



NOPSEMA

Submission

1 June 2018



Education and Employment References Committee

Inquiry into the framework surrounding the prevention investigation and prosecution of industrial deaths in Australia

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).

The submission is structured to provide information on the role, history and functions of NOPSEMA to support specific responses to the Terms of Reference relevant to the effectiveness of legislation, industry performance and enforcement actions. Information is also provided on jurisdictional issues requiring Government consideration to provide a more harmonised approach to industry safety.

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

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1. Framework of Australia's offshore petroleum regulation

1.1 Background

2. The National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) is the national regulator for 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.
3. 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 various Australian government reviews and inquires and by experienced overseas offshore petroleum regulators
4. The establishment of NOPSEMA has brought efficiencies through economies of scale, uniform procedures and greater consistency in the interpretation and application of regulations and guidelines, and reduced regulatory burden on industry. The conferral of powers for offshore petroleum safety has already occurred in Victorian waters and is under consideration by other jurisdictions in Australia.
5. Governance for NOPSEMA is substantial with measures including those applicable to standard government agencies including 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. The two most recent NOPSEMA statutory independent reviews completed in 2015 confirmed NOPSEMA to be a robust, rigorous and competent regulator. Outcomes of other reviews by the Australian National Audit Office¹, the Productivity Commission and other authorities, confirmed NOPSEMA administers an effective regulatory regime and is a cost effective and technically competent regulator. More recently, the 2017 Senate Red Tape Inquiry confirmed that state and Northern Territory conferral of powers to NOPSEMA would achieve a reduction of red tape and associated costs, for offshore petroleum projects.
6. NOPSEMA maintains a critical mass of expertise of more than 110, highly trained and qualified technical professionals with extensive practical experience in the offshore petroleum industry both in Australia and overseas. NOPSEMA represents the largest concentration of offshore petroleum safety and environmental management specialists in Australia for offshore oil and gas.
7. NOPSEMA regulates more than 150 offshore facilities and approximately 900 offshore wells, including some of the highest producing wells globally. Some of the world's most advanced, complex 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 more than \$180 billion and put Australia on track to be a global leader and the world's largest LNG exporter.²
8. Since the commencement of national offshore petroleum safety regulation in 2005, the safety performance of the offshore petroleum industry outperforms other comparable industries, with no fatality or major accident event since 2012 and very few prosecutions due to the low occurrence of incidents. NOPSEMA's proactive and committed approach to promoting and advising industry on leading safety management practices has contributed to record performance results.
9. The conferral of powers on NOPSEMA is the most significant harmonisation action that will have a positive impact on workers and will improve a coordinated strategic approach to health and safety outcomes in the offshore petroleum industry. 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.

¹ ANAO Report on the Establishment and Administration of NOPSEMA 2014, p.22.

² Department of Industry, Innovation and Science.

1.2 Legislation and functions

10. 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
 - 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.
11. NOPSEMA administers an objective-based regime and various aspects of the following legislation as they relate to its functions:
- Offshore Petroleum and Greenhouse Gas Storage Act 2006
 - Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009
 - Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009
 - Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011
 - Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003
 - Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004.
12. Australia's objective-based regime is world class. It 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 safety associated with offshore petroleum are:³
- 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.
13. The Safety, Environment and Resource Management and Administration regulations set out requirements for petroleum title duty holders⁴ to submit a safety case, environment plan and wells operations management plan (permissioning documents) to NOPSEMA for one or more stages in the life of the facility and its petroleum activities.
14. NOPSEMA assesses such submissions against the criteria contained in the regulations and makes a decision to accept or reject them. If NOPSEMA rejects a permissioning document it provides the duty

³Hopkins, Andrew (2012) *"Disastrous Decisions, The Human and Organisational Causes of the Gulf of Mexico Blowout"*

⁴ Duty holders are taken to mean titleholders, operators and third parties responsible for offshore petroleum activities.

holder detailed information regarding the reasons for rejection and the duty holder can subsequently revise and resubmit the permissioning document. NOPSEMA does not consider economic, commercial or political factors in its decision making processes.

15. Acceptance of such documents by NOPSEMA provides the duty holder with permission to undertake the activities described therein, in accordance with the document, hence the term “permissioning document”.
16. NOPSEMA delivers its functions through five core regulatory activities which are interlinked and provide an integrated and comprehensive regulatory framework. These are summarised below.
 - assesses how the operator of the facility proposes to manage the safety 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 safety and provides advice to the industry on learnings from assessments, inspections, investigations and enforcements and promotes robust safety management practices.
17. The Commonwealth Department of Industry, Innovation and Science is the policy agency responsible for legislative changes for the OPGGS Act and associated regulations. NOPSEMA liaises with the Department on policy proposals referred for legislative change.

2. Offshore safety performance

2.1 Industry continuous improvement

18. 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.
19. Australia's safety regime administered by NOPSEMA provides that those who create risk are responsible for identifying and managing that risk including the need to reduce safety risks to a level that is as low as reasonably practicable (ALARP). 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.
20. ALARP 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.
21. The safety performance of the offshore petroleum industry out performs other comparable industries and has improved significantly in the last decade. No fatality or major accident event (MAE) has occurred since 2012 and there was no serious injuries, a record low rate for offshore accidents and low numbers of hydrocarbon releases and reported dangerous occurrences, achieved for a full year in 2016.
22. The number of lost time injuries of more than 3 days, continues to demonstrate a downward trend on previous years. In 2017, there were four (4) serious injuries and six (6) lost time injuries involving workers not applying established procedures. NOPSEMA conducted inspections into these incidents and these were carefully monitored by NOPSEMA. NOPSEMA revisited the safety culture in these organisations and issued Safety Alerts and published articles in the *Regulator*, NOPSEMA's online magazine, to educate the workforce on the circumstances that contributed to these injuries.
23. Australia's performance compares favourably to other international regulator jurisdictions. The most recent International Regulators' Forum (IRF) data⁵ 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 ⁶	ALL IRF NATIONS ⁷
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

24. NOPSEMA advocates continuous improvement in offshore performance, influencing offshore safety processes and behaviours not only in Australia but also overseas.

⁵ IRF data for the calendar year of 2017 is published by the IRF Secretariat in late 2018.

⁶ Comparable IRF Nations (with similar regimes to Australia) include Canada, Netherlands, Norway and the UK.

⁷ IRF member countries: Australia, Brazil, Canada, Denmark, Mexico, Netherlands, New Zealand, Norway, United Kingdom, United States of America.

2.2 NOPSEMA's performance

25. The offshore petroleum safety regime has been subject to ongoing Government review and inquiry since national regulation commenced in 2005. NOPSEMA's predecessor, the National Offshore Petroleum Safety Authority (NOPSA) underwent two statutory operational reviews in 2008 and 2011. In 2009, the Productivity Commission conducted a review into the regulatory burden on the upstream petroleum sector and in the same year a report was prepared to the Offshore Petroleum Safety Regulation Inquiry covering the Varanus Island incident. The overall findings consistently conclude that safety regulation administered by NOPSA is appropriate and effective.
26. 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 during the design process, contributed to the safer design of the proposed facility.⁸ The Inquiry recommendations primarily considered those issues that needed to be addressed by the Western Australian Government with respect to emergency response planning.
27. In 2014 the Australian National Audit Office (ANAO) conducted an independent review on the establishment and administration of NOPSEMA and determined that NOPSEMA has appropriately integrated administrative arrangements for the new function of environmental management and has a sound framework for the regulation of the offshore petroleum industry.⁹ Regulatory activities including providing advice and guidance to operators in relation to regulatory requirements are appropriate.¹⁰
28. 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 *Environment Protection and Biodiversity Conservation Act 1999* (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.
29. 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.
30. 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.
31. 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:
 - 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

⁸ WA Parliamentary Inquiry report into safety-related matters relating to FLNG projects off the WA coast, 2014, Finding 19.

⁹ ANAO Report on the Establishment and Administration of NOPSEMA 2014, p.22.

¹⁰ Ibid., p21.

- promote and advise industry on best practices with the intent of influencing behavioural change across industry to result in safer outcomes.
32. NOPSEMA has actively responded to a number of Government inquiries since 2016 such as the inquiry into oil and gas production in the Great Australian Bight. In 2018, NOPSEMA has already made submissions to the inquiry into the work health and safety of workers in the offshore petroleum industry and to the inquiry into the impediments into business, to raise awareness on the safety performance of the industry and on the need for national consistency with offshore petroleum regulation.

2.3 Strategic compliance regime and the prevention of accidents

Inspections

33. NOPSEMA adopts a strategic approach to compliance and inspections represent a key function in the identification of current and evolving issues. NOPSEMA conducts planned inspections at facilities that may involve some or all of the following activities:
- confirming that the hardware and procedural systems described in the permissioning documents are in place
 - obtaining evidence that such systems are functional in practice
 - gaining assurance that the implementation of the systems will be ongoing
 - verifying that risk control improvements have been implemented
 - verifying that actions arising from recommendations of previous inspections have been completed
 - testing personnel knowledge and understanding of selected aspects of the permissioning documents and supporting documentation as relevant
 - communication with Health and Safety Representatives (HSRs) and the workforce.
34. All 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 and other members of the workforce to assess an operator's implementation of the requirements to consult with and enable the participation of the workforce, in relation to the risks and hazards on facilities.
35. The intent of the inspections is to provide for sufficient oversight to ensure that all reasonably practicable steps are being taken to prevent MAEs and to reduce risks to health and safety to a level that is ALARP.
36. NOPSEMA typically undertakes over 100¹¹ safety inspections per annum, which focus on targeted areas of safety risk.
37. The conduct of safety inspections considers normally attended production facilities and mobile offshore drilling units (MODUs)¹² 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 per year.
38. 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 years or once every four years. The

¹¹ Five year average number of inspections, 2013 – 2017.

¹² Normally attended facilities are those that provide accommodation for the workforce during routine operations.

overall number of inspections has substantially increased since the commencement of a single offshore petroleum regulator in 2005.

39. 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 duty holder to provide proposed actions to be taken with respect to recommendations arising from an inspection and in relation to safety, to provide the report to the health and safety committee and HSRs.¹³
40. Where an inspection finds non-compliance (actual or potential) with legislative requirements including the accepted permissioning document, or identifies any immediate threats to the safety, well integrity and environmental management of the activity, NOPSEMA takes enforcement action in accordance with its published Enforcement Policy.
41. NOPSEMA has an established Compliance Committee that represents all regulatory and legal functions to review and proactively respond to key compliance issues. The Committee delivers strategic oversight of NOPSEMA functions to enable compliance by regulated parties and provides for greater visibility for strategic compliance programs.

Investigation

ToR (g) any other related matters

42. NOPSEMA carries out inspections and investigations to ascertain compliance with the legislation. NOPSEMA's functions and powers are used broadly to investigate complaints and to gather information concerning trends in industry that require detailed consideration. Investigations are also conducted to seek information that may be utilised as a basis for enforcement (including prosecution) and for advice and promotion purposes to promote industry continuous improvement in safety performance.
43. An investigation may range from an enquiry by a single inspector about a minor incident or complaint, to a large enquiry involving a team of inspectors or management by NOPSEMA's independent Investigations Unit and where required supported by external independent subject matter experts.
44. When deciding which incidents to investigate including the resources to be used, account is taken of the:
 - severity and scale of potential or actual harm
 - seriousness of any potential breach of the law
 - duty holder's known past health and safety or environmental management performance
 - enforcement priorities
 - practicality of achieving results
 - wider relevance of the event, including serious public concern.
45. In conducting an investigation, NOPSEMA inspectors will seek to:
 - gather and establish the facts of the incident
 - identify immediate and underlying causes and the lessons to be learned
 - determine whether action has been taken or needs to be taken to prevent recurrence
 - detect breaches of legislation for which NOPSEMA is the enforcing authority
 - establish the most appropriate enforcement tool to be applied and where appropriate refer the incident to NOPSEMA's Investigations Unit to undertake further investigation where for example, a brief of evidence is to be referred to the Commonwealth Director of Public Prosecutions (CDPP).

¹³Schedule 3, Clause 80(5) of the OPGGS Act.

46. NOPSEMA's independent Investigations Unit operates autonomously to NOPSEMA's regulatory assessment and inspection divisions. The Investigations Unit may commence an investigation associated with an accident, dangerous occurrence or reportable environmental management or well integrity incident that has or could affect the health and safety of people engaged in offshore operations. The engagement of independent subject matter experts is considered for these kind of investigations.
47. There have been few investigations referred for prosecution due to the low numbers of incidents. Of those, two investigations related to three (3) fatalities that occurred in the regime in 2008 and 2012. For these types of investigations liaison with the CDPP commences early in the investigation process once the initial facts are determined. Ongoing engagement continues to appraise the CDPP of the investigation status and where NOPSEMA is preparing a brief of evidence.
48. Under clause 89 of Schedule 3 of the OPGGS Act, NOPSEMA may also initiate a prosecution against a duty holder of its own accord or as requested by a workforce health and safety representative. The CDPP will ensure compliance with the CDPP prosecution guidelines and in circumstances where there was not sufficient evidence, the CDPP will intervene.
49. The NOPSEMA website hosts more than 65 safety alerts published in the last decade 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.

Enforcement

50. 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.
51. 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.
52. Under the OPGGS Act, NOPSEMA has a robust suite of graduated enforcement measures. In circumstances of non-compliance, NOPSEMA proactively applies its wide range of enforcement options under the OPGGS Act. Options such as notices and directions are often pursued 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. Importantly the identified offence is clearly stated on the published enforcement notice. The use of these enforcement tools often results in significant financial and reputational impacts to the duty holder and may involve the immediate suspension of the offshore petroleum activity.
53. The enforcement tools include but are not limited to:
 - 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.

54. The OPGGS Act or legislative instruments to be provided for in regulations under the OPGGS Act, allows for documents to be served by electronic means which is particularly important in situations of potential emergency, where notices may be issued under Schedule 3 of the OPGGS Act. The OPGGS Act requires NOPSEMA to publish on its website improvement and prohibition notices issued by NOPSEMA's inspectors under Schedule 3 of the OPGGS Act.
55. In circumstances resulting in a fatality or serious injury, in addition to the use of any of the enforcement tools, NOPSEMA may also consider a referral to the CDPP to prosecute.

Notices

56. Since the establishment of NOPSEMA in 2012, 150 occupational health and safety (OHS) improvement notices, 13 OHS prohibition notices and one OHS general direction, have been issued to duty holders. These notices are published on NOPSEMA's website, 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.
57. Prohibition notices can provide that specific activities must be altered or ceased with immediate effect. 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. Prosecution may be pursued for non-compliance of the notices, however NOPSEMA has not considered a prosecution for non-compliance due to the very high compliance response from duty holders.

Prosecutions

ToR (f) the effectiveness of penalties in situations where an employer has been convicted of an offence relating to a serious accident or death

58. Since 2005 there have been two (2) incidents resulting in a total of three (3) fatalities of workers whilst carrying out offshore petroleum activities. NOPSEMA has pursued prosecution of the responsible parties for these fatalities. There have been no fatalities or major accident events in the regime since 2012.
59. Under the OPGGS Act, the criminal penalty levels for a number of offences are high, consistent with other high-hazard industry legislation and greater than any other model safety legislation. Given the operating budgets of duty holders, in comparison the penalty amounts are not high and NOPSEMA considers that they do not always operate to act as a preferred deterrent or punishment for the offences, unless there has been a fatality or serious injury. Notwithstanding NOPSEMA recognises the importance of penalties to be applied where a person or corporate body has been convicted of an offence relating to a serious injury or fatality.
60. On 21 August 2009, in the case of the prosecution of the PTTEP Montara well head platform blowout, the Northern Territory Magistrate's Court fined PTTEP AA the amount of \$510,000. At that time this was the highest amount for any OHS related offences in Australia.
61. The issuance of enforcement notices such as OHS improvement and prohibition notices has in most circumstances, resulted in a negative financial impact on the duty holder through restricting operation of the facility. An OHS prohibition often requires work to cease. The cost impacts associated with unplanned downtime continue to be assessed by industry. Some studies such as the Kimberlite study provides some indication of the implications associated with repair costs and costs associated with lost and/or deferred production. Estimates indicate that 1% of unplanned downtime, or 3.65 downtime days per year, can cost organizations US\$5.037 million each year.¹⁴
62. Given the effectiveness of the application of enforcement tools such as OHS improvement and prohibition notices, there have been very few incidents where NOPSEMA has referred a brief of

¹⁴GE Oil and Gas, Kimberlite Oil and Gas Market Research and Analytics, The Impact of Digital on Unplanned Downtime-An Offshore Oil and Gas Perspective, October 2016, Pg.4

evidence to the CDPP to consider for prosecution, to date representing a total of four (4) prosecution briefs, one (1) of these remains open.

Fatalities

63. 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 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.
64. 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).

Serious injury

65. Prosecutions have also occurred involving another incident where a diver suffered a serious arm injury. In relation to this prosecution, on 25 July 2014, Technip Oceania Pty Ltd (Technip) was convicted and fined \$70,000 by the Perth Magistrates Court for failing as the employer of the injured diver, to take all reasonably practicable steps to implement and maintain systems of work that were safe and without risk to health. Technip also failed to provide employees with the information, instruction, training and supervision necessary for them to carry out their work in a manner that was safe and without risk to health.
66. For the same incident, in December 2015, another action in the Magistrates' Court of Perth resulted in a criminal penalty of \$20,000 being imposed on Hammelmann Australia, as the supplier of high pressure water jetting equipment that was responsible for an accident on 30 March 2011 where a diver suffered a serious arm injury.

Other matters

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

3. Harmonisation of laws and jurisdictional inconsistency

ToR (a) the effectiveness and extent of the harmonisation of workplace safety legislation between the states, territories and Commonwealth

3.1 Conferral to NOPSEMA

68. The concept of harmonisation of laws resonates strongly with NOPSEMA and is the single most significant reason, agreed by previous Australian Governments, with bipartisan and tripartite support, on the need to establish NOPSEMA in 2012, and previously its predecessor the National Offshore Petroleum Safety Authority (NOPSA) in 2005, to provide a nationally consistent objective-based approach to regulating the health and safety of workers on offshore facilities.
69. The offshore industry was previously subject to a legacy of various pieces of legislation that were excessive and not fit for purpose to regulating the industry. The 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.¹⁵
70. NOPSEMA currently regulates offshore petroleum activities in Commonwealth waters and continues to receive feedback from offshore oil and gas companies that inconsistencies in requirements and resultant burden, still exists for those projects that cross from the Commonwealth jurisdiction into state or Northern Territory waters.
71. For example, an offshore petroleum project with wells in both state and Commonwealth waters, connected by a pipeline to an onshore processing facility will involve a number of regulators for the offshore component of the project, such as the:
 - State Department of Mines/Resources or Primary Industries
 - State Environmental Protection Authority
 - Commonwealth Department of Environment and Energy
 - NOPSEMA
72. In the event of an incident, each of these agencies is mandated through separate pieces of legislation with subordinate regulations, to investigate the incident, resulting in a fragmented approach to reviewing all relevant matters and differing legislation potentially driving an inconsistent approach to enforcement.
73. Under a conferred arrangement NOPSEMA could be the sole regulator for the offshore component of the project and provide for consistent investigation and enforcement of an incident impacting this cross jurisdictional project.
74. 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.
75. Among the benefits of moving to a single national framework for the regulation of the offshore oil and gas industry via 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
 - reduction in unnecessary costs to Governments and industry associated with preparation and assessment of multiple documents for a single project.
76. 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.
77. 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”.*¹⁶
78. The conferral of powers on NOPSEMA is the most significant harmonisation action that will have a positive impact on workers and will improve a coordinated strategic approach to health and safety outcomes in the offshore petroleum industry.

¹⁶ https://www.aph.gov.au/sitecore/content/Home/Parliamentary_Business/Committees/Senate/Red_Tape/Environment/Interim_report

3.2 Model and industry specific WHS legislation

79. The OPGGS Act was established several years prior to the model Work Health and Safety laws (model WHS laws) and the OPGGS Act continues to demonstrate a robust regulatory safety framework. There is a large degree of consistency in principle of provisions within the OPGGS Act and model WHS laws in support of the concept of harmonisation of laws. The model WHS laws and the OPGGS Act both 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.
80. NOPSEMA recognises there are some differences across the model WHS laws and the OPGGS Act, reflecting the unique features of the offshore petroleum industry. Most of these differences are administrative in nature and may often, through administrative arrangements, be resolved between interested parties. Other differences such as membership of the NOPSEMA Board will require legislative change and is a policy matter for Government, rather than NOPSEMA per se.
81. NOPSEMA 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'.¹⁷
82. NOPSEMA has provided details on the alignment and minor differing perspectives between the model WHS laws and the OPGGS Act in the NOPSEMA submission made to the Senate Standing Committee on Education and Employment References Committee - Inquiry into the work health and safety of workers in the offshore petroleum industry. The NOPSEMA submission is available at:
https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/WHSinoffshorepetroleum/Submissions

¹⁷ *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.

4. Engagement and collaboration in creating a safe-work culture

ToR(e) the role of employers and unions in creating a safe-work culture

83. NOPSEMA is a highly engaged and consultative regulator and believes in delivering strong messages to industry on the importance of creating a safe-work culture.
84. NOPSEMA 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 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 safety related matters.
85. 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 offshore petroleum duty holders 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 safety related matters. Since the beginning of 2018, NOPSEMA has conducted a further 131 safety related liaison meetings with stakeholders.
86. NOPSEMA undertakes a number of activities that contribute to the sharing of information with duty holders and unions to include:
- 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) and held a number of other smaller meetings with union bodies throughout 2018
 - NOPSEMA presentations at the 3rd and 4th ACTU offshore petroleum safety conferences in 2015¹⁸, 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*¹⁹, NOPSEMA's news magazine accessible by all interested stakeholders in print and online
 - establishing arrangements with Worksafe Victoria²⁰ with a shared objective to ensure effective cooperation on safety matters so that practicable safety requirements are administered in a consistent manner
 - delivering ongoing presentations 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, 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. In May 2018, the NOPSEMA CEO delivered the keynote address at the APPEA CEO Safety Forum.
87. 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, and as such indirectly

¹⁸ 3rd ACTU offshore petroleum conference of 23 February 2015, 4th ACTU offshore petroleum conference of 1 September 2015.

¹⁹ The Regulator Edition, Issue 1, 2017.

²⁰ 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

contributing to the safety culture of onshore industries. NOPSEMA has delivered presentations on the safety 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 NOPSEMA representatives and staff secondments have also been undertaken with regulators from countries such as New Zealand and Brazil.

88. As a national regulator NOPSEMA interacts regularly with international counterparts and contributes to important international organisations. NOPSEMA is Australia's representative at the International Regulators' Forum (IRF)²¹, and takes an active role in contributing to international efforts to improve safety culture. As one of four leaders of the IRF Management Committee that includes Norway, UK and USA, NOPSEMA leads on international developments on safety matters and shares information on international leading practices with Australia's offshore industry. From 5-6 June 2018, NOPSEMA will provide workforce safety briefings to the United Kingdom's Health and Safety Executive and Norway's Petroleum Safety Authority at the IRF annual general meeting and Safety 30 Conference, in Aberdeen, Scotland and NOPSEMA will also be chairing a session on workforce engagement.

There are no further matters or Terms of Reference addressed in this submission.

²¹ 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.

Glossary of terms

Acronym	Full name
ACTU	Australian Council of Trade Unions
ALARP	As Low as Reasonably Practicable
APPEA	Australian Petroleum Production and Exploration Association
ANAO	Australian National Audit Office
COAG	Council of Australian Governments
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
HSE	Health, safety and environment
HSR	Health and safety representative
IRF	International Regulators Forum
LNG	Liquefied Natural Gas
MAE	Major accident event
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)
OPGGGS Act	<i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i>
Safety Regulations	Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009
The Department	Department of Industry, Innovation and Science