

Victorian Government Submission

Parliament of Australia

Senate Standing Committees on Education and
Employment

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

Authorised by the Victorian Government
1 Treasury Place, Melbourne, 3002

© State of Victoria 2018

1 Contents

1. Introduction	1
2. Victorian OHS regulatory frameworks	1
3. The OPGGS Act OHS regulatory framework	2
4. Areas with the strongest need for alignment.....	2
4.1 High risk work licensing.....	2
4.2 Regulatory gaps	2
4.3 Penalties and offences.....	3
4.4 Employee participation and representation	3
4.5 Entry by authorised representatives of employee organisations.....	4

1. Introduction

On 8 February 2018, the Senate referred the inquiry into the 'work health and safety of workers in the offshore petroleum industry' to the Education and Employment Reference Committee for inquiry and report by 14 August 2018.

One of the key purposes of the inquiry is to consider whether there should be appropriate consistency between the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) (OPGGS Act) and the model Work Health and Safety Act 2011 (model WHS Act) and what legislative changes would be required to bring the OPGGS Act in line with the model WHS regulatory framework.

The OPGGS Act and Regulations establishes a regulatory framework for the occupational health and safety (OHS) of persons engaged in offshore petroleum and greenhouse gas storage operations outside of state territorial waters.

The regulator of offshore petroleum and greenhouse gas storage facilities is the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA). NOPSEMA has functions and powers conferred on it under the OPGGS Act and its regulations. This legislation provides NOPSEMA with regulatory responsibility for occupational health and safety (OHS) and structural (well) integrity.

Victoria supports improved OHS outcomes for all workers, including oil and gas workers in offshore facilities. The terms of reference of the inquiry have particular regard to providing appropriate consistency between the OPGGS Act and the model WHS regulatory framework. Victoria supports appropriate amendments to the OPGGS Act to improve consistency with the model WHS regulatory framework, where such alignment will improve standards of OHS at offshore petroleum and gas storage facilities.

2. Victorian OHS regulatory frameworks

Victoria has not adopted the model WHS regulatory framework and instead relies on the Victorian *Occupational Health and Safety Act 2004* (OHS Act (Vic)) and Occupational Health and Safety Regulations 2017 (OHS Regulations (Vic)) to regulate OHS in regards to Victorian workplaces.

Victoria's OHS regulatory framework is administered by WorkSafe Victoria.

Offshore petroleum operations in Victorian coastal waters are regulated under the Victorian *Offshore Petroleum and Greenhouse Gas Storage Act 2010* (OPGGS Act (Vic)). The OPGGS Act (Vic) broadly mirrors the OPGGS Act with respect to OHS. It also confers functions and powers on NOPSEMA which enable it to regulate petroleum facilities in Victorian coastal waters, including with respect to OHS.

3. The OPGGS Act OHS regulatory framework

Like the model WHS and OHS regulatory frameworks, the OPGGS regulatory framework is performance-based and imposes general duties on parties, in particular operators and employers.

The operator of the facility is the main duty holder, and is required to take all reasonably practicable steps to ensure the facility and its activities are safe and without risk to health. This is broadly consistent with the primary duties of care under section 19 of the model WHS Act which applies to persons controlling businesses or undertakings and section 21 of the Victorian OHS Act which applies to employers.

In a number of key respects, the OPGGS regulatory framework departs significantly from the model WHS and OHS frameworks. This is largely because the OPGGS framework aims to regulate only one particular industry and frames its duties to target those hazards and risks associated with offshore petroleum and gas storage operations rather than workplaces generally.

However, there are several key areas where, the elements of the model WHS and OHS regulatory frameworks are transferable to the offshore petroleum and gas storage sector and would lead to better OHS protections for workers.

4. Areas with the strongest need for alignment

4.1 High risk work licensing

Unlike model WHS and OHS regulatory frameworks, the OPGGS framework does not provide for a high risk work licensing scheme. There are no requirements to use licensed operators for any high risk equipment at offshore facilities. This effectively means that workers at offshore petroleum facilities are able to operate equipment without a licence, such as a forklift, which would ordinarily require a high risk work licence under model WHS or OHS regulatory frameworks.

Victoria supports the establishment of a high risk work licensing scheme within the OPGGS regulatory framework. The operation of high risk equipment requires a licence to ensure that appropriate training is undertaken to operate the equipment safely. This not only protects the operator but also those working within the vicinity of the high risk equipment. The risks associated with high risk equipment are inherent and are not confined to particular industries. Therefore, it is appropriate that equipment which requires a licence to operate onshore should require a comparable licence to operate offshore.

4.2 Regulatory gaps

There is no specific regulatory coverage for falls, confined spaces, manual handling, hazardous substances, dangerous goods, asbestos or plant in the OPGGS regulatory framework. These risks (along with others such as electrical risks under the model WHS Regulations) may be equally present at offshore facilities and need to be eliminated or controlled.

These subject-specific chapters of the model WHS and OHS Regulations provide additional duties tailored to address those particular risks. The OPGGS regulatory framework can only rely on the general OHS duties to ensure these risks are eliminated and/or controlled. The general OHS duties do not specifically direct duty-holders as to how these risks can be eliminated and/or controlled.

Victoria supports the incorporation of specific regulatory frameworks addressing falls, confined spaces, manual handling, hazardous substances, dangerous goods, asbestos and plant within the OPGGS regulatory framework, to ensure that risks associated with these hazard types can be appropriately identified and controlled.

4.3 Penalties and offences

The penalty provisions under the OPGGS regulatory framework are significantly lower than under the model WHS Act and the OHS frameworks. For example the primary duty to provide a safe workplace carries a maximum penalty of 1200 commonwealth penalty units (\$252,000). In comparison the equivalent primary health and safety duty under the OHS Act carries a maximum penalty of 1800 Victorian penalty units (\$285,426) for an individual or 9000 Victorian penalty units (\$1,427,130) for a body corporate. Under the model WHS Act Category 1 offences (failure to comply with a duty involving reckless conduct) can carry a jail term for individuals in addition to a fine of \$300,000 and a maximum penalty of \$3 million for a body corporate. Category 2 offences (failure to comply with a duty) under the model WHS act carry a maximum fine of \$150,000 for individuals and \$1,500,000 for body corporates.

There is also no offence of reckless endangerment in the OPGGS Act, unlike the model WHS Act and the Victorian OHS Act. Similarly there are no officer offences under the OPGGS Act.

Penalties under the OPGGS regulatory framework should reflect the gravity of respective offences and should be sufficient to operate as effective deterrents. Victoria supports increased alignment between the OPGGS regulatory framework and the model WHS regulatory framework in regards to the penalty framework under those Acts. Victoria also supports the inclusion of a reckless endangerment offence and officer offences under the OPGGS Act to strengthen compliance mechanisms under the legislation in regards to all parties who can have a bearing on OHS.

4.4 Employee participation and representation

Unlike under the model WHS and the OHS regulatory frameworks, there is no provision for offshore workers to autonomously determine the manner in which they select Health and Safety Representatives (HSRs) under the OPGGS Act. Instead the OPGGS Act sets out the process by which a HSR must be selected.

HSR training provisions under the OPGGS Act provide that the operator of the facility must permit the representative to take time off work to attend training and the training course must be accredited by NOPSEMA. Unlike, under the model WHS Act and OHS Act, the operator of an offshore petroleum or gas storage facility is not required to cover any reasonable costs associated with HSR training.

Victoria recognises the benefits of worker involvement in OHS matters. Employers and workers should exchange information and ideas about risks to health and safety, and

measures that can be taken to eliminate or reduce those risks. Workers should be entitled and encouraged, to be represented in relation to health and safety issues.

The model WHS Act and the OHS Act provide a more robust framework for employee participation and representation. Victoria supports further alignment of the OPGGS Act with the model WHS Act participation and representation provisions.

4.5 Entry by authorised representatives of employee organisations

Both the model WHS and OHS regulatory frameworks establish a right of entry for authorised representatives of employee organisations. Authorised representatives may exercise this right to enquire into suspected contraventions of the legislation which may impact on members of the relevant employee organisation and other specified persons. The OPGGS regulatory framework does not establish an equivalent right of entry in relation to offshore petroleum and gas storage facilities.

Victoria recognises the positive role that employee organisations play in supporting employees and employers to identify and resolve OHS issues. Victoria supports increased alignment between the OPGGS framework and the model WHS framework in regards to entry by authorised representatives of employee organisations.

