

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

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

Dear Secretary

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

In refer to your correspondence of 22 June 2018 and provide the following response to issues raised in the evidence provided by the Australian Institute of Marine and Power Engineers (AIMPE) at the hearing held in Fremantle on 13 June 2018 and in the AIMPE submission to the inquiry. I provide as evidence references to the Australian Transport Safety Bureau Report '*Fatality on board Skandi Pacific, 14 July 2015*' and to provisions set out in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act) and associated regulations.

Skandi Pacific Incident

The Skandi Pacific is a vessel that has been used by offshore oil and gas operators for supplying offshore facilities or for other support operations relating to offshore oil and gas projects. On 14 July 2015 the Skandi Pacific was involved in an incident that resulted in a fatality to one of the crew members on board the vessel.

NOPSEMA Jurisdiction

As considered by the AIMPE and confirmed by NOPSEMA, at no time prior to, during or following the incident was the safety of the workforce on board the Skandi Pacific subject to regulation by NOPSEMA.

The safety of workers at facilities and associated offshore places is subject to regulation by NOPSEMA under the OPGGS Act and associated safety regulations. Relevantly, vessels used for supplying facilities or for travelling to or from a facility, are specifically excluded from the list of facilities subject to NOPSEMA's jurisdiction. Similarly supply vessels are specifically excluded from being regulated under the OPGGS Act as associated offshore places.

It is noted that the proximity of a vessel to a facility (e.g. within or outside 500m from the facility) has no bearing on whether that vessel is subject to regulation under the OPGGS Act regime. At the time of the incident the Skandi Pacific was located 30 metres away from the Atwood Osprey facility, following the cessation of cargo transfers from the Skandi Pacific to the facility.

Further information on the definition of a facility and an associated offshore place under the OPGGS Act including any exclusions is provided at Attachment A.

Registration of vessels

The following is based on NOPSEMA's understanding of the relevant maritime laws that may apply to vessels being used to support offshore oil and gas operations.

NOPSEMA understands that Australia is a signatory to multiple international maritime conventions of the safety of seafarers and appropriate operation of vessels at sea. The conventions set boundaries on the application of mandatory requirements. The *Navigation Act 2012* is legislation which implements several maritime conventions and covers international ship and seafarer safety, protection of the marine environment where it relates to shipping, and the actions of seafarers in Australian waters.

NOPSEMA notes the Skandi Pacific is registered in the Bahamas and is therefore not an Australian registered vessel. It operates under permissioning documents approved by overseas authorities. Under section 14 of the *Navigation Act 2012*, the Skandi Pacific is a foreign vessel meaning a vessel that does not have Australian nationality, and as such there are limitations on the geographical application of Australian maritime laws to vessels of this kind. Under section 9 of the *Navigation Act 2012*, the geographical application of offences and civil penalty provisions relating to foreign vessels only apply to the foreign vessel entering or leaving an Australian port; or in the internal waters of Australia or in the territorial sea of Australia, other than in the course of innocent passage. None of these conditions existed at the time of the Skandi Pacific incident.

Under the *Seafarers Rehabilitation and Compensation Act 1992* and the *Occupational Health and Safety (Maritime Industry) Act 1993*, the Skandi Pacific is not a 'prescribed ship' required to comply with obligations under those Acts. The jurisdictional gap claimed by the AIMPE appears to be in relation to the geographical application of Australia's maritime laws and this issue is highlighted in the Australian Transport Safety Bureau (ATSB) Report¹.

Collegiate engagement with AMSA

NOPSEMA and AMSA have a memorandum of understanding (MoU) which was signed in 2009. It was established in the early years of national offshore petroleum safety regulation under the National Offshore Petroleum Safety Authority (NOPSA), NOPSEMA's predecessor. The MoU provides for the sharing of information across a number of regulatory matters and provides for jointly conducted audits and inspections where both parties have a direct responsibility at different times of the facility or vessel operation, noting the differing requirements in the suite of separate laws administered by each regulator.

NOPSEMA has established and maintains a strong and collegiate relationship with AMSA on a range of matters related to the functions and regulatory activities of each agency including the regulation of offshore safety. The relationship is firmly embedded in a number of ongoing bilateral activities, standing meetings and national plan arrangements. The extent of engagement maintained between NOPSEMA and AMSA, and the strength of the joint agency relationship is independent of the MoU.

Noting that in relation to the Skandi Pacific incident at no time was the vessel subject to regulation by NOPSEMA, it is NOPSEMA's view that the potential jurisdictional gap issues claimed by the AIMPE cannot

¹ Australian Transport Bureau Report, Fatality on Board *Skandi Pacific*, 14 July 2015, Pgs. 11-12.

be rectified through any MoU as these are policy and legislative matters for Government concerning the registration of vessels and Australia's maritime laws and borders.

Matters relevant to the Karratha Spirit

NOPSEMA understands that the Karratha Spirit was registered in Australia at the time of the incident. The Karratha Spirit was a vessel subject to regulation by maritime authorities and under specific circumstances was operated as an offshore facility and therefore subject to regulation by NOPSA, NOPSEMA's predecessor. The jurisdictional issues raised in regard to the Karratha Spirit do not relate to location or registration of the vessel, but the activity being undertaken by the vessel at the time of the incident. NOPSA accepted it was within the offshore jurisdiction and took responsibility for investigating the matter.

I trust the above response provides sufficient information in response to the evidence provided by the AIMPE. If you require any further information please do not hesitate to contact me.

Yours sincerely

Stuart Smith

Chief Executive Officer

27 June 2018

Attachment A**Facilities under the OPGGS Act and associated regulations**

The definitions in Clause 3 of Schedule 3 to the OPGGS Act indicate that a facility is defined by Clause 4, and includes:

- a facility being constructed or installed
- an associated offshore place.

Clause 4 defines a facility as a vessel or structure (whether floating or fixed) whether or not it is capable of independent navigation, while the vessel or structure is located in Commonwealth waters and is being used, or is being prepared for use, at the site [Schedule 3, Clause 4]] for the recovery, processing, storage, offloading of petroleum (sub-clause 4(1)(b)(i)).

In accordance with sub-clause 4(4), this includes:

- any wells, associated plant, equipment by which petroleum processed or stored at the vessel or structure is recovered
- any pipes from a well, or secondary lines associated with the facility.

Other activities that cause vessels or structures to be facilities include activity categories covered in subclause 4(1)(b)(ii)–(vi), and include:

- accommodation for persons working on another facility
- drilling or servicing a well for petroleum or work associated with drilling or servicing
- laying pipes for petroleum, including any manufacturing of such pipes, or for doing work on an existing pipe
- erection, dismantling or decommissioning of a facility.

Sub-clause 4(6) lists the following that are not facilities:

- off-take tankers
- tugs or anchor handling vessels
- **vessels used for supplying facilities or for travelling to or from a facility**
- any vessel or structure declared by regulations not to be a facility.

Clause 3 lists the following that are not associated offshore places

- another facility
- a supply vessel, offtake tanker, anchor handler or tugboat
- a vessel, or structure, that is declared by the regulations not be an associated offshore place.