failed to escalate its regulatory response to the following repeat offenders:

- In the two-month period between 13 December 2017 and 23 January 2018, five improvement notices were issued to two organisations in respect of the rig called Ocean Monarch, including in relation safety-critical equipment.
- Between June 2015 and December 2017, Esso Australia Pty Ltd was issued with 27 *improvement notices*, including in relation to contraventions of the OPGGS Act causing risk of serious or fatal injury.

- Between August 2015 and August 2017, the organisation MODEC Venture 11 B.V. was issued with one prohibition notice and three improvement notices in respect of the rig called MODEC Venture 11.
- Between October 2014 and June 2017, Woodside Energy Pty Ltd was issued with one prohibition and four improvement notices, including in relation to contraventions of the OPGGS Act causing risk of multiple serious injuries or fatalities.
- In late March and early April 2017, one prohibition notice and three improvement notices were issued to three organisations in respect of the Atwood Osprey facility, including in relation to safety-critical equipment.
- In September and October 2015, three improvement notices were issued to Noble Contracting II GmbH.
- In July and August 2015, one prohibition and two improvement notices were issued to Saipem (Portugal) Comercio Maritimo, Sociedade Unipessoal, LDA in respect of the Castorone facility.
- In July 2015, four improvement notices were issued to Quadrant Energy Australia Limited in respect of the Stag CPF facility.

Recommendations on improving the effectiveness of the NOPSEMA

1. That the NOPSEMA carry out regular unannounced inspections as part of its standard inspection regime.
2. That, within reason so as to not materially obstruct operations, the NOPSEMA provide a less-detailed inspection brief to management and where possible, not provide any details pertaining to components of the facility that will be subject to inspection.
3. An active registry should be kept by NOPSEMA of all HSRs operating on offshore facilities in Australia.
4. Communication infrastructure should be used between NOPSEMA and HSRs, as well as between HSRs themselves, and should be facilitated by the agency.
5. The NOPSEMA to provide remote online access to all HSRs of their facility's safety case, and grant the ability for an HSR to trigger a review and revision of the safety case in certain circumstances.
6. That the penalties in both the OPGGS Act and the WHS Act be significantly increased, in line with best practice responsive regulation.
7. That the NOPSEMA's Enforcement Policy be amended so that its response escalates for each instance of non-compliance by the same organisation or in respect of the same facility.
8. That the NOPSEMA be directed to comply with the Enforcement Policy in respect of taking prosecution action where there has been repeated non-compliance with the legislation.

d. the role and structure of the NOPSEMA Board and options for improving the effectiveness of their stakeholder engagement

The NOPSEMA chief executive is advised by the NOPSEMA advisory board includes both independent academic representatives as well as ex-executives with a long history of working in the oil and gas industry. However, despite the several thousand employees worked in the industry, the workers employed in the sector have no representative on the NOPSEMA advisory board. At most the NOPSEMA conduct annual meetings with the ACTU to discuss issues and concerns raised by workers. This is inadequate and unacceptable.

In an industry where the regulatory board contains limited oversight of behavior with the industry, primarily due to the remote nature of offshore facilities, greater collaboration with HSRs and the NOPSEMA could improve the effectiveness of regulation significantly. Enhancing the voice of workers on the advisory board is one way to ensure that the myriad of concerns raised by workers are addressed immediately rather than ignored and left to build into the need for a Senate Inquiry.

Recommendation on the accountability framework of the NOPSEMA

1. The NOPSEMA advisory board to include at least one representative of workers. This should be appointed in consultation with the ACTU, relevant unions and the workforce directly.

e. Workings of NOPSEMA's collaboration, and working relationships with other work health and safety regulators and bodies, including Safe Work Australia.

The NOPSEMA's effectiveness as a regulatory agency is constrained by its jurisdictional coverage, mainly the separation of carriage between areas with the Australian Maritime Safety Authority (AMSA). Presently, vessels and facilities in the offshore petroleum industry transport and/or are transported between the jurisdictions covered separately by the NOPSEMA and the AMSA. This creates gaps in jurisdictional coverage.

The NOPSEMA Annual Report 2016/17 noted that the decline in OH&S inspections conducted by the NOPSEMA may have been partly attributable to its constrained access to construction and diving vessels for inspection. The 2015 Review found that over the preceding three years there had been limited collaboration in the working relationship between the AMSA and the NOPSEMA and that the joint inspection of vessels certification had ceased.

The issues between separate oversight and jurisdictions are not new and the fatality on board the Skandi Pacific in July 2015 occurred despite these issues being present for several years. These must be urgently addressed.

The Ministerial Statement of Expectations in 2017 stated that the NOPSEMA will work collaboratively with the ASMA ‘in pursuit of streamlined regulation... and enhanced coordination of emergency response arrangements’. The CEO of the NOPSEMA in the Statement of Intent said that evidence of formal mechanisms to facilitate coordinate appear to be lacking or are not transparent.

Recommendations on NOPSEMA’s collaboration with other regulators

1. That a comprehensive assessment of coverage of Australian safety regulation in the maritime industry, including offshore petroleum, be conducted to develop a legislative reform package to ensure complete coverage.
2. That the NOPSEMA and the AMSA update their MOU, with particular focus on:
 - (i) achieving clarity on the touch points between the two agencies and their legislations;
 - (ii) reinstatement of joint inspection of vessels’ certification; and
 - (iii) mechanisms to facilitate access to and inspections of vessels and facilities that transfer between their respective jurisdictions, including, for example, dual recognition of suitably qualified inspectors.