



## Education and Employment References Committee

### Inquiry into the work, health and safety of workers in the offshore petroleum industry

Submission from the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA)

## Introduction and structure of submission

This submission to the Senate Education and Employment References Committee has been prepared by the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) in response to an invitation from Committee Secretary Mr Stephen Palethorpe.

The submission is structured to provide information about the role, history and functions of NOPSEMA to support the subsequent specific responses to the Terms of Reference provided by the Committee.

Information contained in sections 1-5 provide important context to NOPSEMA's response to the Terms of Reference. In responding to the Terms of Reference, each term is associated with, and addressed in, the relevant parts of this submission. A concordance table is provided at Attachment A to clearly indicate where each term is addressed in the submission.

Further information where relevant to the submission is also included as Attachments for the Committee.

Any questions from the Committee regarding the submission or any other matters should be directed to:

### **Mr Nicholas Page**

Manager – Legislative Change, Communications and Stakeholder Relations

Email – [communications@nipsema.gov.au](mailto:communications@nipsema.gov.au)



## Table of contents

1.	Executive summary .....	4
2.	Background .....	6
2.1	Leading practice .....	6
2.2	Creation of National Offshore Petroleum Safety Authority (NOPSA) .....	7
2.3	Expansion of NOPSA's role.....	8
2.4	Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPGGs Act) and model WHS Act and the Commonwealth WHS Act.....	11
3.	NOPSEMA .....	14
3.1	Operations .....	14
3.2	Conferral .....	16
3.3	Offshore petroleum occupational health and safety framework .....	17
3.4	Comparison of legislation .....	24
4.	Performance outcomes .....	33
4.1	Industry safety record .....	33
4.2	Equivalent State and Territory offshore petroleum regulators .....	34
4.3	International offshore petroleum regulation .....	38
5.	Policy considerations.....	40
	Glossary of terms.....	43
	Attachments .....	44
	Attachment A: Concordance Table.....	45
	Attachment B: Offshore petroleum approval and regulatory process.....	46
	Attachment C: HSR Handbook, NOPSEMA 2016 .....	47
	Attachment D: 2017 Safety Alerts .....	48
	Attachment E: NOPSEMA HSR training for the offshore oil and gas industry.....	49

## 1. Executive summary

1. The National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) is the national regulator for health and safety, well integrity and environmental management for offshore petroleum activities in Commonwealth waters and in coastal waters where regulatory powers and functions have been conferred. The conferral of powers for offshore petroleum safety has already occurred in Victorian waters and is under consideration by other jurisdictions in Australia.
2. NOPSEMA was established in 2012 with the support of the federal, state and Northern Territory governments as an independent statutory authority under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act). The OPGGS Act and associated regulations provide for an objective-based regime that remains the accepted leading practice recognised by a various government reviews and inquires.
3. An integrated, expertise based approach is applied by NOPSEMA to the regulation of health and safety, well integrity and environmental management to ensure the risks to health and safety (particularly major accident events), well integrity and to the environment, are reduced to a level that is as low as reasonably practicable and ensures responsible and safe offshore petroleum activities.
4. The integrated approach does not extend to policy development, resource promotion or the regulation of economic factors like the issuing of exploration, acreage, petroleum resource management, taxation or royalties. These responsibilities rest with other government agencies to avoid the potential for a conflict of interest.
5. Establishment of the National Offshore Petroleum Safety Authority (NOPSA) in 2005, and the subsequent addition of well integrity in 2011 and environmental management responsibilities to form NOPSEMA in 2012, recognised the benefits of having a single, independent offshore regulator with a critical mass of expertise that applies a consistent approach to the regulation of all petroleum activities.
6. This rationale for establishing NOPSEMA has become even more imperative as the offshore industry has grown to the point where Australia is about to assume the mantle of global leadership for LNG exports, while continuing to provide an important source of oil and domestic gas from deeper water via increasingly complex facilities.
7. A world scale industry requires an international standard regulator and NOPSEMA has established itself in this light. In addition to international exchange programs and regular international engagement, NOPSEMA has chaired the International Regulators' Forum (IRF) and the International Offshore Petroleum Environment Regulators (IOPER) group. It continues to be elected as one of only four countries on the IRF Management Committee and it is having a demonstrable impact on international standards and practices. Other offshore petroleum regulators in Australia lack the size and jurisdiction of NOPSEMA to apply for membership of these international bodies.
8. NOPSEMA maintains a staff of more than 110, primarily highly trained and qualified technical experts with extensive practical experience in the offshore petroleum industry both in Australia and overseas. This expertise is supplemented with specialist consultants and advisors as necessary.
9. NOPSEMA also maintains a particularly active stakeholder engagement program including interaction with industry operators and contractors, unions, environmental groups, fishing interests, community groups and all levels of government. During 2017, for example, NOPSEMA undertook more than 800 liaison meetings with stakeholders to gather information, provide advice and promote leading safety, well integrity and environmental practice.
10. Where appropriate, NOPSEMA pursues enforcement action through the application of a diverse range of graduated enforcement tools including issuing recommendations, warning letters, improvement and prohibition notices, giving directions, requesting a revision or withdrawing acceptance of a permissioning document<sup>1</sup> and prosecution. The enforcement tool used is aligned to factors such as the severity of the

---

<sup>1</sup> For example a safety case, environment plan or well operations management plan as applicable.

breach, the actions required and the necessary timeframe to respond. In all cases, parties are required to take action to operate in accordance with the law.

11. The governance arrangements for NOPSEMA are comprehensive with measures including those applicable to standard government agencies together with federal, state and territorial ministerial oversight, the NOPSEMA Advisory Board, statutory operational reviews, Senate Estimates, and appearances before Parliamentary inquiries for federal, state and territory governments.
12. The two most recent NOPSEMA statutory independent reviews were completed in 2015 and confirmed NOPSEMA to be a robust, rigorous and competent regulator. These reviews were preceded by two triennial operational reviews in 2008 and 2011 on NOPSA's performance, on the effectiveness of the offshore petroleum safety regime. Those reviews also found NOPSA to be a respected and competent offshore petroleum safety regulator.
13. Outcomes of other reviews relevant to NOPSEMA, conducted by the Australian National Audit Office, the Productivity Commission and other authorities, have also confirmed that NOPSEMA not only administers a sound framework for the regulation of the offshore petroleum industry but is also a cost effective and technically competent regulator.
14. The OPGGS Act was established several years prior to the model Work Health and Safety laws (model WHS laws) and the Commonwealth *Work Health and Safety Act 2011* (Commonwealth WHS Act) and continues to demonstrate a robust regulatory safety framework. The model WHS laws, the Commonwealth WHS Act and the OPGGS Act, sit side by side and are aimed at achieving the desired OHS outcomes even though they were established for different reasons. The model WHS laws, the Commonwealth WHS Act and the OPGGS Act provide a framework for the protection of people at or near workplaces from risks to health and safety and also advocate continuous improvement and consultative relationships between relevant members of the workforce at those workplaces.
15. NOPSEMA recognises there are some differences across the model WHS laws, the Commonwealth WHS Act and the OPGGS Act, reflecting the unique features of the offshore petroleum industry such as the limitations of access to offshore petroleum facilities. The merit of these differences is largely a policy matter and NOPSEMA will continue to administer legislation as determined by Parliament. Nevertheless it is noted the model WHS laws have not yet been implemented in Victoria and Western Australia, and even where they have been implemented, states and territories have tailored those laws to their jurisdictions to be relevant to the differing needs according to each specific industry and environment.
16. Ultimately, the key determinant for government on relevant policy and legislative changes should be the potential for improving workplace health and safety outcomes. While some changes may assist in achieving these outcomes, the single most significant potential change remains the rationale for establishing NOPSEMA. That change involves the integration of all offshore petroleum health and safety, well integrity and environmental management regulatory responsibilities in a single, independent regulator staffed with appropriately qualified and experienced personnel in sufficient numbers to achieve a critical mass of expertise.

## 2. Background

### 2.1 Leading practice

17. The 1988 Piper Alpha incident in the North Sea resulted in 167 deaths and substantial financial impacts to the UK industry and Government. It was a significant catalyst for change to the duty of care requirements and obligations of facility operators and regulators for the safety regulation of offshore petroleum activities.
18. The international regulatory community recognised the limitations of the existing prescriptive-based regime where the regulator identified what was safe and acceptable for the industry and its specific activities. The Cullen Report<sup>2</sup> on the Piper Alpha incident advocated objective-based regulation and the concept of a *safety case* to be adopted as the leading practice for future safety regulation of offshore petroleum activities. The onus of responsibility for the safety of design and operation of a facility is transferred from the regulator to the operator, to require ongoing identification, evaluation and reduction of risks. The regulator exercises powers to provide assurance that the operator is managing risks associated with the work health and safety of people engaged in offshore petroleum activities.
19. In 1988, the Australian Government formed a Consultative Committee on Safety in the Offshore Petroleum Industry (COSOP) to advise on the adequacy of offshore safety regulation in Australia and to give priority to reviewing the reports of the inquiries into the Piper Alpha incident.<sup>3</sup>
20. The COSOP consisted of two representatives from the Commonwealth Government, a representative from the Northern Territory government and from each of the two (2) state governments with active offshore petroleum production programs, three (3) representatives from unions covering workers in the offshore industry, and three (3) representatives from the major offshore operators.<sup>4</sup>
21. The COSOP supported the adoption of the safety case and objective-based regulation in Australia. Subsequently *the Petroleum (Submerged Lands) Act 1967* schedule of specific requirements on safety provisions was replaced by the Management of Safety on Offshore Facilities (MoSOF) Regulations 1996 to introduce performance based regulations, the safety case and to strengthen the duty of care regime imposed on operators and other responsible parties. The model was accepted by the Australian Government as leading practice at that time and was initially administered jointly by the states, the Northern Territory and the Commonwealth under joint authority/designated authority arrangements.

<sup>2</sup> The public inquiry into the Piper Alpha Disaster by Lord Cullen established in July 1988 with hearings commencing in January 1989. The report of the inquiry (the Cullen Report) was presented to the UK Government in November 1990.

<sup>3</sup> Department of Primary Industries and Energy, *Australian Response to the Cullen Report*, 1991, p. 2.

<sup>4</sup> *Ibid.*, p. 9.



## 2.2 Creation of National Offshore Petroleum Safety Authority (NOPSA)

22. In 1999, the Australian Government commissioned a review into the adequacy of offshore safety regulation in Australia. At the time, the states and the Northern Territory carried out day-to-day offshore safety regulation using a combination of objective-based and prescriptive legislative rules. Findings of the independent review team concluded that:

*“the Australian legal and administrative framework and the day to day application of this framework for regulation of health and safety and environment in the offshore petroleum industry, is complicated and insufficient to ensure appropriate effective and cost efficient regulation of the offshore petroleum industry and much would require improvement for the regime to deliver world class safety practice”.<sup>5</sup>*

23. In particular, the review team identified the various pieces of legislation as excessive to regulating the industry, boundaries were unclear and the application of laws was inconsistent for each different state and the Northern Territory. There was an overlap in legislation and regulators lacked regulatory skills, capacity and consistency. Often the state law was not intended and not drafted in appropriate terms to apply in the offshore environment.<sup>6</sup>
24. The review team recommended a revision of the existing regulatory and legislative framework and proposed that a national petroleum regulation authority, similar to the Australian Maritime Safety Authority (AMSA), be developed to oversee the regulation of safety in Commonwealth waters.<sup>7</sup>
25. The Council of Australian Governments (COAG) accepted the review’s recommendations to establish a single, expertise-based, independent agency. In 2005 the Australian Government with bipartisan and tripartite support established NOPSA to provide a nationally consistent objective-based approach to regulating the health and safety of workers on offshore facilities.
26. NOPSA was created as an independent, cost recovered statutory authority. This framework provided NOPSA the ability to attract and retain highly skilled and experienced technical specialists from an international recruitment pool.
27. The states commenced the process of transferring powers recognising that the conferral of powers to NOPSA would “maximise integration of offshore petroleum safety and integrity regulation and a properly resourced regulator in an augmented duty of care and safety case regime is the best option for future safety”.<sup>8</sup>
28. Further detail on conferral arrangements and its relevance to the [terms of reference \(10\) on government policies at the state, territory and Commonwealth level which have a significant impact on the work health and safety of workers in the offshore petroleum industry](#), is provided in [part 3.2 – Conferral](#), of this submission.

---

<sup>5</sup> Department of Industry, Science and Resources, 2001, *Australian Offshore Petroleum Safety Case Review – Future arrangements for the Regulation of Offshore Petroleum Safety*, 2001, pp. 3-4.

<sup>6</sup> Ibid., pp. 54-60.

<sup>7</sup> Ibid., p. 6.

<sup>8</sup> Offshore Petroleum Safety Regulation, *Better Practice and the Effectiveness of the National Offshore Petroleum Safety Authority*, Kim Bills and David Agostini, 2009, p. xii.

## 2.3 Expansion of NOPSA's role

29. Following the establishment of NOPSA in 2005, a number of major offshore incidents drew intense media and public scrutiny and prompted moves for further regulatory reform in Australia and internationally with respect to offshore petroleum.
30. In Australia, two offshore petroleum incidents further reinforced the need to expand NOPSA's jurisdiction and role to include well integrity and environmental management. These incidents were: (1) the Varanus Island incident of 3 June, 2008, and (2) the Montara incident of 21 August, 2009. Case studies on these incidents are provided at paragraphs 41 and 42.
31. On 9 January 2009 the Commonwealth and Western Australian Governments through the Minister for Resources and Energy, the Hon Martin Ferguson AM MP, and the Minister for Mines and Petroleum, the Hon Norman Moore MLC, announced a joint independent Inquiry into the effectiveness of regulation for offshore petroleum activities. Around the same time a further investigation specific to the Varanus Island incident was also undertaken by Kym Bills and David Agostini to establish causes and responsibilities.<sup>9</sup>
32. The 2009 Inquiry into the effectiveness of offshore petroleum safety regulation and the investigation report on the Varanus Island incident was made public and described the best option for the future safety of offshore petroleum activities, to involve conferral of powers to NOPSA to maximise integration of offshore petroleum safety and integrity regulation. Conferral of powers to NOPSA offered many advantages to streamlining regulation, including eliminating the *"confusing mishmash of jurisdictional, legal, process and regulatory interfaces"*.<sup>10</sup>
33. In the same year, the Productivity Commission also conducted its review of Australian offshore petroleum regulation to consider ways to reduce the regulatory burden on industry and identified:
  - the dual regulation across jurisdictions, of pipelines and wells as an unnecessary regulatory burden
  - states and territories should consider conferring powers on NOPSA to regulate OHS matters for all state and territory waters seaward of the low tide mark, including islands within those waters.<sup>11</sup>
34. The Montara incident confirmed the significant relationship and synergies of how the integrity of a facility's wells can impact the safety and environmental management outcomes for that facility. In the following years the interdependencies across these three functions was recognised by the Australian Government as needing to be combined and oversighted by a single independent regulator.
35. A formal inquiry into the Montara oil spill and the subsequent publication of The Montara Commission of Inquiry Report (2010), found a series of failures predominantly attributed to the operator, however the inquiry also found that:
  - the existing legislative regime is largely sufficient to allow effective monitoring and enforcement by regulators of offshore petroleum-related operations – the inadequacies identified by the Inquiry relate primarily to the implementation of this legislation
  - a single, independent body should be created and be made responsible for regulating the health and safety, well integrity and environmental management aspects of offshore petroleum operations.<sup>12</sup>

<sup>9</sup> Offshore Petroleum Safety Regulation, Varanus Island Incident Investigation, Kym Bills and David Agostini, June 2009

<sup>10</sup> Ibid., p. xviii.

<sup>11</sup> Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector, Productivity Commission, 2009

<sup>12</sup> Report of the Montara Commission of Inquiry, Commissioner David Borthwick AO PSM, June 2010

36. In 2010, in the Gulf of Mexico, the BP Macondo incident claimed 11 lives and led to an oil spill that lasted 87 days. Inadequate corporate management of safety of the Macondo well and the associated drilling rig was one of the root causes of this incident.

*"The actions, policies, and procedures of the corporations involved did not provide an effective system safety approach commensurate with the risks of the Macondo well. The lack of a strong safety culture resulting from a deficient overall systems approach to safety is evident in the multiple flawed decisions that led to the blowout. Industrial management involved with the Macondo well–Deepwater Horizon disaster failed to appreciate or plan for the safety challenges presented by the Macondo well (Finding 5.1)."*<sup>13</sup>

37. During this period the Commonwealth, states and territories agreed on the performance and strength of the regulatory regime to be administered by a single, independent, expertise and objective-based regulator. In April 2011, the Commonwealth Government transferred well integrity powers from the states and Northern Territory designated authority arrangements to NOPSA.
38. On 1 January 2012, responsibility for regulating offshore environmental management was added to NOPSA's existing functions and the organisation was renamed the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), reducing the number of regulators in Commonwealth waters from seven to one.
39. From 30 June 2013, Victoria conferred its offshore safety functions in designated coastal waters on NOPSEMA for the regulation of health and safety, and structural integrity.
40. In February 2014, NOPSEMA became the sole Commonwealth environmental management regulator for offshore petroleum activities when the Commonwealth Minister for the Environment endorsed NOPSEMA's environmental management authorisation process under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The combination of the regulation of safety, well integrity, and environmental management under a single independent regulator aims to standardise Australia's offshore petroleum regulation to a quality, best practice model.
41. Case study one, Varanus Island incident of 3 June 2008:

**Summary** Varanus Island was classified as within Western Australian internal waters, under Western Australian (WA) jurisdiction. It was regulated as a "pipeline" under the WA *Petroleum Pipelines Act 1969* by the WA Department of Industry and Resources (DOIR), the regulator at that time. NOPSA provided audit services to DOIR under contract with no legal authority for inspections or compliance as DOIR elected to retain these responsibilities on Varanus, Airlie and Thevenard Islands.

The incident involved a high pressure export sales gas pipeline rupturing and exploding on the beach of Varanus Island. A parallel pressure inflow gas pipeline also ruptured. Both pipelines directed intense fires towards the main gas processing plant. Two other pipelines also ruptured closer to the plant and debris from the explosions penetrated into the Harriet Joint Venture gas plant. Damages to the plant and the plant closure resulted in approximately A\$3 billion of losses to the WA economy which lost 30 percent of its gas supply for two months.

**Outcomes** The independent investigation into the incident identified that corrosion and ineffective inspection and monitoring regimes were the causes of the incident. The investigation report concluded the DOIR was an under-resourced and less than competent safety regulator working in a difficult legislative and industry environment in which safety case language was confusingly grafted into an already inadequate pipeline licensing regime.<sup>14</sup> NOPSA had submitted reports and advice on the weaknesses in the WA legislation and on the pipeline licence as inappropriate for the facilities, but noted its limitations under the services contract and other legal restrictions, to be empowered to provide greater safety assurance for this offshore petroleum activity.

<sup>13</sup> Macondo Well Deepwater Horizon Blowout: Lessons for Improving Offshore Drilling Safety, 2012

<sup>14</sup> Offshore Petroleum Safety Regulation, Varanus Island Incident Investigation, Kym Bills and David Agostini, June 2009



42. Case study two, Montara oil spill incident of 21 August 2009:

**Summary** PTTEP Australasia (Ashmore Cartier) Pty Ltd operated the Montara H1 well, located off Australia's northern coast. It experienced a sequence of events that compromised the well's integrity. This led to a blowout, which later ignited causing a fire which engulfed the facility and an oil spill that took more than 70 days to bring under control. Well integrity related regulatory oversight of the Montara operations was administered by the Northern Territory Department of Resources (NT DoR) at that time.

**Outcomes** The Montara incident was Australia's most significant offshore petroleum industry accident in terms of its impact on community confidence, expectations for environmental management, and reform to Commonwealth offshore petroleum industry regulation. While the failures were predominantly attributed to the operator, the Montara Commission of Inquiry also found the NT DoR as not a sufficiently diligent regulator, having adopted a minimalist approach to its regulatory responsibilities and strongly recommended a single, independent body be created.<sup>15</sup>

The incident confirmed how shortcomings with the well integrity of the facility posed safety and environmental risks which led to significant consequences. Moving forward an integrated approach to the regulation of all these functions as a whole would provide assurance to Government and the public of a more responsible and safe offshore petroleum environment. The Montara incident became a significant driver for Government to establish NOPSEMA.

NOPSEMA (NOPSA initiated) took appropriate enforcement action against PTTEP AA and successfully prosecuted PTTEP AA. They were convicted and fined in the amount of \$510,000 for three OHS offences and one non-OHS offence. At that time this was the largest OHS penalty handed down under OHS legislation in Australia.<sup>16</sup>

---

<sup>15</sup> Report of the Montara Commission of Inquiry, Commissioner David Borthwick AO PSM, June 2010, p.6.

<sup>16</sup> <https://www.nopsema.gov.au/assets/News-and-media/Media-Release-Successful-prosecution-over-Montara-platform-blowout-31-August-2012.pdf>



## 2.4 Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPGGs Act) and model WHS Act and the Commonwealth WHS Act

43. Since 2006 the legislative framework for the offshore petroleum industry has been based on the OPGGS Act which superseded and repealed previous offshore petroleum legislation—the *Offshore Petroleum Act 2006* (OPA) and the *Petroleum (Submerged Lands) Act 1967* (PSLA).
44. NOPSEMA continually assesses the effectiveness of the OPGGS Act for improvement to the OHS regime and consults with the Department of Industry, Innovation and Science (the policy agency responsible for legislative change for the OPGGS Act and associated regulations) on its assessment of the legislation.
45. In 2011, the Australian Government undertook a review of compliance and enforcement measures in the OPGGS Act and associated regulations. The review concluded that the enforcement mechanisms, sanctions and penalties available at that time, needed to be a more effective and meaningful deterrent against non-compliance. As a result, the Government introduced a broader range of graduated enforcement tools for NOPSEMA to use, including civil penalties, infringement notices, injunctions and adverse publicity orders. The criminal penalty levels for a number of offences were also substantially increased, consistent with other high-hazard industry legislation. The relevant measures amending the OPGGS Act commenced on 1 October 2014.
46. The resulting amendments to the OPGGS Act (introduced through the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures) Act 2013*) included:
  - the introduction of a civil penalty regime
  - increases to the criminal penalty levels under the OPGGS Act, consistent with major hazard industry legislation
  - penalties, including custodial penalties, for OHS offences under the OPGGS Act were harmonised with, or made greater (as appropriate) than the Commonwealth *Work Health and Safety Act 2011*, to reflect the greater consequences in a major hazard industry
  - NOPSEMA's inspectorate powers were redrafted to provide greater clarity and consistency between the various powers of each category of inspector and to remove unnecessary procedural requirements that impeded NOPSEMA's ability to effectively perform its enforcement functions.
47. Further amendments to the OPGGS Act were introduced through the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures No. 2) Act 2013* which included:
  - the introduction of alternative enforcement mechanisms (infringement notices, daily penalties for continuing offences and civil penalty provisions, injunctions and adverse publicity orders) into the offshore petroleum regulatory regime
  - requiring NOPSEMA to publish on its website improvement and prohibition notices issued by NOPSEMA's inspectors under Schedule 3 of the OPGGS Act
  - enabling matters relating to the service of documents under the OPGGS Act or legislative instruments to be provided for in regulations under the OPGGS Act. Specifically, this allowed for documents to be served by electronic means which was deemed to be particularly important in situations of potential emergency, where notices were issued under Schedule 3 of the OPGGS Act.
48. The OPGGS Act and associated regulations provide for an objective-based regime that is the accepted leading practice recommended by a number of Australian Government reviews. The objective-based safety regime:
  - establishes a framework based on specified objectives and requires operators of facilities to demonstrate how they will achieve those objectives
  - ensures that those who create risk are responsible for identifying and managing that risk including the need to reduce OHS risks to a level that is as low as reasonably practicable (ALARP)
  - is adaptable, flexible and scalable to the petroleum activities proposed to be undertaken

- provides the opportunity for the offshore petroleum industry to adopt advances in technology and apply OHS risk control measures that are best suited to the individual circumstances of the activity
  - encourages adoption of best practice and continuous improvement in all aspects of the operator's OHS performance
  - is recognised as international regulatory best practice for major hazard industries such as offshore petroleum, onshore petroleum, petrochemical and the nuclear industries.
49. An objective-based model places onus on the creator of the risk to identify the most effective means to manage risk and allows for continuous improvement for both the industry and the regulator. It is adaptable, flexible and scalable and is supported internationally by regulatory authorities, risk management professionals and academics as being the most appropriate regulatory framework for major hazard industries. The four basic features of a successful regulatory regime for OHS associated with offshore petroleum are:<sup>17</sup>
- a general duty of care being placed on the operator of the facility
  - a risk-based approach to safety management
  - a requirement to "make a case" to the regulator
  - a competent and independent regulator.
50. The regulatory regime under which NOPSEMA operates provides all of these features.
51. In 2011, Safe Work Australia developed the model WHS laws to include:
- the Work Health and Safety Act ([model WHS Act](#))
  - the WHS Regulations
  - model Codes of Practice.
52. By way of background, in 2008 uniformity in OHS laws arose as an issue on the COAG reform agenda. The Commonwealth, States and Territories signed the Intergovernmental Agreement for Regulatory and Operational Reform in OHS (IGA). Under the IGA, the Commonwealth, along with states and territories, committed to establishing a national independent body (Safe Work Australia) and implementation of model legislation in each jurisdiction.<sup>18</sup> For the model WHS laws to become legally binding, the Commonwealth, states and territories must separately implement them as their own laws.
53. The OPGGS Act incorporates comparable provisions to the key elements of the model WHS laws with few differences. The similarities include provisions for a duty of care regime, a risk management framework, workplace-based consultation, participation and representation, provisions for enforcement and compliance, regulation-making powers, and a defined role of the OHS regulatory agency. The OPGGS Act is also reinforced by the OPGGS Safety Regulations that provide in detail the obligations, systems and workplace arrangements for a robust safety regulatory framework.
54. A member of the National OHS Review Panel, Barry Sherriff, whose recommendations on the model WHS Act were made to Workplace Relations Ministers' Council (WRMC), provides the model WHS Act does not contain all detailed provisions required to give effect to legislation of this kind, leaving some matters to the relevant jurisdiction in order to recognise the differing needs of jurisdictions according to their 'commercial or industrial environment'.<sup>19</sup>
55. The explanatory statement to the model WHS Regulations (the ES) explains the model WHS Regulations considers the differing needs of operating environments. The ES explains in relation to regulation 530 of the WHS Regulations on major hazard facilities that the WHS Regulations do not apply to a facility

<sup>17</sup> Hopkins, Andrew (2012) *"Disastrous Decisions, The Human and Organisational Causes of the Gulf of Mexico Blowout"*

<sup>18</sup> Council of Australian Governments, Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety (2008) ss 5.2.5, 5.3.3, 5.4.4.

<sup>19</sup> Australian Law Reform Commission website - *Understanding the Model Work and Health Safety Act* (2010), B Sherriff and M Tooma, p.3. Barry Sherriff was a member of the National OHS Review Panel.

regulated by NOPSEMA, nor in relation to explosives magazines on mine leases regulated by the relevant responsible authority.

56. Given the unique operating environment of offshore petroleum activities, to include its remoteness and inherent risks associated with a high hazard industry, NOPSEMA is not aware of any evidence to suggest the differences between the model WHS laws and the OPGGS Act, compromises the health and safety of the offshore petroleum workforce. A comparative analysis of the OPGGS Act, the model WHS Act and Commonwealth WHS Act and its relevance to addressing [terms of reference \(1\)](#) is provided in [part 3.4 – Comparison of legislation](#), of this submission.



### 3. NOPSEMA

#### 3.1 Operations

57. NOPSEMA is established as an independent statutory authority under the OPGGS Act and as a Commonwealth corporate entity under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). It is independently cost recovered from industry and has a transparent process for determining levies and reporting on expenditure.
58. NOPSEMA is an expertise-based regulator of all offshore petroleum activities in Commonwealth waters, which comprise those areas beyond three nautical miles from the territorial sea baseline<sup>20</sup> and regulates offshore petroleum activities in coastal waters only where a state or territory has conferred regulatory powers and functions on NOPSEMA. Victoria has conferred powers and functions for the regulation of health and safety and well integrity to NOPSEMA.
59. NOPSEMA is subject to a range of governance controls including federal, state and territorial ministerial oversight, the NOPSEMA Advisory Board, statutory operational reviews, estimates hearings and other Parliamentary inquiries for federal, state and territory.
60. Appointed by the responsible Commonwealth Minister (currently the Minister for Resources and Northern Australia) with support from each of the relevant state and Northern Territory ministers, NOPSEMA's Chief Executive Officer (CEO) has overall responsibility for the management of NOPSEMA. The CEO has all the powers and functions that the OPGGS Act and associated regulations assign to NOPSEMA. The CEO also reports to the responsible state and territory minister where conferral has occurred.
61. The responsible Commonwealth Minister, after consultation with each relevant state or territory minister, may issue policy principles to NOPSEMA that NOPSEMA must comply with. These policy principles direct the manner in which NOPSEMA fulfils its responsibilities.
62. NOPSEMA reports, as appropriate, to the responsible Commonwealth Minister, the Commonwealth Minister for the Environment and each relevant state or territory minister on industry performance.
63. NOPSEMA also reports to the Commonwealth Minister for the Environment on its environmental management performance in accordance with administrative arrangements under the endorsed EPBC Act Program.
64. NOPSEMA's independent, cost recovered framework allows the authority to continue to attract and retain highly skilled specialist staff that is comparable to leading industry practice. As a statutory authority, NOPSEMA has greater freedom to offer competitive salaries and adjust expenditure according to industry activity and regulatory need.
65. NOPSEMA is staffed by 110 dedicated professionals that make decisions free of policy or economic development responsibilities. NOPSEMA has systems in place to ensure that regulatory staff obtain and maintain relevant competencies.
66. NOPSEMA's Safety and Integrity Division is staffed by a critical mass of 36 highly trained and qualified technical experts with extensive practical domestic and international experience in offshore petroleum activities. This staffing unit includes 29 offshore petroleum OHS specialists and seven (7) offshore petroleum well integrity specialists and is the largest concentration of offshore petroleum OHS regulatory specialists in Australia. The Safety and Integrity Division is further supported by another 30 specialists that provide legal services, stakeholder education and communications, independent investigations, and data analysis and reporting.
67. NOPSEMA is a highly engaged and consultative regulator. It undertakes a wide variety of communication and engagement activities to advise industry and promote matters relating to the occupational health and safety of people engaged in offshore petroleum activities. Those activities include direct interaction

<sup>20</sup> Note: The territorial sea baseline varies depending upon the shape of the coastline in any given locality.

See <http://www.ga.gov.au/scientific-topics/marine/jurisdiction/maritime-boundary-definitions> for a comprehensive description and maps.

through assessment and inspection activities, meetings and workshops, participation in conferences and open days, publication of guidance material and performance data, and appearances before public hearings on OHS related matters.

68. NOPSEMA averages more than 800 meetings per annum with industry, government (all parties at federal, state and local government level) and other stakeholders including bilateral meetings with unions and around 80 meetings with health and safety representatives (HSRs) that are facility elected worker representatives. During 2017, NOPSEMA conducted 552 liaison meetings with duty holders<sup>21</sup> and 258 liaison meetings with government, industry and other stakeholders, and responded to a number of parliamentary inquiries. Of the 552 liaison meetings, 365 were specifically related to OHS related matters.
69. Since 2005, more than 65 safety alerts have been published on NOPSEMA's website related to reports on safety improvement issues arising from its investigative and assessment activities. NOPSEMA periodically reviews safety alerts from other jurisdictions and, where appropriate, highlights timely lessons drawn from these identified sources.
70. In 2017 NOPSEMA published numerous safety-related guidance documents and information papers, and four safety alerts on process safety observations arising from NOPSEMA investigations. Further information on NOPSEMA's engagement strategy and outreach to the workforce to address [terms of reference \(5\) collaboration and working relationships with other work health and safety regulators and bodies including Safe Work Australia](#), is provided in [part 3.3 - Offshore petroleum occupational health and safety framework](#) of this submission.

---

<sup>21</sup> Duty holders are taken to mean titleholders, operators and third parties responsible for offshore petroleum activities.

## 3.2 Conferral

**ToR (10) government policies at the state, territory and Commonwealth level which have a significant impact on the work health and safety of workers in the offshore petroleum industry; and**

**ToR (12) the role of government in providing a coordinated strategic approach to health and safety outcomes in the offshore petroleum industry.**

71. In 2002 the Ministerial Council on Mineral and Petroleum Resources recommended the merits of a single national offshore safety authority to reduce the regulatory burden on industry operating across multiple jurisdictions and to provide for consistent and comprehensive coverage of safety requirements. The Council concluded that it would meet the needs of industry and the workforce for an independent safety regulator.<sup>22</sup>
72. Accepting the recommendation, the Commonwealth proposed the creation of an independent regulator regulating Commonwealth and designated coastal waters, requiring the states and the Northern Territory to confer their powers over designated waters on the Commonwealth. This arrangement would effectively result in the Commonwealth reporting to state ministers regarding activities in designated coastal waters, but allow the Commonwealth to directly control the administration of offshore waters, with reporting and accountability to relevant ministers.
73. The states and Northern Territory ministers endorsed the way forward for the formation of an independent national offshore safety authority to be a single agency covering both Commonwealth and designated coastal waters and to be accountable to the Commonwealth, state and Northern Territory ministers. A single agency would bring efficiencies through economies of scale, uniform procedures and greater consistency in the interpretation and application of regulations and guidelines, and reduce regulatory burden on industry.<sup>23</sup> This change in Government policy, endorsed by the states and Northern Territory, contributed to more consistent and appropriate requirements for the work, health and safety of workers in the offshore petroleum industry.
74. In 2009 the conferral of powers in coastal waters to streamline regulation and avoid regulatory gaps was also recommended by the Productivity Commission.
75. The formation of NOPSA and later NOPSEMA standardised the approach taken to the regulation of safety of the offshore petroleum industry in Commonwealth waters. Under a conferred arrangement, further streamlining between state, territory and Commonwealth laws could occur. Where implemented, it increases clarity, certainty and consistency in the decision-making processes for workers and provides assurances to the community regarding safety outcomes for offshore petroleum activities regardless of their location.
76. Victoria has conferred its offshore safety functions in designated coastal waters on NOPSEMA for the regulation of health and safety and structural integrity of offshore petroleum activities. Progress by other states and the Northern Territory has been variable, with active steps having been completed in some jurisdictions. Among the benefits of conferral are:
  - a consistent objective-based regulatory framework leading to improved occupational health and safety, integrity and environmental outcomes
  - reduced duplication and regulatory burden on industry
  - increased clarity, certainty and consistency in decision-making processes for industry
  - assurance to the community regarding consistent regulatory outcomes for offshore petroleum activities regardless of their location
  - increased benefits for the Australian economy by increasing petroleum industry competitiveness and encouraging future investment

---

<sup>22</sup> Communique, Summary of Ministerial Council Meeting, 13 September 2002 Perth

<sup>23</sup> Ibid.



- reduction in unnecessary costs to Governments and industry associated with preparation and assessment of multiple documents for a single project.
77. Conferral of powers to an experienced, well-resourced expertise based regulator offers the opportunity to minimise future OHS risks. The critical mass of NOPSEMA expertise and capacity to regulate complex and large numbers of facilities cannot, for practical and resource reasons, be paralleled by other state and territory regulators.
  78. Reducing inconsistencies between jurisdictions has also been highlighted by industry as reducing cost and burden for them. Cross jurisdictional projects are particularly affected by this unnecessary burden in meeting the requirements of different regulators and potentially conflicting requirements for different aspects of the same offshore petroleum activity.
  79. NOPSEMA offers scale and critical mass of expertise dedicated to the regulation of more than 150 offshore facilities and approximately 900 offshore wells that is not covered or sustainable by other jurisdictions. This feature is becoming even more pronounced as offshore activity is moving to deeper water, which means even less activity in coastal waters to sustain regulatory capability.
  80. In addition, there are direct benefits for the states and the Northern Territory of conferring regulatory functions on NOPSEMA in designated coastal waters including:
    - reduced economic burden on states and Northern Territory governments, who no longer require resources to assess, enforce and monitor compliance of safety cases, well operations management plans and environment plans
    - reduced reputational, economic and other risks in the event of another significant petroleum related incident such as the Montara incident
    - states and Northern Territory governments continue to have full control over the location of exploration and development activities, and collect associated royalties, without carrying the burden of regulatory compliance and enforcement.
  81. The graduated conferral of powers on NOPSEMA has proven to be successful as evidenced by the continuing improvement in industry performance and findings established by independent reviews and inquiries. Government support to reinforce the policy of conferral of powers will have a positive impact on workers as it will provide a coordinated strategic approach to health and safety outcomes in the offshore petroleum industry. Further [performance outcomes](#) information in support of these statements is provided in [part 4](#) of this submission.

### 3.3 Offshore petroleum occupational health and safety framework

82. NOPSEMA's functions involve the regulation and promotion of occupational health and safety (OHS) of persons engaged in offshore petroleum operations<sup>24</sup> in Commonwealth waters. NOPSEMA's legislated functions are specified in Section 646 of the OPGGS Act, and are summarised as follows:
  - to promote the occupational health and safety of persons engaged in offshore petroleum operations or offshore greenhouse gas storage operations
  - to develop and implement effective monitoring and enforcement strategies to secure compliance under the OPGGS Act and regulations
  - to investigate accidents, occurrences and circumstances that affect occupational health and safety
  - to advise on matters relating to offshore health and safety

<sup>24</sup> Offshore petroleum operations means any regulated operations (including diving) is taken to mean a petroleum activity at and on a facility and an associated offshore place in relation to a facility that is taken to mean any offshore place near the facility where activities such as diving relate to the construction, installation, operation, maintenance or decommissioning of the facility take place.

- to make reports on investigations to the responsible Commonwealth minister and each responsible state/Northern Territory minister
  - to provide information, assessments, analysis, reports, advice and recommendations on request to the responsible Commonwealth minister
  - to cooperate with other Commonwealth, state and Northern Territory agencies or authorities having functions relating to regulated operations.
83. NOPSEMA administers aspects of the following legislation as they relate to its health and safety functions:
- *Offshore Petroleum and Greenhouse Gas Storage Act 2006*
  - Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009
  - *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003*
  - Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004.
84. To fulfil its legislated functions NOPSEMA undertakes assessment, inspection, investigation, enforcement, promotion and advisory activities.
85. The 'OHS legislation' that establish the foundations of the OHS regime that NOPSEMA administers comprise:
- Schedule 3 of the OPGGS Act
  - Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009 (the Safety Regulations)
  - Part 5 of the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011*, to the extent to which that Part relates to occupational health and safety.
86. NOPSEMA delivers its OHS functions through five core regulatory activities which are interlinked and provide an integrated and comprehensive regulatory framework.
87. NOPSEMA:
- assesses how the operator of the facility proposes to manage the OHS risks of their activity and determines whether the safety case is acceptable
  - inspects the facility to determine whether the activity is being managed in accordance with the accepted safety case and other legislative requirements
  - investigates where an incident occurs or where a potential non-compliance with the legislation is suspected
  - takes enforcement action where this is required to rectify and prevent recurrence of non-compliance
  - promotes OHS and provides advice to the industry on learnings from assessments, inspections, investigations and enforcements and promotes robust OHS management practices.
88. Further information on each of these functions is provided on the following pages.

### **Assessment**

89. The objective of the Safety Regulations is to ensure that:
- facilities are designed, constructed installed, modified and operated only in accordance with accepted safety cases submitted by the operator
  - risks to health and safety of persons at or near facilities are reduced to a level that is as low as reasonably practicable (ALARP)
  - that diving is carried out in accordance with accepted diving safety management systems
  - safety cases and diving safety management systems make provision for:



- the identification of hazards and assessment of risks
- the implementation of measures to eliminate the hazards or control the risks
- a comprehensive and integrated system for management of the hazards and risks
- monitoring, audit, review and continuous improvement.

90. The Safety Regulations stipulate the detailed content requirements for safety cases and diving safety management systems.

91. Each safety case that NOPSEMA assesses is specific to the facility and activities to which it relates.

#### **OHS Inspections**

92. NOPSEMA conducts OHS inspections to monitor compliance with the OHS laws including ongoing implementation and compliance with accepted safety cases and diving safety management systems, where applicable. The intent of the OHS inspections is to provide for sufficient oversight to ensure that all reasonably practicable steps are being taken to prevent Major Accident Events (MAEs) and to reduce risks to health and safety to a level that is ALARP.

93. NOPSEMA typically undertakes over 100<sup>25</sup> OHS inspections per year which focus on targeted areas of OHS risk.

94. The conduct of OHS inspections considers normally attended production facilities and mobile offshore drilling units (MODUs)<sup>26</sup> as higher risk than other facilities such as pipelines, not-normally attended facilities and transient vessel facilities. The inspection framework takes into account operator maturity and facility complexity in determining the frequency of inspecting normally attended production facilities and MODUs. The minimum frequency for inspecting these facilities is typically twice (2) per year.

95. The inspection frequency for pipelines is informed by a risk-based methodology taking into consideration a number of pipeline and operator-specific factors including the probability of people being at or near the pipeline. This risk-based methodology assists NOPSEMA to determine a target inspection of a frequency generally between once every two (2) years or once every four (4) years. The overall number of safety inspections has substantially increased since the commencement of a single offshore petroleum regulator in 2005.

96. Inspections are scoped and scheduled using a risk-based methodology that considers relevant risk factors, previous performance and compliance history, current industry incident trends, and responses to recommendations from any previous inspections. They include meetings with HSRs to assess an operator's implementation of the requirement to consult with and enable the participation of the workforce, in relation to the risks and hazards on facilities.

97. Given the complexity and high hazard nature of offshore petroleum operations, on most occasions advance notice of inspections is given to ensure that appropriate transport logistical arrangements are facilitated and that facility personnel and areas of activity are made accessible to NOPSEMA to carry out its functions. This approach is not unique within Government where arranged attendance and early notification is also practiced by others such as Australia's Maritime Border Command before approaching any of Australia's security regulated offshore production facilities. NOPSEMA also conducts unannounced inspections, in the form of investigations which typically take place at regulated business premises where the situation warrants the formal collection of evidence.

98. Upon completion of an inspection, NOPSEMA provides a detailed report of inspection findings, conclusions and any recommendations for improvement to the operator. NOPSEMA also requests the operator to provide proposed actions to be taken with respect to recommendations arising from an inspection and to provide the report to the health and safety committee and HSRs.<sup>27</sup>

<sup>25</sup> Five year average number of inspections, 2013 – 2017.

<sup>26</sup> Normally attended facilities are those that provide accommodation for the workforce during routine operations.

<sup>27</sup> Schedule 3, Clause 80(5) of the OPGGS Act.

99. Where an inspection finds non-compliance (actual or potential) with legislative requirements including the accepted safety case, or any immediate threats to health or safety, NOPSEMA may take enforcement action in accordance with its published Enforcement Policy.

### **Investigation**

100. NOPSEMA may commence an investigation associated with an accident or dangerous occurrence that has or could affect the health and safety of people engaged in offshore operations or where it suspects or becomes aware of a potential non-compliance with the legislation, either through its inspection or monitoring activities, or through a complaint.
101. Investigations are conducted to seek information that may then be utilised as a basis for enforcement (including prosecution) and advice and promotion purposes.
102. Major investigations are led by experienced investigators supported by OHS subject matter experts from within NOPSEMA where required.
103. NOPSEMA shares lessons learnt from the investigation of incidents with the relevant industry stakeholder, where these lessons contribute to continuous improvement in OHS performance.

### **Enforcement**

104. Where NOPSEMA determines a breach of the legislation has occurred, it proactively takes enforcement action requiring the operator to rectify the breach, take steps to prevent a recurrence and act as a deterrent to future non-compliance.
105. NOPSEMA's principles of enforcement are specified in its published enforcement policy, and include the following:
- outcomes focused
  - proportional and responsive
  - informed
  - transparent
  - consistent
  - targeted
  - aligned with the principles of procedural fairness.
106. There have been two (2) incidents resulting in a total of three (3) fatalities related to the carrying out of offshore petroleum activities since the establishment of NOPSA in 2005. NOPSEMA has pursued prosecution of the responsible parties for these fatalities. There have been no fatalities in the regime since 2012.
107. On 24 December 2008, the Australian registered floating, storage and offloading (FSO) tanker, *Karratha Spirit*, sought to disconnect from a CALM Buoy and depart the field to avoid an approaching category four cyclone. During the disconnection process, one offshore worker was fatally injured when struck by a mooring line. NOPSA conducted a thorough investigation, input to the coronial inquest and submitted two briefs of evidence 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 jurisdiction between the offshore and maritime regimes and with proving the criminal elements of the offence.
108. The most recent incident resulted 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; the Magistrates' Court of Victoria imposed a criminal penalty of \$330,000 on Stena Drilling (Australia).
109. Prosecutions have also occurred involving various other major incidents. 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.

110. In circumstances of non-compliance not resulting in a fatality or serious injury, NOPSEMA proactively applies a wide range of enforcement options under the OPGGS Act. Options such as notices and directions are often pursued in preference to prosecution as these options can be more effective in lifting industry performance. Notices and directions may typically, for example, impose more timely legal obligations on duty holders to correct unsafe infrastructure, systems and behaviours. The application of these options can also result in significant financial and reputational impacts to the operator and may involve the immediate suspension of the offshore petroleum activity, whereas undertaking prosecutions for similar non-compliances may take several years and prolong correction to the non-compliances. The enforcement tools include:
- the issuing of improvement and prohibition notices
  - giving directions
  - requesting a revision or withdrawing acceptance of the permissioning document
  - removing the operator from the register of operators.
111. From 2005 to 2011, NOPSA issued 200 OHS improvement notices and 38 prohibition notices to duty holders. The enforcement notices set out the breaches of the safety legislation, and identified the immediate threat to health and safety, and required duty holders to take corrective action and demonstrate that deficiencies had been adequately addressed.
112. Prohibition notices must be complied with immediately, while improvement notices may provide the duty holder a number of weeks to address the non-compliance subject to the type of correction needed which may require changes to equipment, infrastructure, procedures and services.
113. Since the establishment of NOPSEMA in 2012, another 146 OHS improvement notices and 13 OHS prohibition notices have been issued to duty holders. These notices are published on NOPSEMA's website, as required by the legislation, to provide greater transparency in relation to NOPSEMA's enforcement processes and, to allow for associated learnings to be shared among industry. NOPSEMA maintains ongoing engagement with duty holders implementing corrective actions in relation to identified non-compliances.



## Promotion and advice

### ToR (5) the workings of NOPSEMA's collaboration, and working relationships with other work health and safety regulators and bodies including Safe Work Australia

114. With the overall objective of improving industry performance, NOPSEMA has a legislated function under section 646 of the OPGGS Act to promote and advise on OHS matters. As part of this legislated function, NOPSEMA is committed to being responsive to facility operators' information needs during the safety case assessment process. This includes engagement with the operator from the early stages of introduction to the regime through to commencing activities. Where appropriate, NOPSEMA will develop a safety case engagement plan.
115. NOPSEMA proactively seeks to engage with stakeholders through liaison meetings, hosting workshops and information sessions, presentations and participating in industry conferences and forums. NOPSEMA gives serious consideration to accepting invitations to participate in discussions and conferences where such invitations are extended by other OHS regulators and bodies including Safe Work Australia.
116. NOPSEMA seeks input from stakeholders on key NOPSEMA business operations, and advocates the sharing of information to include, but not limited to:
- the development of NOPSEMA's compliance strategy that incorporated input from the Australian Maritime Safety Authority (AMSA), the Australian Council of Trade Unions (ACTU), and other stakeholders
  - the executive appointment for NOPSEMA's Safety and Integrity Division involved a representative from Safe Work Australia to partake as a panel member in the recruitment and decision process. Ongoing collaboration with Safe Work Australia is demonstrated by NOPSEMA's commitment to sharing data and other relevant information where requested and permitted under the OPGGS Act
  - establishing memorandums of understanding with Worksafe Victoria<sup>28</sup> with a shared objective to ensure effective cooperation on OHS matters so that practicable OHS requirements are administered in a consistent manner
  - participation in bilateral meetings held with the ACTU and with the Maritime Union of Australia (MUA), Construction, Forestry, Mining and Energy Union (CFMEU), Australian Workers' Union (AWU), Australian Manufacturing Workers' Union (AMWU) and Electrical Trades Union (ETU), to engage on matters of mutual importance on work and health safety. Meetings with union bodies are held at least twice per annum. In 2017, NOPSEMA met with the ACTU and affiliated union bodies on three occasions (13 February, 6 June and 20 December)
  - NOPSEMA presentations at the 3<sup>rd</sup> and 4<sup>th</sup> ACTU offshore petroleum safety conferences in 2015<sup>29</sup>, following an invitation from the ACTU
  - collaboration on the development of an article on workforce participation in cooperation with the Australian Workers Union, which was published in *The Regulator*<sup>30</sup>, NOPSEMA's news magazine accessible by all interested stakeholders in print and online
  - networking and sharing information with different industry regulatory bodies such as ACCC and AFMA on the importance of OHS and partnering with other regulators such as AMSA and the AMSA Advisory Board, to share information that contributes to consistent regulatory approaches to OHS in the maritime domain.
117. NOPSEMA's leadership and experience in safety case regulation has been sought by other regulators such as Energy Safe Victoria who are responsible for onshore gas pipeline safety. NOPSEMA has delivered presentations on the OHS regime to visiting overseas delegations from countries such as China, Indonesia, East Timor and New Zealand. Many presentations have also been delivered at international forums by

<sup>28</sup> [https://www.worksafe.vic.gov.au/\\_\\_data/assets/pdf\\_file/0017/217601/ISBN-Memorandum-of-understanding-between-WorkSafe-Victoria-and-National-Offshore-Petroleum-safety-2017-01.pdf](https://www.worksafe.vic.gov.au/__data/assets/pdf_file/0017/217601/ISBN-Memorandum-of-understanding-between-WorkSafe-Victoria-and-National-Offshore-Petroleum-safety-2017-01.pdf)

<sup>29</sup> 3rd ACTU offshore petroleum conference of 23 February 2015, 4th ACTU offshore petroleum conference of 1 September 2015.

<sup>30</sup> The Regulator Edition, Issue 1, 2017.

NOPSEMA representatives and staff secondments have also been undertaken with regulators from countries such as New Zealand and Brazil. Further information on NOPSEMA's engagement with overseas regulators is provided at [part 4.3](#) of this submission.

118. NOPSEMA meets with HSRs as standard practice at the commencement of every OHS inspection at facilities where HSRs have been elected; discussions held with HSRs are confidential. NOPSEMA inspectors consider any issues raised by HSRs in the course of the inspection to ensure any OHS risks are identified and are appropriately addressed by the facility operator. In addition, NOPSEMA frequently communicates with HSRs via phone and email to provide advice and support resolution of queries presented by HSRs.
119. NOPSEMA developed and published the HSR Handbook in 2010 (with the latest update made in 2016) to provide a guide for HSRs on how to exercise the powers given to HSRs under the OPGGS Act and to serve as a resource for HSRs to refer to when selected or when attending an accredited HSR training course. [\[Attachment C\]](#)
120. NOPSEMA presents at the APPEA Health, Safety and Environment (HSE) and HSR conferences, ProSafe 2017 (process safety), to the Society of Petroleum Engineers, International Marine Contractors Association (IMCA), Marine Technical Science, and DrillSafe, where messaging to the workforce is often delivered by NOPSEMA's CEO and senior executives. In October 2017, the NOPSEMA CEO delivered the keynote address at the APPEA HSE conference on maintaining vigilance and safety performance.
121. In 2012, NOPSEMA initiated a national program exploring safety culture improvement initiatives in the offshore petroleum industry. The program involved extensive engagement and collaboration with industry and industry representatives to gather information about how safety culture is understood and operationalised throughout the industry. A model of safety culture was published, with the aim of framing the design and implementation of safety culture initiatives, and providing a more consistent approach to safety culture initiatives more broadly. In addition to the safety culture national program, NOPSEMA has also engaged with industry through a periodic survey of safety improvement initiatives. The first survey was administered in 2012, and was reiterated after a 5-year interval in 2017. The report on 'Safety Improvement Initiatives in the Australian Offshore Petroleum Industry' is available on NOPSEMA's website.<sup>31</sup>
122. NOPSEMA recognises and is proactively managing an increase in public expectations on the transparency of information in the offshore sector. NOPSEMA recently launched an online community information portal and publishes a variety of safety, well integrity and environmental regulatory information including alerts, *The Regulator* - a quarterly print and online magazine, guidance and brochures to increase both industry and public understanding of the regulatory framework.<sup>32</sup>
123. Since 2012, *The Regulator* magazine available on NOPSEMA's website, has published over 250 articles on industry issues and best practices, relevant to the offshore workforce and has more than 2,500 subscriptions that continue to increase each year.

---

<sup>31</sup> <https://www.nopsema.gov.au/assets/Safety-resources/A576907.pdf>

<sup>32</sup> <http://www.nopsema.gov.au/resources/>

### 3.4 Comparison of legislation

124. Under Clause 9 of Schedule 3 to the OPGGS Act, the operator has primary responsibility for OHS at a facility and must take all reasonably practicable steps to ensure that the facility is safe and without risk to the health of any person at or near the facility. The operator must ensure that all work and other activities at the facility are carried out in a manner that is safe and without risk to the health of any person at or near the facility. In particular, so far as reasonably practicable, the operator must:

- provide and maintain a physical environment at the facility that is safe and without risk to health
- provide and maintain adequate facilities for the welfare of all members of the workforce at the facility
- ensure that any plant, equipment, materials and substances at the facility are safe and without risk to health
- implement and maintain systems of work at the facility that are safe and without risk to health
- implement and maintain appropriate procedures and equipment for the control of, and response to, emergencies at the facility
- provide all members of the workforce, in appropriate languages, with the information, instruction, training and supervision necessary for them to carry out their activities in a manner that does not adversely affect the health and safety of persons at the facility
- monitor the health and safety of all members of the workforce and keep records of that monitoring
- provide appropriate medical and first aid services at the facility
- in consultation with members of the workforce and any workforce representatives, develop a policy relating to occupational health and safety.

125. Schedule 3 to the OPGGS Act outlines workplace arrangements and also requires the operator:

- to enter into consultations to establish designated work groups in relation to the members of the workforce at the facility, where requested. These requests may be made by any member of the workforce (or their workforce representative on their behalf if they so request) or be initiated by the operator and provides for requests for variations to be made to any existing designated work groups
- to notify members of the workforce of the establishment of the designated work group in accordance with the outcome of consultations
- to prepare, keep up to date and make available a list of all the health and safety representatives (HSRs) of a designated work group
- to notify members of a designated work group in relation to HSR vacancies and appointments
- to permit the HSR to take leave without the loss of remuneration or other entitlements, to undertake training.

126. The designated work groups must be established or varied in such a way that, so far as practicable, each workforce member at a facility is in a designated work group. A request to vary the designated work groups may be made by any member of the workforce (or their workforce representative on their behalf if they so request) and only following extensive consultation between all parties, may the operator vary the designated work groups in accordance with the outcome of the consultations. In the course of consultations if there is disagreement between any parties on the establishment or varying a designated work group, the matter can be referred to the Fair Work Commission. Members of the designated work groups may select a HSR for that designated work group.

127. Schedule 3 also provides for the selection, election, resignation and disqualification of HSRs and deputy HSRs and sets out the suite of powers of HSRs and assistance that may be given by a consultant.



128. The Safety Regulations address:

- prohibitions on drugs, intoxicants and specified hazardous substances
- exposure limits for hazardous substances and noise, as set out in national OHS standards
- requirements for the safe management of fatigue and working hours
- detailed processes for the election of HSRs (for use in cases where the involved parties cannot otherwise agree on a process)
- forms of official notices, including provisional OHS improvement notices for use by HSRs
- the registration of an operator for each facility
- a requirement for the operator to have a safety case for each facility that has been accepted by NOPSEMA, and the necessary contents of these safety cases
- a requirement for operations at each facility to comply with the facility safety cases
- detailed requirements for the notification and reporting of accidents and dangerous occurrences
- the requirement for any company that conducts diving at offshore petroleum areas to have a diving safety management system accepted by NOPSEMA and a diving project plan accepted by the relevant facility operator.

129. NOPSEMA's processes provide for early engagement regarding the development of the safety case. All safety case submissions made to NOPSEMA undergo a pre-assessment process to confirm that:

- the submission is being made by the operator
- the requirements of OPGGS Safety Regulation 2.50, or relevant state or Northern Territory equivalents, have been met (details of person making submission)
- the basis for making the submission is clear (i.e. under which regulation or subregulation the submission is being made)
- where applicable, a scope of validation has been agreed
- NOPSEMA's preference for an electronic copy has been met.

130. The safety case prepared by the operator of the facility must describe:

- the facility
- activities expected to occur at the facility
- assessments carried out regarding any potential 'major accident events' including technical or other controls to reduce risk to a level that is as low as reasonably practicable
- the system for managing safety that is to be implemented by the operator.

131. An unsuccessful pre-assessment may result in a submission being returned or the commencement of the assessment being delayed. Operators are notified in writing when a safety case submission has been received and the assessment commenced.

132. NOPSEMA prepares and regularly updates published guidance for operators on how to meet the requirements of the Safety Regulations when preparing a safety case.

133. While preparing a safety case, operators must ensure there is effective consultation with, and participation by, members of the workforce. NOPSEMA's assessment takes into consideration the extent to which this has been demonstrated and has published a guidance note on its website on the importance of involving the workforce in the development of the safety case.<sup>33</sup>

---

<sup>33</sup> <https://www.nopsema.gov.au/assets/Guidance-notes/A308788.pdf>

134. NOPSEMA has an established policy document that provides a documented, systematic and consistent approach to the assessment of the safety case.
135. NOPSEMA policies and processes ensure that dedicated assessment teams comprising highly qualified and experienced technical experts are assigned to assess each safety case in line with their area of expertise.
136. As an independent statutory authority, NOPSEMA makes assessment decisions based only on the requirements of the Safety Regulations. NOPSEMA does not consider economic, commercial or political factors in its decision making processes.
137. NOPSEMA must accept a safety case if it has determined that the safety case meets the acceptance criteria in the Safety Regulations. An accepted safety case establishes the legally binding commitments regarding the management of safety at the facility that must be met by the operator and against which NOPSEMA can secure compliance.
138. Failure to comply with an accepted safety case is an offence, and is a ground upon which NOPSEMA can withdraw its acceptance of a safety case. It is an offence to undertake an activity in relation to an offshore petroleum facility without an accepted safety case for that facility which adequately provides for that activity.
139. In the event that NOPSEMA is not satisfied that a safety case meets the requirements of the Safety Regulations, NOPSEMA may either request further written information or reject the safety case. If NOPSEMA rejects a safety case it provides the operator detailed information regarding the reasons for rejection and the operator of the facility can subsequently revise and resubmit the safety case for assessment.
140. The OPGGS Act provides for NOPSEMA (or the responsible Commonwealth Minister) to give written directions to operators of offshore petroleum operations including compliance with regulations made under the OPGGS Act.
141. NOPSEMA does not provide specific comment on the merits of regulatory submissions that are under assessment as any comment may be perceived to bias NOPSEMA's fair and impartial assessment of the submission in question. This position is in accordance with the Australian Administrative Law Policy Guide and NOPSEMA's published policies.



**ToR (1) - The scope and necessity for amending and updating any legislative inconsistencies in the relevant work health and safety scheme, including:**

- a. Any provisions in the legislation which need to be updated;
- b. Providing for appropriate consistency between the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act) and the *Work Health and Safety Act 2011* (WHS Act);
- c. Legislative changes required to the OPGGS Act to provide for appropriate consistency with the model work health and safety laws (as revised in June 2011); and
- d. Legislative changes which recognise that the work is undertaken in remote locations.

142. The model WHS Act has been implemented in the Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia, Tasmania and the Commonwealth.<sup>34</sup> However there is some variation in each jurisdiction that has implemented the model WHS laws to ensure the legislation is consistent with their relevant drafting protocols and other laws and processes. A member of the National OHS Review Panel, (Barry Sherriff, whose recommendations on the model WHS Act were made to the WRMC) notes the intent of the model WHS Act is not to contain all detailed provisions required to give effect to legislation of this kind, leaving some matters to the relevant jurisdiction in order to recognise the differing needs of jurisdictions according to their 'commercial or industrial environment'.<sup>35</sup>
143. NOPSEMA notes Comcare administers the Commonwealth *Work Health and Safety Act 2011* (Commonwealth WHS Act) and this legislation is based on the model WHS Act. Under Section 12 of the Commonwealth WHS Act, the scope of its application applies to Commonwealth and public authorities. Under Section 12A, the Commonwealth WHS Act states it does not apply in relation to any vessel (including a ship or barge) or any structure to which the *Occupational Health and Safety Maritime Industry Act 1993* applies. More importantly it states the Act does not apply in relation to a facility to which Schedule 3 of the OPGGS Act applies. It is clear the unique and significant differing needs of the offshore petroleum environment cannot be addressed by the Commonwealth WHS Act; which is legislation that Commonwealth public servants primarily apply in an onshore environment.
144. NOPSEMA is not responsible for policy or legislative changes to the OPGGS Act. Instead, NOPSEMA's role is to implement the regulatory framework deemed leading practice and as determined by Government. The merits of potential policy changes, such as the application on any specific aspects of the model WHS Act and Commonwealth WHS Act, to offshore petroleum safety regulation, is a matter for policy makers, recognising that others can contribute perspectives.

**Appropriate consistency**

145. There is already a large degree of consistency in principle of provisions within the OPGGS Act, the model WHS Act and the Commonwealth WHS Act, to include:
- the identification of hazards
  - the assessment of risks and measures to eliminate or control risks
  - workplace arrangements, consultation and cooperation between operators, the workforce (to include worker's representatives) and employers over issues by:
    - requiring an OHS policy and agreement determined through a consultative process
    - setting out requirements for establishing designated working groups and health and safety committees
  - the selection process and the range of powers for HSRs and protections
  - monitoring, audit, review and continuous improvement

<sup>34</sup> Website: <https://www.safeworkaustralia.gov.au/law-and-regulation/law-your-state#victoria-laws>

<sup>35</sup> *Understanding the Model Work and Health Safety Act* (2010), B Sherriff and M Tooma, p.3.  
Barry Sherriff was a member of the National OHS Review Panel.

- incident notification
- powers for inspectors to monitor and enforce compliance with OHS legislation.

146. Under Part 3 of Schedule 3 to the OPGGS Act, the workplace arrangements described, mutually align with the requirements in the model WHS Act and the Commonwealth WHS Act to include:

- a group of members of the workforce of a facility may be established as a designated work group. Any member of the workforce, or a workforce representative, or the operator may request to establish and vary groups of this kind
- members of a designated work group may select a health and safety representative (HSR) for that designated work group and select deputy HSRs
- the HSR may exercise certain powers for the purpose of promoting or ensuring the health and safety of the group members and may seek assistance from external consultants in the exercise of his or her powers
- a health and safety committee may be established in relation to the members of the workforce at a facility that may assist the operator in relation to occupational health and safety matters.

### Differences

147. Nevertheless, there are some differences between the model WHS Act, the Commonwealth WHS Act and the OPGGS Act. Whether these differences are significant is more of a policy issue that needs to be addressed by policy makers and these differences are described in paragraphs 148-160. NOPSEMA will continue to administer legislation as determined by Parliament to be appropriate and proportionate to safeguarding Australia's offshore petroleum industry.

148. The model WHS Act and the Commonwealth WHS Act provide that an elected HSR may hold the office for three (3) years and provides the OHS training for HSRs and associated costs are met by the employer. The OPGGS Act provides the term of office for a HSR is determined by the parties involved in the elections and consultations, or in any other case for two (2) years. The OPGGS Act does not prescribe the operator or employer pay for OHS training for HSRs however it mandates the operator or employer must permit the HSR to take time off work to attend training, without loss of remuneration or other entitlements. To the best of NOPSEMA's knowledge, in the majority of instances employers of HSRs pay for OHS training.

149. The objects of the OHS regime provided in Clause 1 of Schedule 3 to the OPGGS Act are:

- to secure the health, safety and welfare of persons at or near those facilities
- to protect persons at or near those facilities from risks to health and safety arising out of activities being conducted at those facilities
- to ensure that expert advice is available on occupational health and safety matters in relation to those facilities
- to promote an occupational environment for members of the workforce at such facilities that is adapted to their needs relating to health and safety
- to foster a consultative relationship between all relevant persons concerning the health, safety and welfare of members of the workforce at those facilities.

150. The objects of the model WHS Act and Commonwealth WHS Act provide for similar outcomes to the OPGGS Act with the key difference in that the model WHS Act and Commonwealth WHS Act describe "encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment".<sup>36</sup>

151. While the objects of the OPGGS Act and the Safety Regulations make no specific mention of unions or employer organisations, the OPGGS Act object "to foster a consultative relationship between all relevant

<sup>36</sup> Section 3 of the model WHS Act.

persons...” is interpreted by NOPSEMA as being inclusive of unions and employer organisations as relevant persons involved in consultative arrangements to promote constructive improvements in work health and safety practices. NOPSEMA recognises the importance of unions and employer organisations and initiates bilateral meetings with union representative bodies on OHS matters and similar engagement with employer organisations to supplement the extensive stakeholder engagement program run by NOPSEMA.

152. Several requirements related to workplace arrangements under Part 3 of Schedule 3 to the OPGGS Act provide for workforce representatives to be consulted and involved in a number of workplace activities where requested by a member of the workforce. A HSR can request the assistance of a consultant (OPGGS Act Schedule 3, Clause 35) regarding health and safety matters which could be a workforce representative if they are competent to assist in the matter. NOPSEMA has a specific policy on how this may occur and this is available on the NOPSEMA website for the workforce to access.
153. The OPGGS Act does not prescribe workplace entry by WHS entry permit holders as prescribed in the model WHS Act and Commonwealth WHS Act, for persons who may have a reason to inquire or consult into suspected OHS contraventions, or to conduct an OHS business.
154. Arrangements for accessing offshore facilities, has been a matter for individual stakeholders to negotiate with the operator. Noting that the management of access to offshore facilities has some unique features. The geographical, operational nature and high hazard risks associated with remote offshore facilities create additional logistical, transportation, and planning requirements so as to not pose an OHS risk to the safe operation of the facility.
155. As the regulator, NOPSEMA does not have a view on any specific class of person gaining access to a facility, subject to that person meeting all safety requirements set by the industry operator and that the person does not unreasonably increase the safety risk to any aspect of themselves, offshore workers or the facility. Where arrangements for union access to offshore facilities exist in other international jurisdictions such as with the regulatory model in Norway, the regulator is not typically involved in decision-making on access to offshore facilities.
156. For the purposes of defining a workplace of offshore petroleum operations, the OPGGS Act extends this definition to cover diving operations or operations at a facility. Certain vessels or structures are defined as facilities<sup>37</sup> and licensed pipelines are also facilities. The categories of offshore petroleum operations under the OHS regime are:
  - recovery, processing, storage and offloading of petroleum, or any combination of these activities
  - provision of accommodation for persons at another facility, whether or not connected by walkway
  - drilling or servicing a petroleum well, or doing any work associated with drilling or servicing
  - laying of pipes for petroleum, including any manufacturing of such pipes, or doing work on existing pipes
  - erection, dismantling or decommissioning of a vessel or structure of any of the above types
  - any other activity related to offshore petroleum that is prescribed.
157. The importance of defining what the workforce is ‘doing’ under the OPGGS Act and associated regulations, provides the foundation on which the identification of hazards, assessment of risks and appropriate risk management, is established. The model WHS Act provides a broad meaning of a workplace<sup>38</sup> and does not define a workplace in reference to a kind of work, reaffirming its intended purpose to guide in the development of legislation and not prescribe the differing needs according to specific industries and environments.

<sup>37</sup> The facility definition includes a facility being constructed or installed and an associated offshore place (that being an offshore place near the facility where activities relating to the facility occur). The facility definition also includes a pipeline subject to a pipeline licence, together with any associated wells, associated plant and equipment, and any pipe or system of pipes through which petroleum is conveyed from that well to that pipeline

<sup>38</sup> Section 8 of the model WHS Act.



158. Schedule 3 to the OPGGS Act imposes OHS duties to specific classes of persons relevant to the offshore industry and takes into account the very particular roles and responsibilities of each of these persons:
- operators of offshore petroleum facilities
  - persons in control of particular parts of facilities or particular work
  - all members of the workforce at those facilities
  - employers of the members of the workforce
  - manufacturers, suppliers, installers and erectors of a plant
  - contractors providing goods and services to those facilities
  - titleholders in relation to the regulation of wells.
159. The model WHS Act and the Commonwealth WHS Act do not define specific classes of persons relevant to the offshore industry or provide details about offshore petroleum roles and responsibilities.
160. The OPGGS Act, the model WHS Act and the Commonwealth WHS Act broadly provide for similar enforcement tools, with the difference being the OPGGS Act has yet to include enforceable undertakings that are provided for under the model and Commonwealth WHS Acts. However the penalties, including custodial penalties, for OHS offences under the OPGGS Act were harmonised with, or made greater (as appropriate) than the Commonwealth WHS Act, to reflect the greater consequences in a major hazard industry. A Bill has been approved for inclusion in the legislative program for the Autumn sittings of the Australian Parliament that proposes to amend the OPGGS Act to allow for enforceable undertakings as an additional graduated enforcement measure. NOPSEMA is also working closely with the Department of Industry, Innovation and Science on a project to expand the graduated enforcement measures to include a robust civil penalty regime within the Safety Regulations.

#### **Work in remote locations**

161. The OPGGS Act does not define remote locations or a remote workplace nor does the model WHS Act and Commonwealth WHS Act. NOPSEMA ensures engagement with the workforce and compliance with the legislation takes into account the unique operating nature of offshore petroleum activities in remote areas. The OPGGS Act and associated regulations provide for a robust safety case framework and risks associated with the relative remoteness of a facility in question, are described in the facility safety case, as are the control measures applied to reduce the risks associated with operating in the specified location to ALARP.
162. Definition and context of a remote location may be based on the Institute of Remote Healthcare (IRHC) that defines a remote location as one in which medevac to hospital cannot be guaranteed to occur within four hours of injury or illness onset; while an extreme remote location is defined as one in which medevac can never be achieved within four hours (IRHC, 2017). In accordance with these definitions, many Australian offshore petroleum facilities will be classified as remote or extreme remote locations.
163. In December 2017, NOPSEMA published a guidance note that recognises some of the challenges associated with operators ensuring appropriate medical and emergency response in respect of the facility. The NOPSEMA guidance note provides facility operators with information on appropriate qualifications for offshore medical service providers, thus facilitating compliance with their legislative obligations. It addresses the medical qualifications necessary for offshore medical personnel to respond to medical emergencies in remote and extreme remote locations for anticipated periods whilst awaiting medevac, including during the range of expected environmental conditions. In November 2014, NOPSEMA published a guidance note on avoiding fatigue. The guidance note highlighted the fatigue risk associated with long-distance commuting to offshore facilities during swing changeover, and recommended strategies to prevent and mitigate fatigue risk associated with travel to remote offshore locations.

## Opportunities for legislative change

164. Changes to legislation are determined by the Government policy of the day and for the purposes of amendment to the OPGGS Act, will be driven by the Department of Industry, Innovation and Science that is responsible for providing the Australian Government with policy advice relevant to offshore petroleum activities. The merits of potential policy changes such as application on any specific aspects of the model WHS Act and Commonwealth WHS Act, to offshore petroleum safety regulation, is a matter for the Department.
165. NOPSEMA will support the implementation of any changes to the OPGGS Act deemed relevant by the Government as proposed improvements to the current OHS regime.

## **ToR(7) the adequacy of the protections afforded to Health and Safety Representatives performing their functions under the relevant legislation.**

166. HSRs are afforded a number of protections under Schedule 3 to the OPGGS Act.
167. HSRs have the power to accompany a NOPSEMA inspector during any inspection and be present at interviews between NOPSEMA inspectors and group members.
168. Clauses 34 to 38 and 44 of Schedule 3 to the OPGGS Act set out the HSR powers and actions and provide a HSR can:
  - If there has been a recent accident or dangerous occurrence, or if there is an immediate threat of an accident or dangerous occurrence, inspect the workplace of members of the designated work group (DWG)
  - inspect the workplace of members of the DWG at any other time, provided the operator has been given reasonable notice of the inspection
  - submit a request to NOPSEMA or a NOPSEMA inspector that an inspection be conducted at the workplace
  - accompany a NOPSEMA inspector during an OHS inspection at the workplace
  - if there is no health and safety committee, represent the members of the DWG in health and safety consultations with the operators or their employers
  - if there is a health and safety committee, examine that committee's records
  - investigate health and safety complaints by DWG members
  - with the consent of the DWG member, attend any interview concerning health and safety at work between that person and a NOPSEMA inspector or the operator or employer
  - access information held by the operator or employer that relates to risks to the health and safety of any DWG member
  - issue a provisional OHS improvement notice (PIN)
  - request that NOPSEMA or a NOPSEMA inspector conduct an OHS inspection into a matter that is the subject of a PIN, if the notice has not been complied within the specified period, and if an inspection has not been requested by the operator, employer or other person responsible
  - initiate emergency 'stop-work' procedures
  - request that NOPSEMA or a NOPSEMA inspector conduct an OHS inspection, if the HSR and the supervisor cannot agree on an appropriate course of action to remove a threat to health and safety
  - appeal to the Fair Work Commission (FWC) against an inspector's decision to vary or cancel the PIN
  - ask NOPSEMA to institute proceedings for offences against the legislation if proceedings have not been commenced within six months of an alleged breach
  - if the operator or NOPSEMA has agreed in writing, receive assistance from a consultant or provide a consultant with information

- request consent from an operator that a consultant accompany the HSR in an interview between a DWG member and a NOPSEMA inspector or operator.

169. The OPGGS Act does not impose an obligation on HSRs to exercise any powers and actions conferred on the HSR.

170. HSRs are not liable under civil proceedings for exercising or not exercising these powers and actions. There are provisions for the disqualification of HSRs, which protect others against the possibility of HSRs misusing their powers.

171. In 2017, NOPSEMA inspectors actively engaged with HSRs during every one of the 80 facility-based OHS inspections. There were no exceptions. Discussions held with HSRs are confidential.

172. Arising from these inspections, NOPSEMA inspectors made several recommendations to the operators of facilities as a result of their meetings with HSRs to cover:

- addressing safety issues raised during the meeting
- ensuring all HSRs receive training
- posting and updating a list of HSRs on the facility noticeboard
- implementing workplace arrangements.

173. Outside of inspections, HSRs can contact a NOPSEMA inspector for their facility to raise concerns, or for assistance and advice on:

- understanding the legislation
- using their powers
- engaging with facility management.

174. On an ongoing basis, NOPSEMA develops guidance and information to assist HSRs in performing their responsibilities. NOPSEMA published the HSR Handbook in 2010 (with the latest update made in 2016) to provide a guide for HSRs on how to exercise the powers given to HSRs under the OPGGS Act and to serve as a resource for HSRs to refer to when selected or when attending an accredited HSR training course.

175. NOPSEMA also actively presents at the APPEA Health, Safety and Environment (HSE) and HSR conferences where messaging to the workforce is often delivered by NOPSEMA's CEO and senior executives. In October 2017, for example, the NOPSEMA CEO delivered the keynote address at the APPEA HSE conference on maintaining vigilance and safety performance with additional presentations being delivered by senior NOPSEMA staff.



## 4. Performance outcomes

### 4.1 Industry safety record

176. The OHS regime administered by NOPSEMA out performs other comparable industries. It provides the offshore workforce with a strong degree of assurance of continuous improvement of safety outcomes and a strong regulatory focus to reducing all risks to a level that is as low as reasonably practicable.
177. No fatality or major accident event (MAE) has occurred since 2012 and there was a record low rate for offshore accidents achieved for a full year in 2016 with no serious injuries reported.
178. In 2017 there were four (4) serious injuries in the offshore petroleum industry attributed to incorrect manual and lifting operations and the use of equipment. NOPSEMA issued safety alerts ([Attachment D](#)) to industry sharing information of these events and continues to engage the operator's senior management in relation to these incidents. In the same year, there were six (6) lost time injuries (LTIs) greater than three (3) days and one (1) LTI less than 3 days, reported by the offshore petroleum industry involving muscular stress/lacerations arising from the use of equipment or moving objects. There was an additional 40 other injuries reported that required some medical treatment, but did not result in lost time at work and involved alternative duties assigned for some members of the workforce.
179. NOPSEMA notes LTIs are commonly used by the workforce as an indicator of performance, which is why they have been included in this submission. While the LTI results for offshore petroleum workers are impressive, NOPSEMA has limited regard to LTIs as they are a lag indicator that are not reflective of the risks associated with MAEs. Rather than focussing on LTIs, NOPSEMA places more emphasis on other factors and indicators such as dangerous occurrences, recognising that these indicators also have limitations.
180. The number of reported dangerous occurrences decreased by three percent (3%) from the 303 reported in 2016 to 293 in 2017; and the vast majority of these reported occurrences are attributed to activating an emergency response to false alarms or inadvertent manual activation due to human activities. For instance the shower steam from bathing quarters inadvertently triggering sensors and alarms, or persons requiring medivac for conditions not related to the workplace or offshore activity, such as displaying symptoms of chicken pox. An assessment of the reported events indicated the majority of reported dangerous occurrences posed no danger to offshore infrastructure or to the ongoing health and safety of personnel on the facility.
181. NOPSEMA provides data to Safe Work Australia on various matters related to the OHS performance of the offshore industry. NOPSEMA's data is incorporated into the broader mining category (not disaggregated). The safety record for offshore petroleum activities outperforms mining, which outperforms comparable industries. The publication produced by Safe Work Australia '*Key Work Health and Safety Statistics 2017*'<sup>39</sup> summarises the number of fatalities and work injury claims in 2016 across other comparable industries. Data from the Safe Work Australia publication is provided below.

Industry of employer	Fatalities	Fatality rate per 100,000 workers	Work injury claims	Incidence rate serious claims per 1,000 workers
Mining	6	2.7	2,080	9.2
Construction	35	3.3	12,670	16.0
Transport, postal, warehousing	47	7.5	8,200	14.4

182. NOPSEMA works with industry to ensure that corrective actions are appropriately targeted and will hold duty holders to account for any identified breaches of their duties or responsibilities.
183. NOPSEMA advocates continuous improvement in offshore performance, influencing offshore safety processes and behaviours not only in Australia but also overseas. [See paragraphs 206 – 219.](#)

<sup>39</sup> *Key Work Health and Safety Statistics 2017*, Safe Work Australia 2017, p.4 and p.10.

## 4.2 Equivalent State and Territory offshore petroleum regulators

**ToR(2) the effectiveness of 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.**

184. NOPSEMA's proactive approach to promoting and advising industry on leading practice for safety management has contributed to record results in safety performance in recent years. NOPSEMA's performance and ongoing review of performance is highlighted in paragraphs 193-205 of this submission and reinforces the ongoing need for an independent expertise-based regulator such as NOPSEMA.
185. The establishment of NOPSA, and afterwards NOPSEMA, has continued to receive support via COAG from states and the Northern Territory ministers for an independent national offshore safety authority to be responsible for consistent and appropriate requirements for the work, health and safety of workers in the petroleum industry. A single agency brings efficiencies through economies of scale, uniform procedures and greater consistency in the interpretation and application of regulations and guidelines, and reduce regulatory burden on industry.
186. NOPSEMA regulates more than 150 offshore facilities and approximately 900 offshore wells, including some of the highest producing wells globally. Australia's offshore petroleum activities are moving into deeper waters with multiple, varied and highly complex facilities. Some of the world's most advanced and largest subsea and offshore facilities have NOPSEMA oversight and include the recently established offshore facilities of Wheatstone, Prelude, Ichthys and the Gorgon and Jansz-Lo offshore developments. These projects represent an investment of US\$138 billion and put Australia on track to be a global leader and the world's largest LNG exporter.<sup>40</sup>
187. The regulation of Australia's offshore LNG activities and other offshore petroleum activities requires highly trained and qualified technical experts with extensive practical domestic and international experience in offshore petroleum activities. NOPSEMA provides this critical mass of expertise within its Safety and Integrity Division of 36 offshore petroleum OHS experts, further supported by another 30 specialists dedicated to legal services, stakeholder education and communications, independent investigations, and data analysis and reporting. This staffing unit is the largest concentration of offshore petroleum OHS specialists in Australia for offshore oil and gas.
188. NOPSEMA notes that some of the states and the Northern Territory have significant resources dedicated to the regulation of LNG onshore developments that support these offshore petroleum operations and NOPSEMA works cooperatively with these jurisdictions. However, the scale and continuing expansion of offshore activity into deeper water makes it unreasonable to expect states and the Northern Territory regulators to have offshore petroleum expertise comparable to NOPSEMA for the oversight of major activities offshore.
189. Consequently, the best prospect for sound OHS outcomes in the regulation of offshore petroleum activities remains the integration of federal, state and the Northern Territory offshore responsibilities, in a single independent regulator with a critical mass of OHS expertise.
190. NOPSEMA is a global player in the International Regulators' Forum (IRF) and the International Offshore Petroleum Environment Regulators (IOPER) group and shares knowledge and experiences from these groups with states and the Northern Territory which are unable to participate in this scale of engagement as the state and Northern Territory regulators are not eligible for membership of international groups.
191. In relation to comparable industries, since 2005 a marked decrease in major injuries and lost time injuries is evident and offshore petroleum performance compares favourably to industries such as onshore mining, where the model WHS Act has been applied.

<sup>40</sup> Department of Industry, Innovation and Science.



## What is NOPSEMA doing to improve performance?

192. NOPSEMA is pursuing a range of preventive initiatives to continue improvement in industry health and safety performance including:

- Engaging NOPSEMA senior management with industry leaders (including CEOs) to ensure that messages are being communicated with a view to leaders paying more attention to operational issues in their organisations.
- Driving a more strategic approach to compliance:
  - Looking at the past to stopping old incidents. Analysing the data relating to previous incidents to test for risk to ALARP in assessments and inspections. Also learning from experience of others such as operations in the North Sea on hydrocarbon releases.
  - To the present, 'Find One, Fix Many'. Preventing future incidents through the examination and sharing of learnings from current non-compliances, incidents and industry best practice.
  - To the future, responding to evolving trends. Addressing transparency expectations, removing unnecessary regulatory burden to improve efficiency and looking elsewhere for better practices and tools (application of big data to enable analysis and trend identification).
- Undertaking a comprehensive review and analysis of industry performance data for 2017, the findings of which will be published in the Annual Offshore Performance Report in April 2018. NOPSEMA is considering the Norwegian Petroleum Safety Authority (PSA's) approach to reversing the trend and outreach to industry to influence better performance. Norway's industry OHS performance has been declining since 2015 with another fatality recorded on 7 December 2017.
- Increase publication of information to share lessons learned. In 2017, NOPSEMA issued four safety alerts, and has been using *The Regulator* magazine as a communication tool to further share lessons about near misses and performance management more broadly. Recent articles include:
  - Verifying safety features of light well intervention systems during commissioning
  - Work management review following recent incidents
  - Whole body vibration hazards
  - Misuse of management of change to facilitate organisational change
  - Dropped objects
  - Continuous improvement in vessel safety cases
  - How safe organisations can drift into disaster.
- Offering assistance to the Northern Territory government and Worksafe Northern Territory with respect to the reported fatality at the Inpex onshore processing plant.

## **ToR (3) the accountability framework to which NOPSEMA is subject with respect to work health and safety matters, and where this needs to be strengthened**

193. NOPSEMA's regulation of the offshore petroleum industry is subject to a range of governance controls including:

- ministerial policy direction
- NOPSEMA Advisory Board
- statutory operational reviews
- estimates hearings and other Parliamentary Inquiries for federal, state and territory levels.

194. The 2009 reports of the Offshore Petroleum Safety Regulation Inquiry (OPSRI) and the 2008 Review into the Operational Activities of NOPSA recognise the good reputation of Australia's offshore industry, the effective implementation of the safety case regime and the robust establishment of NOPSA which has developed many credible systems, competencies and publications. The recommendations in the report also recognise the changing environment facing the offshore industry.

195. The second triennial review of NOPSAs conducted in 2011 confirmed that the previous review recommendations had been addressed and that “NOPSAs have firmly established themselves as a respected and competent offshore petroleum safety regulator”.<sup>41</sup> The review also highlighted the improvement in the authority’s resources, procedures and ‘early engagement’ initiatives in the three years since the inaugural independent review in 2008.
196. The 2011 review was positive, and it also identified a small number of recommendations to enable continuous improvement of NOPSAs’ functions. In particular, the development of an overarching national understanding to entrench and improve regulatory cooperation between Commonwealth and state and territory offshore petroleum regulators.
197. This recommendation is relevant following the Report of the Montara Commission of Inquiry and the Productivity Commission’s 2009 Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector that also pointed to the need for one, coordinated national body to have responsibility for regulating offshore activities so that preventable risks to the safety of workers and the environment can be mitigated in the future.<sup>42</sup>
198. The 2014 Western Australian Parliamentary Inquiry into safety-related matters relating to FLNG projects off the coast of Western Australia found the independent objective-based regulatory regime administered by NOPSEMA to be world’s best practice and did not recommend any changes to NOPSEMA’s regulatory regime. The Inquiry found NOPSEMA’s early engagement safety case policy allowed NOPSEMA to engage with an operator proposing a new technology facility during the design process, contributed to the safer design of the proposed facility.<sup>43</sup> The Inquiry recommendations primarily considered those issues that needed to be addressed by the Western Australian Government with respect to emergency response planning.
199. In 2014, the Australian National Audit Office (ANAO) conducted an independent review on the establishment and administration of NOPSEMA and established that NOPSEMA has appropriately integrated administrative arrangements for the new function of environmental management and has established a sound framework for the regulation of the offshore petroleum industry.<sup>44</sup> Regulatory activities including providing advice and guidance to operators in relation to regulatory requirements are appropriate.<sup>45</sup>
200. Since NOPSEMA was formed it has also been subject to an independent operational review of its regulatory performance and of its environmental management performance under the endorsed EPBC Act Program after the first 12 months of operating under this arrangement. Both reviews were completed in 2015 and the reports from these reviews are public documents.
201. The 2015 statutory operational review of NOPSEMA’s performance concluded that NOPSEMA is an effective regulator that has made positive contributions to improving safety and well integrity, and managing Australia’s offshore environment.
202. The 2015 independent EPBC Act Streamlining Review found:
  - NOPSEMA met all commitments under the Program
  - the required processes and procedures are in place for the Program commitments to continue to be met in the future.
203. The efficient and effective administration of the offshore regulatory regime is central to all activities undertaken by NOPSEMA. NOPSEMA ensures sound regulatory administration and enforcement procedures and processes to reflect best practice, and continues to:

<sup>41</sup> Second Triennial Review of the Operational Effectiveness of the National Offshore Petroleum Safety Authority Report, November 2011, p.4.

<sup>42</sup> Ibid, p.5.

<sup>43</sup> WA Parliamentary Inquiry report into safety-related matters relating to FLNG projects off the WA coast, 2014, Finding 19.

<sup>44</sup> ANAO Report on the Establishment and Administration of NOPSEMA 2014, p.22.

<sup>45</sup> Ibid., p21.

- undertake annual reviews of its five year forward-looking Corporate Plan, identifying where change is required to ensure we continue to meet the expectations of government, industry, and the wider community
- prepare and publish the Annual Offshore Performance Report, providing industry and government with the means to track industry performance under the regulatory regime and identify where changes to the regime may be required
- apply a graduated enforcement regime aimed at changing behaviours, where required, within industry for longer-term performance improvements
- promote and advise industry on best practices with the intent of influencing behavioural change across industry to result in safer outcomes.

204. In 2017, NOPSEMA gave testimony at the Perth hearings of the Senate Red Tape Inquiry into the effect of Red Tape on Environmental Assessment and Approvals. One of the key items of discussion at the hearing was opportunities for streamlining through conferral. The committee has released an interim report on the effect of red tape on environmental approvals which contained the following key findings relevant to NOPSEMA:

*“The committee accepts that state/territory governments could achieve red tape reductions for offshore petroleum projects with a conferral of power on NOPSEMA. In this regard, the committee notes that NOPSEMA would effectively become an agent of the state/territory, subject to the usual rules of agency.*

*The committee also notes that the Council of Australian Governments (COAG) has previously agreed to examine the benefits of consolidating regulatory functions, including through the amalgamation of regulators. However, since 2014 the COAG Energy Council does not appear to have given much attention to environmental regulation of offshore petroleum projects”.*<sup>46</sup>

205. Moving toward a single national framework for regulation of the offshore petroleum sector would expand workers’ access to world class best practice and regulatory experts with practical skills and knowledge relevant to the industry. The Organisation for Economic Co-operation and Development (OECD) recognises that:

*“Establishing a regulator with a degree of independence (both from those it regulates and from government) can provide greater confidence and trust that regulatory decisions are made with integrity. A high level of integrity improves outcomes of the regulatory decisions. Regulators should have provisions for preventing undue influence of their regulatory decision-making powers and maintaining trust in their competence and delivery”.*<sup>47</sup>

<sup>46</sup> [https://www.aph.gov.au/sitecore/content/Home/Parliamentary\\_Business/Committees/Senate/Red\\_Tape/Environment/Interim\\_report](https://www.aph.gov.au/sitecore/content/Home/Parliamentary_Business/Committees/Senate/Red_Tape/Environment/Interim_report)

<sup>47</sup> OECD (2014) *The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy*.



### 4.3 International offshore petroleum regulation

#### ToR (11) relevant parallels or strategies in an international context;

206. The composition and type of offshore petroleum activities in Australia is unique to Australia and is currently not a model reproduced elsewhere in the world. In Australia, the remoteness of facilities, the number of facilities producing LNG and the associated challenges and risks, is different to offshore petroleum models presented in countries such as Norway, the UK, the USA and Canada, where oil is the primary resource drilled and produced in those countries.
207. Australia's OHS regime administered by NOPSEMA provides that those who create risk are responsible for identifying and managing that risk including the need to reduce OHS risks to a level that is as low as reasonably practicable (ALARP).
208. ALARP has received significant legal consideration in higher courts and is a principle used internationally in a number of other occupational health and safety and high-hazard regulatory systems, including international leading practice regimes in the UK and Norway. It is also used by global petroleum industry bodies such as the International Association of Drilling Contractors and the International Association of Oil and Gas Producers. As a result, it is a well-known and widely used concept and is understood legally and in practice, including in Australia.
209. As a national regulator NOPSEMA interacts regularly with international counterparts and contributes to important international organisations. NOPSEMA's international interaction allows cooperation and sharing of information in relation to regulatory activities and industry performance. It also provides opportunity for NOPSEMA to engage on new industry technologies and trends and best practices. NOPSEMA is able to use this valuable information to inform its regulatory functions and to share international insights with stakeholders.
210. NOPSEMA has chaired the International Regulators' Forum (IRF) and the International Offshore Petroleum Environment Regulators (IOPER) group. Since 2005 under NOPSA, as Australia's representative at IRF<sup>48</sup>, Australia is a trusted leader in the IRF as evidenced by its continued re-election to the IRF Management Committee every two years. The IRF Management Committee is limited to four committee members, and includes Norway, UK and USA.
211. In May 2017, NOPSEMA led the International Regulators' Forum Working Group to identify and categorise around 250 relevant standards for well integrity and considered duplication between the standards and identified critical gaps. This body of work contributes to improving the safety of facility infrastructure and its workforce.
212. In May 2017, NOPSEMA led the International Offshore Petroleum Environment Regulators working group on regulating oil spill preparedness and response in conjunction with the US Bureau of Safety and Environmental Enforcement. NOPSEMA coordinated consensus on defining an internationally agreed set of guiding principles for regulating oil spill response preparedness.
213. Australia's performance compares favourably to other IRF jurisdictions. For example, the most recent IRF data available confirms that Australia's offshore petroleum industry has lower injury and fatality rates than any of the other IRF member nations.

2016	AUSTRALIA	COMPARABLE IRF NATIONS <sup>49</sup>	ALL IRF NATIONS
Average fatality rate per million hours worked	0.00	0.00	0.01
Number of major injuries per million hours worked	0.00	0.62	0.31

<sup>48</sup> The International Regulators' Forum (IRF) is a group of 10 countries' independent regulators of health and safety in the offshore upstream oil and gas industry, Australia is represented by NOPSEMA.

<sup>49</sup> Comparable IRF Nations (with similar regimes to Australia) include Canada, Netherlands, Norway and the UK.



214. NOPSEMA's stewardship on significant international safety issues is having a demonstrable impact on industry behaviour and performance globally.
215. During 2017 for example, NOPSEMA's leadership of the IRF working group on well integrity international standards categorized around 250 relevant well integrity standards for all IRF members to identify duplication between the standards and notify critical gaps. The IRF working group concluded its findings in October 2017 and these results were shared with standard development organisations to promulgate further in the public domain. In this regard, NOPSEMA's commitment to influencing better outcomes with well integrity is directly contributing to a safer working environment for offshore workers globally.
216. In October 2017, NOPSEMA also presented to the IRF annual general meeting, various international case studies on dynamic positioning (DP) system failures and the susceptibility of its 'auto position' mode to be inadvertently deactivated and result in a major accident event. NOPSEMA secured IRF member commitment to adopting a global coordinated compliance action on DP system failures.
217. The DP systems concern originated from a reported incident in Australia in June 2016 where a vessel facility drifted off location as a result of human error while a diver was working on the seabed. Nobody on board the vessel was aware the DP system had been deactivated and no person was injured. NOPSEMA became aware of 16 similar 'loss of position' incidents internationally and each of these incidents had the potential to result in loss of life or other major accident events.
218. NOPSEMA presented information which supported the view that the frequency of unintended and undetected deactivation of DP systems is significantly greater when it is viewed from an international perspective over that of a single jurisdiction. By applying this international perspective, NOPSEMA was able to demonstrate that it is apparent that the risk of loss of life or other major accident event was significantly greater than understood by any single regulator or jurisdiction. NOPSEMA's presentation referred to research which showed measures to reduce risks are available, but are not necessarily widely known or adopted. As a result, these risks are not being reduced to 'as low as reasonably practicable'. NOPSEMA has also delivered the presentation at industry conferences in Asia and America and NOPSEMA has also written to DP system suppliers calling on DP suppliers to explain how they are addressing this issue.

**Dynamic positioning case studies – presented to IRF and published in *The Regulator* magazine**

In the US, a drill ship in the Gulf of Mexico unintentionally drifted off position while dealing with a well kick. The US Coast Guard OCSNCE (Outer Continental Shelf National Centre of Expertise) stated that the DP operator inadvertently deactivated the auto-position mode by accidentally double-pressing the manual button while reaching across the console. Upon realising the mistake, the operator re-engaged the auto-positioning to bring the ship back into position. The US Coast Guard OCSNCE stated the incident was the result of 'human errors with a mix of ergonomics.

In the UK, a semisubmersible drilling rig lost control of position for several minutes due to an accidental disengagement of the DP system while drilling. Although the loss of position was immediately noticed by personnel, it took them six minutes to realise the auto positioning system had been disengaged. In response to the emergency, the drill pipe was sheared and the lower marine riser package disconnected. The UK Health and Safety Executive attributed both the loss of position and inadequate initial crew response to the 'poor ergonomic design of the control system.

219. Since the IRF meeting in 2017, the International Marine Contractors Association (IMCA) has taken up the NOPSEMA action and further communicated mitigation measures to its industry members to reduce the risks of inadvertent dynamic positioning control deactivation. IMCA has also communicated to its members through bulletins<sup>50</sup> and other guidance, on observations and lessons learned.

<sup>50</sup> IMCA DP Event Bulletin 01/18.

## 5. Policy considerations

220. The Department of Industry, Innovation and Science (the Department) is responsible for providing the Australian Government with policy advice relevant to offshore petroleum activities. The merits of potential policy changes such as the application of any specific aspect of the model WHS Act and Commonwealth WHS Act, to offshore petroleum safety regulation, is a matter for the Department. NOPSEMA will continue to implement the regulatory framework deemed leading practice by the Government.
221. NOPSEMA recognises that some differences exist between the OPGGS Act, the model WHS Act and the Commonwealth WHS Act, reflecting the unique features of the offshore petroleum industry such as the limitations of access to offshore petroleum facilities. The merit of these differences is largely a policy matter and NOPSEMA will continue to administer legislation as determined by Parliament. It is noted the model WHS laws have not yet been implemented in Victoria and Western Australia, and even where they have been implemented, states and territories have tailored those laws to their jurisdictions to be relevant to the differing needs according to each specific industry and environment.
222. NOPSEMA's primary concern is industry safety performance, and ensuring in its role as an independent regulator, it can positively influence industry to improve its OHS systems in a technically complex and changing offshore petroleum environment.
223. The key determinant for any policy and legislative change should be the potential for improving workplace health and safety outcomes. While some changes may assist in achieving these outcomes, the single most significant potential change remains the rationale for establishing NOPSEMA. That change involves the integration of all offshore petroleum health and safety, well integrity and environmental management regulatory responsibilities in a single, independent regulator staffed with appropriately qualified and experienced personnel in sufficient numbers to achieve a critical mass of expertise.

### **ToR (4) the role and structure of the NOPSEMA Board and options for improving the effectiveness of their stakeholder engagement**

224. The NOPSEMA Board (the Board) is an advisory board and comprises up to eight (8) persons. There are currently six (6) members of the Board and persons are appointed by the responsible Commonwealth minister in consultation with relevant state and Northern Territory ministers. Candidates may be nominated by any of these ministers. NOPSEMA has no role in decision making for appointments to the Board but has always worked productively with the Board members.
225. Under section 654 of the OPGGS Act the Board has specific functions to:
- advise and make recommendations to the CEO of NOPSEMA about the operational policies and strategies to be followed by NOPSEMA in the performance of its functions
  - advise and make recommendations to the Commonwealth, state and territory petroleum ministers, and to the Council of Australian Governments (COAG) Energy Council, on the occupational health and safety of persons in offshore petroleum operations, the integrity of facilities and wells, environmental management and on NOPSEMA's performance.
226. Under the OPGGS Act, the CEO of NOPSEMA is required to 'have regard' to the advice of the Board and where required, makes requests to the Board to provide advice on specific issues.
227. Board members are appointed for their expertise and provide advice to Government on strategies to improve safety and environmental management performance. In informing their advice, the Board may consult others. For example, in 2017 the Board met the Commonwealth Minister for Resources and Northern Australia, unions, industry associations (such as APPEA) and other stakeholders.
228. The responsible ministers may take a range of factors into account to appoint persons to the Board including skills, experience, geographic location and gender.
229. Nominations are sought from candidates that have relevant skills and expertise appropriate to the needs of the Board and that would assist in delivering gender and occupational balance to its constitution. Current Board members demonstrate a broad mix of competencies to include:



- detailed knowledge of the petroleum industry
- extensive legal knowledge of legislation and the operations of regulatory organisations
- an understanding of the safety case approach in regulating major hazard industries
- senior operational experience in a major hazard industry (onshore or offshore)
- an understanding of the political environment within which NOPSEMA operates in particular the importance of its relationship with the COAG Energy Council.

230. Any changes to the Board's composition and functions are a matter for Government and NOPSEMA will work with any persons appointed as members.

#### **ToR(8) policies and practices which could be adopted by NOPSEMA to better support Health and Safety Representatives**

231. NOPSEMA sees the participation of the workforce as a central element of safety risk management on any facility. Under the OPGGS Act, the offshore petroleum workforce independently selects the HSR for each designated work group as long as the person is a member of the workforce included in the group. If the workforce or the operator does not seek to establish a designated work group the provisions regarding the selection of HSRs do not apply.<sup>51</sup>
232. NOPSEMA's inspection procedures place considerable emphasis on HSR engagement. During inspections, HSRs are invited to attend the entry and exit meetings with NOPSEMA and the facility operator and meet with NOPSEMA inspectors privately to discuss the operator's implementation of the safety management system and the requirement for operator's to consult with and enable the participation of the workforce, in relation to the risks and hazards on facilities. This level of NOPSEMA and HSR engagement was assessed by the ANAO as suitable.<sup>52</sup>
233. NOPSEMA recognises meetings with HSRs as providing valuable regulatory intelligence regarding the operation of the facility. HSRs also have the power to accompany NOPSEMA inspectors during an inspection, and attend interviews between NOPSEMA inspectors and workgroup members.
234. In 2017, all facility-based OHS inspections included a meeting between NOPSEMA inspectors and HSRs. The level of HSR involvement is highly active in the identification and resolution of issues and in relation to providing comment on the inspection reports. NOPSEMA continues to support this established and effective system of HSR collaboration.
235. Under Clause 30 of Schedule 3 to the OPGGS Act, the need for HSRs to receive OHS training is mandated and training must be accredited by NOPSEMA. The operator of the facility must permit the HSR to take time off work, without loss of remuneration or other entitlements, as is necessary to undertake the training. A nationally consistent approach to comprehensive training must be delivered and NOPSEMA's accreditation of appropriate and experienced training organisations ensures that HSRs have access to fit for purpose training on OHS in the offshore petroleum industry. A single, independent accreditation of training material and training providers reduces the risk of generalised training, potentially driven by economic factors, that is not specific to meeting industry needs.
236. NOPSEMA's dedicated OHS offshore petroleum specialists ensure accreditation for HSR OHS training involves:
- a review of the developed training material to ensure it conforms to the NOPSEMA endorsed course outline, developed in-house by NOPSEMA OHS specialists with extensive practical industry and regulatory experience in offshore petroleum<sup>53</sup>
  - a review of the training provider's organisation and personnel structure

<sup>51</sup> Clauses 19 and 20 of Schedule 3 under the OPGGS Act.

<sup>52</sup> Establishment and Administration of the National Offshore Petroleum Safety and Environmental Management Authority, ANAO, 2014

<sup>53</sup> Health and Safety Representative training for the offshore oil and gas industry – available on NOPSEMA's website



- an onsite visit of the training premises and confirmation of Registered Training Organisation status
- assessing the training provider's experience in OHS and training HSRs and knowledge of the offshore petroleum industry
- NOPSEMA surveillance audits on accredited training providers to ensure the ongoing accreditation of the training provider.

237. To augment HSR knowledge, NOPSEMA publishes the HSR Handbook to provide a guide for HSRs on exercising the powers given to HSRs under the OPGGS Act and to serve as a resource for HSRs to refer to when selected or when attending an accredited HSR training course. In addition, NOPSEMA is a regular presenter at APPEA HSE and HSR forums having delivered multiple presentations at these forums in recent years whether organised by industry bodies or the unions.

238. NOPSEMA publishes a range of information useful to HSRs (*The Regulator* quarterly magazine, safety alerts, guidance and information papers) which are all available on the NOPSEMA website and via electronic subscription.

239. NOPSEMA continues to consider internal and external suggestions to further support and assist the effectiveness of HSR's to the extent such initiatives are aligned with NOPSEMA's vision, purpose and values and are provided for by NOPSEMA's powers and functions.

#### **ToR (6) challenges in attracting and retaining Health and Safety Representatives**

240. The OPGGS Act and associated regulations provides for HSRs to have an active role in the offshore petroleum industry and sets out HSR responsibilities, protections and the requirement for HSRs to receive OHS training. The employers permit the representative to take such time off work, without loss of remuneration or other entitlements, as is necessary to undertake the training.

241. NOPSEMA considers it appropriate for the offshore industry to define the challenges in attracting and retaining HSRs, noting that the role of an HSR is undertaken by the workforce in addition to their normal duties.

242. Nevertheless, NOPSEMA remains willing to actively engage and consult with relevant industry bodies and associations that wish to address these challenges more broadly.

#### **ToR (9) factors impacting on the work health and safety of workers in the offshore petroleum industry**

243. The offshore petroleum industry is a unique environment given its geographical and operational nature and how that environment impacts the management of high hazard risks.

244. An understanding of the factors impacting the work health and safety of workers in this industry is best identified by the industry. Such matters may relate to factors such as an ageing workforce and the strategies applied for change management, succession planning and upskilling of workers more broadly, and new and emerging industry technologies that may pose different risks to the safe operation of facilities, and competition for labour and skills in Australia and overseas.

245. Any matters related to compliance with the OPGGS Act and associated regulations are taken seriously by NOPSEMA. Where HSRs raise issues associated with OHS matters with NOPSEMA either during an inspection, via a PIN or directly with an inspector via phone or email, NOPSEMA proactively responds to resolving these issues for HSRs.

246. NOPSEMA remains willing to engage and consult with relevant industry bodies and associations that wish to address these factors in more detail.

#### **ToR (13) any other related matters**

247. There are no other matters addressed in this submission.

## Glossary of terms

Acronym	Full name
ACTU	Australian Council of Trade Unions
ALARP	As Low as Reasonably Practicable
AMSA	Australian Maritime Safety Authority
APPEA	Australian Petroleum Production and Exploration Association
ANAO	Australian National Audit Office
COAG	Council of Australian Governments
Commonwealth WHS Act	<i>Commonwealth Work Health and Safety Act 2011</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
HSE	Health, safety and environment
HSR	Health and safety representative
IOPER	International Offshore Petroleum Environmental Regulators
IRF	International Regulators Forum
LNG	Liquefied Natural Gas
MAE	Major accident event
Model WHS Act	Cited as the model Work Health and Safety Act 2010
Model WHS Laws	Suite of template laws comprising an Act, Regulations and Codes of Practice
MODUs	Mobile offshore drilling units
NOPSEMA	National Offshore Petroleum Safety and Environmental Management Authority
NOPSA	National Offshore Petroleum Safety Authority (now NOPSEMA)
OECD	Organisation for Economic Co-operation and Development
OPGGs Act	<i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i>
PIN	Provisional OHS improvement notice
Safety Regulations	Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009
The Department	Department of Industry, Innovation and Science

## Attachments

- A: Concordance table
- B: Diagram - The offshore petroleum approval and regulatory process – NOPSEMA 2016
- C: The HSR Handbook – A guide for health and safety representatives in Australia’s offshore petroleum industry, NOPSEMA 2016
- D: 2017 Safety Alerts – No. 67 Understanding of light well intervention safety systems is critical for safe operations, No. 66 Potential for fatalities from electrical incidents, No. 65 Well annulus leaks gas-lift inventory from failed instrument line, No. 64 Collared eyebolts as lifting equipment
- E: NOPSEMA HSR training for the offshore oil and gas industry – course descriptor and suggested outline for registered training organisations



## Attachment A: Concordance Table

Terms of Reference	Part	Page
1. The scope and necessity for amending and updating any legislative inconsistencies in the relevant work health and safety scheme, including:	2.4 - OPGGS Act and model WHS Act and Commonwealth WHS Act	11
a. Any provisions in the legislation which need to be updated;	3.4 – Comparison of legislation	24-30
b. Providing for appropriate consistency between the Offshore Petroleum and <i>Greenhouse Gas Storage Act 2006</i> (OPGGS Act) and the <i>Work Health and Safety Act 2011</i> (WHS Act);		
c. Legislative changes required to the OPGGS Act to provide for appropriate consistency with the model work health and safety laws (as revised in June 2011); and		
d. Legislative changes which recognise that the work is undertaken in remote locations.		
2. The effectiveness of 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.	4.1 – Industry safety record	33
	4.2 – Equivalent state and territory offshore petroleum regulators	34
3. The accountability framework to which NOPSEMA is subject with respect to work health and safety matters, and where this needs to be strengthened.	4 – Performance outcomes	35
4. The role and structure of the NOPSEMA Board and options for improving the effectiveness of their stakeholder engagement.	5 – Policy considerations	40
5. Collaboration and working relationships with other work health and safety regulators and bodies including Safe Work Australia.	3.3 - Offshore petroleum occupational health and safety framework	22
6. Challenges in attracting and retaining Health and Safety Representatives.	5 – Policy considerations	42
7. The adequacy of the protections afforded to Health and Safety Representatives performing their functions under the relevant legislation.	3.4 – Comparison of legislation	31
8. Policies and practices which could be adopted by NOPSEMA to better support Health and Safety Representatives	5 – Policy considerations	41
9. Factors impacting on the work health and safety of workers in the offshore petroleum industry.	5 – Policy considerations	42
10. Government policies at the state, territory and Commonwealth level which have a significant impact on the work health and safety of worker in the offshore petroleum industry.	3.2 – Conferral	16
11. Relevant parallels or strategies in an international context.	4.3 - International comparison of offshore petroleum regulators	38
12. The role of government in providing a coordinated strategic approach to health and safety outcomes in the offshore petroleum industry.	3.2 – Conferral	16
13. Any other matters.	5 – Policy considerations	42

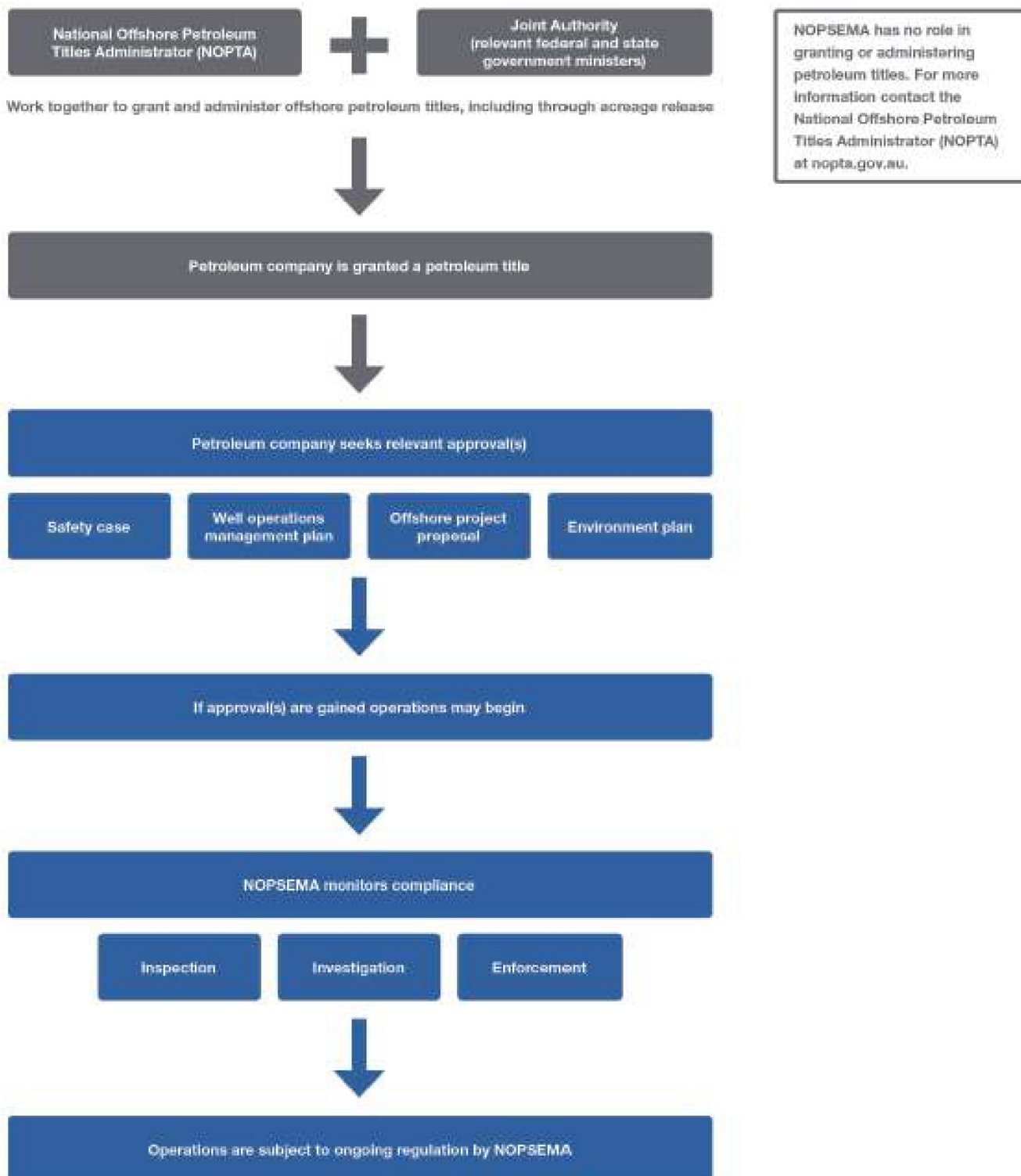
## Attachment B: Offshore petroleum approval and regulatory process

### The offshore petroleum approval and regulatory process

The infographic below provides a broad overview of the approval and regulatory process for all offshore petroleum activities in Commonwealth waters.

#### Legend

- NOPSEMA's remit
- Outside of NOPSEMA's remit



## **Attachment C: HSR Handbook, NOPSEMA 2016**

Provided as a separate document.



## **Attachment D: 2017 Safety Alerts**

Provided as a separate document.

## **Attachment E: NOPSEMA HSR training for the offshore oil and gas industry**

Provided as a separate document.