



Australian Government
Department of Resources, Energy and Tourism



OFFSHORE PETROLEUM SAFETY REGULATION INQUIRY (June 2009)

and

REVIEW OF THE NATIONAL OFFSHORE PETROLEUM SAFETY AUTHORITY OPERATIONAL ACTIVITIES (March 2008)

GOVERNMENT RESPONSE

SEPTEMBER 2010



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EXECUTIVE SUMMARY

A safe and secure working environment is a key priority for the Australian Government. Australia has a sound record in offshore petroleum safety, recognising that there is room for improvement to achieve our goal of world's-best safety practices. Last year the National Offshore Petroleum Safety Authority (NOPSA) released the inaugural *Offshore Health and Safety Performance Report* for 2007-08. The NOPSA statistics have indicated increasing numbers of gas releases and personal injury rates which have failed to decline. This is supported by statistics from the June 2010 *Offshore Health and Safety Performance Report* which again show an increase in the number of hydrocarbon releases when compared with previous years. These statistics serve as potential indicators for more severe events. In summary, NOPSA's report indicated that the industry needs to improve leadership, better manage ageing facilities, address skills shortages and minimise gas releases.

Since the mid-1990s, the safety case regime in Australia has provided an assurance to the community, governments and industry that risks to health and safety are identified and appropriately addressed.

The 2009 reports of the Offshore Petroleum Safety Regulation Inquiry (OPSRI) and the 2008 Review into the Operational Activities of the National Offshore Petroleum Safety Authority (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 reports also recognise the changing environment now facing the offshore industry.

The reports are:

- *Better practice and the effectiveness of the National Offshore Petroleum Safety Authority* (June 2009) (the NOPSA Report);
- *Marine Issues* (June 2009) (the Marine Report); and
- The Review of the *National Offshore Petroleum Safety Authority Operational Activities* (March 2008) (the Operational Review).

In preparing its response to the three reports, the Government recognised that there are consistent themes from all stakeholders. The three reports provide recommendations and findings that are specific to matters relating to clarity regarding the framework and coverage of the legislation and regulations. Complementing this theme are those matters that are specific to NOPSA. Administrative and operating policies and practices of both NOPSA as the Regulator and the offshore petroleum industry have been identified in the reports. Issues include a perceived lack of a consistent approach by the Regulator and the need for more open and frequent interaction between the Regulator and the operator / titleholder and other stakeholders.

The reports recognised the onus placed on operators by the safety case regime and identified a number of recommendations aimed at assisting industry to ensure that risks are appropriately managed and all legislative requirements are adhered to.

The Government has set forward its response and associated implementation considerations based on a clearly established case for action and against the following key principles:

1. The occupational health and safety regime for the offshore petroleum industry in Australia is regulated under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act). The regime is underpinned by duty of care requirements that are set out in Schedule 3 of the OPGGS Act. The central duty of care is a requirement imposed on operators to take all reasonably practicable steps to ensure that the facility and all associated work is safe and without risk to the health of any person at or near the facility.¹
2. The regulations under the OPGGS Act implement a safety case regime, under which an operator must have had a safety case accepted by NOPSA before an offshore facility may be constructed, installed or operated. The operator / titleholder is obligated under the regime to demonstrate in the safety case how they intend to acquit this duty of care.²

The Government has developed this response to the Offshore Petroleum Safety Regulation Inquiry and the 2008 NOPSA Operational Review following a period of stakeholder consultations. In general, stakeholders were supportive of the direction of the Government's draft response, recognising that processes are underway that will address major concerns. Processes include the Government's proposed establishment of a single national offshore petroleum regulator, the Government's response to the Montara Commission of Inquiry and the re-write of the *Navigation Act 1912*.

The Government has commenced work to address the issues arising from the reports, specifically relating to the clear integration of integrity with safety and rapid growth in the offshore petroleum industry. This includes clarifying and strengthening Australia's offshore OHS framework through the consolidation of the safety regulations and amendments providing NOPSA with power to regulate non-OHS structural integrity matters. Amendments also allow for early engagement by the Regulator to address health and safety issues arising from the rapid growth in the industry and the incorporation of new and often large-scale technologies. In addition, NOPSA is in the process of responding to administrative and operating concerns raised in the Reports and issues in relation to interaction with the industry and will provide a progress report to the Minister by the end of 2010.

¹ *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, Schedule 3, Part 2, Division 1, Clause 9

² *Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996*, Part 1, Regulation 3

Offshore Petroleum Safety Regulation Inquiry (NOPSA Report)

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 upstream petroleum operations. The terms of reference included a focus on the 3 June 2008 gas pipeline rupture at the Apache Energy Ltd operated facilities on Varanus Island.

On 22 May 2009, Apache Energy Ltd was successful in a Federal Court challenge to the Panel's use of documents provided by the Western Australian Department of Mines and Petroleum that had been compulsorily obtained under the Western Australian *Petroleum Pipelines Act 1969*.

In light of the Federal Court decision, the Terms of Reference for the Inquiry were altered and Ministers agreed that the Panel would prepare a report for the Minister for Resources and Energy covering better practice regulation and the role of the National Offshore Petroleum Safety Authority (NOPSA) with associated recommendations. A separate report, with recommendations, would be provided to the Minister on improving the interface between NOPSA and the Australian Maritime Safety Authority (AMSA).

The two Reports, *Better practice and the effectiveness of NOPSA* (the NOPSA Report) and *Marine issues* (the Marine Report), were provided to Minister Ferguson on 12 June 2009. The Minister released the reports at the 9th meeting of the Ministerial Council on Mineral and Petroleum Resources (MCMPR) on 9 July 2009.

The NOPSA Report found that NOPSA has developed many creditable systems, competencies and publications, recognising the important role of NOPSA in interacting with, guiding, supporting and educating operators through the safety case process. Yet over this period, there has been significant growth in the industry which has placed additional pressure on NOPSA as the national offshore safety regulator.

RECOMMENDATION 1

We recommend powers should be conferred on NOPSA to enable it to effectively regulate safety and integrity for all facilities and pipelines in the water and the WA islands which export gas by pipeline. NOPSA's authority should extend to the nearest valve on the mainland above the shore crossing. (p. 17)

Proposed Response

Accepted with further consideration of the extent of NOPSA's jurisdictional authority

Facility and pipeline regulation

This recommendation is consistent with Recommendation 7.1 of the Productivity Commission *Review of the Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector* (June 2009) (PC Review) which identified the dual regulation of pipelines and wells as an unnecessary regulatory burden³. This recommendation has also previously been put

³ Productivity Commission 2009, *Review of Regulatory Burden on the Upstream Petroleum*

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forward by an Integrity Working Group, established under the upstream Petroleum and Geothermal sub-Committee under the auspice of the Ministerial Council on Mineral and Petroleum Resources (MCMPR) which was made up of Commonwealth, State and Northern Territory officials and industry representatives in 2007 and the Operational Report in June 2008.

An agreed position was reached by the Integrity Working Group who recommended that the *Petroleum (Submerged Lands) (Pipelines) Regulations 2001* be revoked; and the *Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996* be amended to provide for the management of pipelines. The Integrity Working Group recommended that the amendment should include redefining *facility* to include pipelines.

As part of the Government's September 2009 amendment to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPGGGS Act)*, facilities have been redefined to incorporate "Pipelines" as per the recommendation of the Integrity Working Group. The Department of Resources, Energy and Tourism has also, through its process for consolidation of all regulations under the Act, incorporated the management of pipelines into the new and consolidated *Offshore Petroleum (Safety) Regulations 2009*, which replace the *Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996* and the *Petroleum (Submerged Lands) (Occupational Health and Safety) Regulations 1993*; and the *Petroleum (Submerged Lands) (Diving Safety) Regulations 2002*.

For the purpose of the *Offshore Petroleum (Safety) Regulations 2009* which came into force on 1 January 2010, Pipeline Safety Management plans have been replaced by safety cases.

The *Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Bill 2010*, was originally introduced to the Australian Parliament on 10 February 2010 and lapsed with the calling of the August Federal Election. The Government will re-introduce this Bill as a priority. The amendments will provide NOPSA functions and powers in order to strengthen its ability to carry out its existing regulatory responsibilities by expressly including the oversight of the whole of structural integrity of facilities (including pipelines), wells and well-related equipment. To ensure complete coverage of this oversight role, the legislative amendment will include non-OHS structural integrity. The Bill will also clarify that a titleholder has an OHS duty of care relating to wells.

Further work is required to determine the details of this function, through regulation, including the delineation between resource security and management matters that may also have a structural integrity aspect.

NOPSA Jurisdiction

This recommendation reflects the intent of the establishment of NOPSA, to provide a nationally consistent safety regulation framework for Australia's offshore petroleum industry. Furthermore, Recommendation 7.2 of the PC Review states that 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 waters⁴.

In order for a consistent regime to operate effectively and efficiently any conferral of additional State and Northern Territory powers must mirror the functional obligation of the OPGGS Act and relevant regulations.

The ability for the States and Northern Territory to extend NOPSA's jurisdiction to waters landward of the territorial sea baseline and/or to extend, for pipelines, to the nearest valve on the mainland above the shore crossing is provided for in the Commonwealth OPGGS Act. The Commonwealth recognises that this extension is at State and Territory discretion, and also notes stakeholder OHS and integrity concerns about this extension, however the Commonwealth is of the view that this issue requires further consideration and the Department will work with stakeholders to formulate a final policy position.

This also incorporates the response to Finding 4 of the NOPSA Report and Recommendation 5 of the Operational Review.

RECOMMENDATION 2

We recommend MCMPR continue to support a duty of care safety case regime for best practice offshore petroleum industry regulation augmented to include regulation of integrity. Since the safety case is at the centre of the duty of care co-regulatory regime, we consider that the requirement for the implementation of the safety case at facilities involved in the exploitation of petroleum resources should be provided for within the OPGGS Act itself. (pg.19)

Proposed Response

Accepted in part

The Government accepts that continued support from MCMPR for a duty of care safety case regime reflects current best practice offshore petroleum industry regulation.

The *Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Bill 2010*, was originally introduced to the Australian Parliament on 10 February 2010 and lapsed with the calling of the August Federal Election. The Government will re-introduce this Bill as a priority. The amendments will provide NOPSA functions and powers in order to strengthen its ability to carry out its existing regulatory responsibilities by expressly including the oversight of the whole of structural integrity of facilities (including pipelines), wells and well-related equipment. To ensure complete coverage of this oversight role, the legislative amendment will include non-OHS structural integrity. The Bill will also clarify that a titleholder has an OHS duty of care relating to wells.

The Government accepts that the duty of care regime in Schedule 3 of the OPGGS Act is a 'co-regulatory' regime. However, the key principle of this response, as outlined in the Executive Summary, is to reinforce the duty of care requirements that are set out in Schedule 3 of the OPGGS Act. The duty of care is a requirement imposed on operators to

⁴ Productivity Commission 2009, *Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector*, Research Report, Melbourne p.179

take all reasonably practicable steps to ensure that the facility and all associated work is safe and without risk to the health of any person at or near the facility.

The Government acknowledges that responses to the draft Government response highlighted the safety management responsibilities of other stakeholders (as per Division 1, Part 2, Schedule 3 of the OPGGS Act) including:

- Persons in control of parts of a facility or particular work;
- Employers;
- Manufacturers in relation to plant and substances;
- Suppliers of facilities, plant and substances;
- Persons erecting facilities or installing plant; and
- Persons at a facility in relation to occupational health and safety.

While the safety management responsibilities of the stakeholders are recognised, compliance with the operator's duty of care is the responsibility of the operator alone. Responsibility is not shared with the Regulator.

There is a balance to be achieved between recognising both the duty of care responsibility of the operator and the community's reasonable expectation that the Regulator take appropriate steps to properly assess the quality and content of the safety case, compliance with the safety case, and the effectiveness of the safety case over time. The Government is continuing to assess the most appropriate mechanism to achieve that balance.

RECOMMENDATION 3

We recommend in relation to safety case development and compliance overall, that NOPSA revise its approach to interacting with operators prior to the safety case assessment process and subsequently and direct more resources into its advisory functions. We further recommend that NOPSA develop and implement a formal plan for supporting and guiding each operator prior to safety case acceptance, as well as for ongoing compliance with that safety case, recognising the unique experience, capabilities and assessed risk of that operator. Each plan needs to include advice, education and liaison meetings with the operators. The plan needs to be continuously reviewed and reassessed based on latest information, including the interaction with the operator. Implementation should be reviewed at a senior level within NOPSA. (p 38)

Proposed Response

Accepted

It is important that the offshore petroleum industry has an understanding of, and confidence in, the regulatory regime within which it operates. This recognises the role of the Regulator in promoting and clarifying with industry, industry's understanding of and obligations under the OPGGS Act and associated regulations.

The Government notes that NOPSA has commenced work to address these issues, for example, through the Safety Case Guidance Note project. NOPSA continues to be responsible for improving interaction and consultation with stakeholders on this and other

issues identified in these reports, including the response to Finding 7 of the NOPSA Report and Recommendation 17 of the Operational Report.

In relation to the safety case framework, the Government considers that it would be appropriate and timely for a review of safety case development, implementation and ongoing compliance. Section 695 of the OPGGS Act states that the responsible Commonwealth Minister must cause reviews of the operations of the Safety Authority⁵ to be conducted every 3 years. The first review was conducted in 2008. The next review is due in 2011 and the Government proposes that this review include a review of policy matters around the safety case framework, including development, content requirements and implementation. In this context, consideration of interactions between the Regulator and industry may also be considered as part of the next review.

The Chief Executive Officer (CEO) of NOPSA will be responsible for improving the interaction between the Authority and its stakeholders. The Government will work with the CEO to determine the process to undertake the 2011 review and will consult with stakeholders to determine the most appropriate means of ensuring improvements in the development, implementation and compliance with the safety case requirement.

RECOMMENDATION 4

We recommend that NOPSA review the risk assessment of pipelines. NOPSA should focus, in particular, on the efficacy of anti-corrosion systems, and recognise potential interference effects and major accident event (MAE) escalation risks associated with adjacent pipelines and unlicensed pipes even if they fall outside its direct regulatory responsibilities (p. 39).

Proposed Response

Accepted, in principle

NOPSA already examines risks to the offshore petroleum workforce within its jurisdiction including potential interference effects and major accident event escalation risks associated with adjacent pipelines and unlicensed pipes that fall outside NOPSA's direct regulatory responsibilities. However, NOPSA's capacity to assess risks associated with pipelines and other structures outside its jurisdiction is constrained by a number of factors. Implementation of this Recommendation in full would require the conferral of powers on NOPSA by legislation of the relevant State or Territory. The Commonwealth supports the conferral of powers. However, this is a matter for State and Territory governments.

This is consistent with the response to Recommendation 1.

⁵ *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, Chapter 6, Part 6.9, Division 9, Section 695, p.760

RECOMMENDATION 5

We recommend that NOPSA develop a robust risk assessment matrix for use in assessing and responding to the changing risk associated with each facility and the operator. Further, we recommend that NOPSA increase auditing frequency and duration to audit each manned facility on average twice per year (covering each staff swing), but more often if the risk matrix indicates this is necessary; and that audits should average several days actually on major facilities. (p. 54)

Proposed Response

Accepted

A mature and robust risk management system is crucial for the effective administration of regulatory activity. Through operational knowledge and learning a robust and dynamic risk matrix is one that incorporates continuous improvement and changes accordingly. Furthermore, a robust risk matrix provides the key platform for undertaking focussed audits of facilities (both desk top and through visits) and enables the efficient and effective use of finite resources.

This is a matter for the NOPSA CEO. The Government has asked the CEO to report by the end of 2010 to the Minister for Resources and Energy on steps taken to implement this recommendation. The advice of the Board may be sought by both the CEO and the Minister.

This recommendation is consistent with the response to Recommendation 18 of the Operational Report and Recommendation 7 and Finding 13 of the NOPSA Report.

RECOMMENDATION 6

We recommend that the OPGGS Act and its subsidiary regulations be amended to enable NOPSA to have a broader range of graduated compliance tools including the ability to impose a civil fine on an operator per day of non compliance with an improvement or prohibition notice. Legislation should also be considered that would enable NOPSA to make public, with appropriate safeguards, specific information concerning its enforcement actions including the name of the operator, the breach, and the enforcement action required including potential penalties. (p. 61).

Proposed Response

Further consideration required

The need for a more flexible compliance regime is one that requires further policy and legislative consideration.

Specifically issues such as the level of fines (including trigger points), the administration of fines collected by the Regulator and the effectiveness of civil fines in other OHS jurisdictions will need to be considered. The effectiveness and appropriateness of publishing enforcement orders will also need to be examined to ensure this doesn't mitigate against industry openness and the sharing of lessons learnt between industry members, Governments, regulators and the community more broadly.

This response incorporates the response to Recommendation 15 of the Operational Report.

NOPSA and the Government will undertake further examination of the options available and their benefits, if any, including practical and legal implications for the Regulator, Government and industry. All options will be considered in consultation with stakeholders.

RECOMMENDATION 7

We recommend that the Management of Safety on Offshore Facility (MOSOF) regulations be amended to explicitly enable assessment of safety culture, leadership, and consideration of operator past history, motivation and current capacity in approvals of safety cases. NOPSA should be able to audit against these criteria and challenge operators on these issues. (p. 69).

Proposed Response

Accepted in part

No amendments to the *Offshore Petroleum (Safety) Regulations 2009* are necessary.

The need to focus on organisational safety culture and leadership is an essential consideration of best practice safety management. While the evaluation of safety culture and leadership in particular can be very subjective, the issue of taking past performance into consideration is not. NOPSA now has an established history, working over the last five years with operators undertaking offshore petroleum activities in Australia. This knowledge is important in ensuring that operators are committed to meeting their legislative responsibility under the duty of care regime.

NOPSA has been progressively incorporating assurance of safety culture, including Process Safety Culture as a themed promotional project in NOPSA's 2009-2010 Annual Operating Plan and continuing this theme in 2010-2011.

Noting that Industry Leadership in MAE Prevention is a focus of NOPSA's 2009/10 Annual Operating Plan, the Government will seek the consideration by NOPSA of a third National Program around leadership and safety culture, incorporating operator past history, motivation and current capacity in approval of safety cases. NOPSA will review this recommendation in 2011/12 to determine whether there has been improvement or whether a regulatory approach is required.

This recommendation is also consistent with the response to Recommendation 5 (robust risk matrix) and consideration of Finding 13 of the NOPSA Report.

RECOMMENDATION 8

We recommend that NOPSA critically review its regulatory manning levels based on its current workload and the recommendations for additional areas of focus and increased auditing presented in this Report. To meet these requirements, we estimate that NOPSA

requires up to 50 inspectors in total plus associated support staff to bring overall staffing from about 55 to 75. The Department of Resources, Energy and Tourism should help facilitate the necessary ongoing levy funding in consultation with industry. (p. 73)

Proposed Response

Accepted

The Government agrees that NOPSA is under resourced, reducing its capability to enforce the regime effectively. This is an ongoing challenge for the Authority with continuing difficulties obtaining suitably qualified and skilled candidates. NOPSA currently remains under optimal staffing levels.

This is a matter for the NOPSA CEO to address on an ongoing basis. The recruitment of appropriately skilled staff during periods of high activity in the industry will continue to be a long-term challenge for the Authority. The Government has asked the CEO to report by the end of 2011 to the Minister for Resources and Energy on steps taken to implement this recommendation and ongoing issues with respect to resourcing.

This recommendation incorporates the response to Finding 15 and 16 of the NOPSA Report.

RECOMMENDATION 9

We recommend that MCMPR liaise with Ministers with environmental and planning responsibilities, and if necessary COAG, to ensure that environmental requirements for oil and gas projects are not imposed subsequent to safety assessments and do not increase the risk of major accident events. (p. 76)

Proposed Response

Accepted in-principle

The Government will implement this recommendation through the Chair of the Ministerial Council on Mineral and Petroleum Resources (MCMPR) writing to the Chair of Environment Protection and Heritage Council and working with other Ministerial Councils in relation to the establishment of a single national regulator.

The Government notes that this recommendation is also consistent with recommendations arising from the PC Review, recognising the parallel but potentially inconsistent workings of occupational health and safety and environmental regulatory processes.

As per recommendation 10.7 of the PC Review⁶, on 5 August 2009 the Minister for Resources and Energy announced the Government's intention to establish a single national regulator in Commonwealth offshore areas from 1 January 2012, with the option for states and the Northern Territory to confer their powers for state coastal and inland waters and islands to the national regulator. The Government's preferred model is consistent with the industry's view that the safety of people, the integrity of facilities, the

⁶ Productivity Commission 2009, *Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector*, Research Report, Melbourne, p.292

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protection of the environment, and day to day operations must be regulated in an integrated way, with resource management issues regulated separately.

RECOMMENDATION 10

We recommend that the Commonwealth and States/Northern Territory legislate to establish a properly resourced and empowered independent national safety investigation capacity to investigate serious oil and gas industry (including pipeline) incidents including near miss events that could have led to a major accident event. We further recommend that the regulatory investigatory powers under the OPGGS ACT be reviewed in the context of powers for the proposed independent national safety investigator, noting that the regulator must retain those investigatory powers necessary in order to fulfil its legislative functions. (p. 82).

Proposed Response

Accepted in part

The Government recognised that there was an administrative gap in the provisions of the OPGGS Act where, until October 2009, there were no general powers available to conduct an inquiry into any offshore incidents. The OPGGS Act allows for an investigation by NOPSA into occupational health and safety; and by the Minister as the Designated Authority for offshore areas in Commonwealth waters which would be limited to considering whether or not it was appropriate to exercise one or more of the specific statutory powers available in that capacity.

The Minister for Resources and Energy introduced an amendment to the OPGGS Act to enable the responsible Commonwealth Minister to appoint a Commissioner to conduct a Commission of inquiry into the operational, human and regulatory factors where a significant offshore petroleum or greenhouse gas incident, or a 'near miss' has occurred. This amendment was passed by Parliament on 17 September 2009 and received Royal Assent on 8 October 2009.

The inquiry powers will enable governments, regulators and the industry to be fully informed of all matters surrounding an offshore incident. This will enable all stakeholders to learn from these incidents and initiate appropriate changes (legislative and operational) to prevent similar future incidents. Furthermore, an appointed Commissioner, under the OPGGS Act, for the purposes of undertaking a Commission of Inquiry, has the power to seek assistance from investigative agencies such as the Australian Transport Safety Bureau, if deemed appropriate.

In November 2009, the Minister exercised his powers and appointed Mr David Borthwick AO PSM as the Commissioner conducting the Commission of Inquiry into the August 2009 uncontrolled release of oil and gas from the Montara Wellhead Platform in the Timor Sea.

Findings

FINDING 1

We note that the NOPSA Board should function as envisaged in the legislation and that this function should be clarified in writing by the Commonwealth Minister and reinforced by the Department to the Board and NOPSA CEO. We consider that any lack of clarity in the OPGGS Act with regard to the role of the NOPSA Board should be resolved and that a budget be made available by NOPSA to support research related to the Board's advisory role and the holding of four to six meetings annually. We also consider that to avoid confusion with governance Boards, the Board should be explicitly renamed an Advisory Board. (p. 11)

Proposed Response

Accepted in part

The Government is of the view that Section 654 of the OPGGS Act, which relates to functions of the Board, provides a clear statement of the Board's role and responsibilities. The Government supports the functions of the NOPSA Board, which are advisory in nature, as set out in the OPGGS Act. The independent advisory function of the Board provides the Government, NOPSA, State and Territory Petroleum Ministers and the MCMPR with a valuable resource to assure that policy and operational elements are robust and achievable.

This Recommendation is consistent with Recommendation 7.5 of the PC Review⁷ which seeks consideration of whether it is appropriate to have a Board for NOPSA and if so, clarification of the role of the Board.

In responding to concerns raised by stakeholders and the Board itself relating to the need for clarity as to the Board's role and functions, the Minister for Resources and Energy provided the NOPSA Board with a "Statement of Expectations". The Statement of Expectations sets out the Minister's expectations which are in accordance with the OPGGS Act.

The Minister for Resources and Energy has advised the CEO of NOPSA and the Board of his expectation that the CEO of NOPSA will work constructively with the Board and develop and agree annual budgets and support for future Board activities and work priorities.

This response incorporates the response to Recommendation 16 of the Operational Report.

FINDING 2

We note that with the relevant division of DOCEP now transferred to DMP, it would be timely to revise the NOPSA/DOIR/DOCEP MOUs. We also note that both parties should be proactive in fulfilling their obligations under MOUs and cooperating closely. (p. 13)

⁷ Productivity Commission 2009, *Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector*, Research Report, Melbourne, p.188

Proposed Response

Accepted

The efficient and effective operation of NOPSA relies on clarity between the legislative interfaces of both the OPGGS Act and jurisdictional responsibilities. The Government notes, however, that, while there is a case for MOUs that deal with cooperative working arrangements between jurisdictions, there is no legislative basis for NOPSA to provide regulatory services to other jurisdictions.

The Government has asked the CEO of NOPSA to review and consider the appropriateness of all MOUs and report to the Minister for Resources and Energy by the end of 2010 on ongoing issues and options with respect to improving cooperative arrangements with other jurisdictions.

The CEO of NOPSA has advised that a review of MOUs will be included in the Annual Operating Plan for 2010-2011.

FINDING 3

We note the importance of further work to improve industry performance on safety critical maintenance and backlogs. NOPSA should drive and monitor industry progress on this through its Facility Integrity national program and through facility audits. (p. 15)

Proposed Response

Accepted

As the Regulator, NOPSA's role in a performance-based regime is to provide independent assurance that health and safety risks are properly controlled by the operator.

In June 2009 the Minister for Resources and Energy released the inaugural *Offshore Health and Safety Performance Report* for 2007-08, which was prepared by NOPSA. The Report, an important initiative of the Authority, indicates that the industry needs to improve leadership, better manage ageing facilities, address skills shortages and minimise gas releases.

In the inaugural report NOPSA has specifically highlighted facility integrity and lifting operations as areas of concern. These areas can be addressed by ensuring that all procedures, maintenance and workforce training reflect a commitment to compliance as well as a strong and embedded safety culture.

NOPSA has implemented two National Programs for Facility Integrity and Lifting Operations to focus industry attention on key safety issues and to facilitate comparisons with international practices. The intent of the national program on facility integrity has been to influence the number of hydrocarbon releases, a key forward indicator for a major accident event.

The Government has asked the CEO of NOPSA to consider and implement further strategies to address this challenge, including a more extensive facility audit program.

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This is consistent with the response to Recommendation 5.

FINDING 4

We also note that Commonwealth legislative drafting is underway to include overall facility integrity in NOPSA's responsibilities and urge that this be progressed as a matter of urgency. While this is underway, other jurisdictions should prepare to mirror the legislation to enable NOPSA to regulate facility integrity in designated coastal waters as soon as the Commonwealth legislation is passed. (p. 17)

Proposed Response

Accepted with further consideration as per the response to Recommendation 1 of the NOPSA Report

As per the response to Recommendation 1 of the NOPSA Report, the Government reiterates that NOPSA was established to provide a nationally consistent safety regulation framework for the offshore petroleum industry. Responsibility for structural integrity needs to be provided uniformly in Commonwealth waters and in State and NT coastal waters.

FINDING 5

We note the recent agreement that separate industry or hazard specific laws relating to OHS should only be maintained where objectively justified. We believe that separate legislation is justified for the offshore oil and gas industry but that in line with the national OHS review's recommendation, the content and operation of all laws in the petroleum and gas industry that affect OHS should be reconsidered with the aim of achieving as much consistency with the content and operation of the harmonised principal OHS laws as is appropriate. (p. 19)

Proposed Response

Noted

The Government is committed to the implementation of nationally consistent legislation and regulation for occupational health and safety. The establishment of NOPSA was in itself the reflection of an all-of-government agreement to establish a single safety regulator for offshore petroleum activities in Australia. The Department of Resources, Energy and Tourism will monitor progress of the OHS Review and take into account any recommendations in its policy and rule making responsibilities for offshore petroleum activities.

The Government encourages the industry to consider the development of industry-wide guidelines or a code of practice to provide direction on the requirements to be met by industry in relation to the competency of high-lift operators.

The Government will remain involved in this issue through the Department of Resources, Energy and Tourism, the Department of Education, Employment and Workplace Relations and Safework Australia.

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FINDING 6

We note that there would be value in undertaking a gap analysis between documentation associated with the UK HSE and its Offshore Division and the material available through NOPSA to assist NOPSA in identifying an appropriate quantum and focus for its own guidance material. (p. 24)

Proposed Response

Noted

The Government supports the need for appropriate guidance material to be provided by NOPSA, including clearly identifying operator/titleholder and regulator responsibilities and duties, as provided for by Australia's offshore occupational health and safety legislative regime.

This is an operational matter for the CEO of NOPSA. The Government has asked the CEO of NOPSA to review and address any identified gaps in guidance material, taking into account the UK HSE as a benchmark in this area. The CEO of NOPSA is to report by the end of 2010 to the Minister for Resources and Energy on this matter.

FINDING 7

We note that NOPSA could consider establishing an appropriate forum for consultants and those personnel within operators that undertake safety case development. This forum could be via APPEA and should be used for education, promotion and discussion of safety case issues. (p. 24)

Proposed Response

Noted

The promotion of occupational health and safety of persons engaged in offshore petroleum operations is a legislated function of NOPSA.⁸

The Government notes that NOPSA and APPEA have collaborated on a Health and Safety Representatives Forum which has been held every 18 to 24 months. The Forum provides an opportunity for offshore workplace health and safety representatives from all jurisdictions to meet, exchange information and develop strategies to assist in the management of offshore safety issues from a workplace point of view.

As per the Government's response to Recommendation 3 of the NOPSA Report, the CEO of NOPSA will be responsible for improving the interaction between NOPSA and its stakeholders.

⁸ *The Offshore Petroleum and Greenhouse Gas Storage Act 2006*, Section 646

FINDING 8

We note that NOPSA/operator liaison meetings have a number of benefits when held at least quarterly. More frequent or less frequent meetings may be appropriate depending on the culture and responsiveness of each operator. We also note that where a facility is managed by a contractor (i.e. who is the operator) and the titleholder or contract holder exerts a strong influence on the health and safety culture and performance of the operators, NOPSA should consider whether they should also be more routinely involved in liaison meetings. (p. 27)

Proposed Response

Accepted

The Government notes that the OPGGS Act makes the operator responsible for the health and safety of persons at or near the facility. However, in circumstances where the safety culture is strongly influenced by an entity other than the facility operator (eg the titleholder), NOPSA is able to review the continued registration of the facility operator.

This is an operational matter for the CEO of NOPSA. The Government has asked the CEO of NOPSA to review the frequency of operator meetings and the inclusion of those not directly operating, but influencing, operator culture and performance, for example, titleholders and contractors. NOPSA has developed a revised Operator Liaison process and will report to the Minister for Resources and Energy by the end of 2010 on implementation of this matter and any ongoing issues.

FINDING 9

We note that where a standard is applied within the safety case regime, the operator should be aware of, and act on, any changes or revisions to the standard. This may include reviewing the safety measures to ensure ALARP⁹ continues to be met. Where a new standard becomes less prescriptive good industry practice indicates that the operator should review its systems and define measures as appropriate to meet safety requirements. We also consider that NOPSA should have ready access to all relevant standards and proactively review revisions. (p. 36)

Proposed Response

Accepted

The Government notes that it is very important for NOPSA to maintain access to and have knowledge of all relevant and current standards, including, but not limited to, the International Standards Organisation and Australian Standard series. In addition, NOPSA's experience and role make it appropriate that it be involved in the revision and development of relevant standards.

This is an operational matter for the CEO of NOPSA. The Government has asked the CEO of NOPSA to make sure that systems are in place to ensure the Authority is able to develop and maintain knowledge of relevant and current standards, and that it is able to

⁹ ALARP – As Low As Reasonably Practicable

participate in standards revision and development processes, as appropriate. The CEO is to report by the end of 2010 to the Minister for Resources and Energy on this matter.

FINDING 10

We note that if a validation report has been required to support a regulatory approval, the regulator should ensure that the complete report is received and considered as part of the approval process. The regulator should also be able to speak directly to the validation team to discuss further any issues raised within the report. This may require amendment to legislation to ensure that the regulator can engage in confidential discussions with the validator without the operator present. (p. 37)

Proposed Response

Further consideration required

The Government notes that the Inquiry outlined a number of policy options and potential issues relating to validations. To assist in forming a view on this issue, the Government will consult with stakeholders further and seek advice from the CEO and Board of NOPSA, and the Department of Resources, Energy and Tourism.

FINDING 11

We note that having identified control measures, the onus is on the operator to manage the issue. We consider, however, that NOPSA should expand its assessment policy to require it to use previously gathered information during the assessment process, and that if necessary the legislation should reflect this requirement. (p. 38)

Proposed Response

Accepted in part

The expansion of the assessment process to take into consideration operational knowledge and understanding as a result of previously gathered information would be consistent with the response to Recommendations 3 (stakeholder interaction), 5 (risk matrix development) and 7 (consolidation of operator culture, history etc) of the NOPSA Report.

This is an operational matter for the CEO of NOPSA. The Government has asked the CEO of NOPSA to review the Authority's operational policies, including the use of previously gathered information to inform the assessment process.

The Government is of the view that this can occur without legislative provisions.

FINDING 12

We note that it is important to target compliance not only considering the inherent risk of a facility and operational process but also the safety culture of a particular operator. (p. 42)

Proposed Response

Accepted in-principle

Consistent with the response to Recommendation 5 of the NOPSA Report, the Government agrees that a mature and robust risk management system is crucial for the effective administration of regulatory activity. Through operational knowledge and learning, a robust and dynamic risk matrix is one that incorporates continuous improvement and changes accordingly.

Consistent with the response to Recommendation 7 of the NOPSA Report, the Government recognises that the evaluation of safety culture and leadership can be very subjective. The issue of taking past performance into consideration, however, is not. NOPSA now has an established history, working over the last five years with operators undertaking offshore petroleum activities in Australia. This knowledge is important in ensuring that operators are committed to meeting their legislative responsibility under the duty of care regime.

The CEO will be responsible for addressing this finding within the context of the Government's response to Recommendations 5 and 7 of the NOPSA Report.

FINDING 13

We note that NOPSA should ensure that its inspection activities are appropriately focussed on the operator's effective implementation of its policies and systems and that these concerns should also be addressed in liaison meetings. NOPSA should implement a robust strategy for assuring itself that the operator is complying with its safety case based on issues raised from previous inspections and meetings with the operator. Corporate and themed audits should also be a part of this approach. (p. 63)

Proposed Response

Accepted

Consistent with the Government's response to Recommendation 7 of the NOPSA Report, a robust strategy to ensure compliance with the Safety Case based on previous inspections and meetings will provide additional assurance that operators are effectively meeting their legislative requirements.

This is an operational matter for the CEO of NOPSA and will be implemented in the context of the response to Recommendation 5 of the NOPSA Report.

FINDING 14

We note that NOPSA should increase its advisory and promotional functions by engaging with operators more, and in a more targeted fashion, in the early stages of the safety case and PSMP process. (p. 68)

Proposed Response

Accepted

Consistent with the Government's response to Recommendation 3 of the NOPSA Report, the Government notes that NOPSA has an important role in ensuring that the offshore petroleum industry has an understanding of and confidence in the regulatory regime within which it operates.

This is an operational matter for the CEO of NOPSA and will be implemented in the context of the Government's response to earlier Recommendations and Findings of the NOPSA Report.

FINDING 15

We note that there is significant merit in a NOPSA position being created in Canberra, closely linked with RET, to handle liaison with Commonwealth stakeholders, assist the Board, and drive the policy agenda, including facilitating legislative change. (p. 71)

Proposed Response

Noted

The Government has taken steps, through the provision of a Statement of Expectations to the Board and through discussions between the CEO of NOPSA, the Board of NOPSA, the Department of Resources, Energy and Tourism, and the Minister for Resources and Energy, to facilitate closer and more constructive working relationships between NOPSA and the Department. The Government is of the view that a Canberra-based NOPSA position is not required, but that it is important for the CEO of NOPSA to work closely and constructively with both the Secretary and Resources Division Head of the Department of Resources, Energy and Tourism.

The Government notes that NOPSA is a regulator. NOPSA is not a policy-making or rule-making Authority, nor do its functions include a legislation development role. The Minister and the Department may, from time to time, request or receive advice from the CEO and/or the Board of NOPSA, and will properly take that advice into account in the formulation of policy and the development of necessary legislation or regulation.

The Government is of the view that it is a very important principle of the overall regulatory regime for offshore petroleum safety that there is institutional separation of policy and rule-making processes; approval, compliance and enforcement processes; and investigation processes for major incidents.

FINDING 16

We note that NOPSA has recently added the position of investigator (currently vacant). We support creation of this position and observe that this person needs to be trained and experienced in compliance and enforcement investigations and preparation of evidence briefs to the DPP. (p. 82)

Proposed Response

Noted

Employment, induction and training of NOPSA employees are matters for NOPSA. The CEO of NOPSA will implement this recommendation in the context of the response to Recommendation 8 of the NOPSA Report.

Offshore Petroleum Safety Regulation Inquiry (Marine Report)

In December 2008, during Tropical Cyclone Billy, two incidents occurred involving ship-like floating facilities, the Karratha Spirit and Castoro Otto, which were engaged in the exploitation of petroleum resources off the northwest coast of Western Australia. As an addendum to the wider Offshore Petroleum Safety Regulation Inquiry (OPSRI), the Inquiry Panel considered the effectiveness of the regulatory regime for occupational health and safety (OHS) and integrity as it applied to the Karratha Spirit and Castoro Otto and the effectiveness of the interface between the National Offshore Petroleum Safety Authority (NOPSA) and the Australian Maritime Safety Authority (AMSA). In particular, the OPSRI examined the interrelationship between maritime legislation and offshore petroleum legislation and possible unintended consequences from the disapplication of the Navigation Act 1912.

This, the *Marine Issues* report (the Marine Report) was released, along with *Better practice and the effectiveness of NOPSA* (the NOPSA Report), by the Minister for Resources and Energy, the Hon Martin Ferguson AM MP, at the 9th meeting of the Ministerial Council on Mineral and Petroleum Resources (MCMPR) on 9 July 2009.

The Marine Report identified potential gaps in both OHS and regulatory coverage and less than optimal interface issues. The Marine Report recommended an increased cooperative role between AMSA and NOPSA but did not find that regulatory interface issues were central to the two incidents reviewed. The Marine Report also recommended consideration of a rewrite of the Navigation Act 1912.

The Government notes stakeholder comments in relation to the recommendations in the Marine Report were raised primarily about maintaining marine standards when a vessel becomes a facility. They sought to ensure compliance with IMO and ILO standards and the continued application of International Maritime Conventions to vessels that are facilities. Suggestions included providing powers of inspection and enforcement to AMSA.

The Department of Resources, Energy and Tourism (RET) provided a submission to the re-write of the Navigation Act 1912 Discussion Paper outlining issues with the possible application of two regulatory regimes at the time when a vessel is functioning as a facility and the provision of inspection and enforcement powers for a second regulator at that time and suggesting a possible way forward on issues identified in the Marine Report, as per the response to the recommendations in the Marine Report.

RET is continuing to work on these issues with Department of Infrastructure and Transport, the Australian Maritime Safety Authority, the Department of Education, Employment and Workplace Relations and NOPSA.

RECOMMENDATION 1

We recommend that the Commonwealth undertake legislative change that will ensure that when any floating facility reverts to a 'navigable form', the relevant provisions of the Navigation Act and the OHSMI Act will apply regardless of any voyage criteria. This will help to ensure that all Australian seafarers are covered.

Proposed Response

Accepted

This recommendation is supported by Recommendation 7.4 of the PC Review¹⁰ which seeks to clarify occupational health and safety regulations under the OPGGS Act to ensure that there is complete clarity about which petroleum-related sea going vessels must be regulated under the safety case regime.

The Department of Resources, Energy and Tourism is working closely with NOPSA, the Department of Infrastructure, Transport, Regional Development and Local Government, the Australian Maritime Safety Authority and the Department of Education, Employment and Workplace Relations on options for addressing any unintended consequences resulting from the disapplication of the *Navigation Act 1912.*,

This recommendation is being considered in conjunction with the response to Recommendation 2 of the Marine Report. In order to maintain the integrity of the offshore petroleum health and safety regime, the changeover in command structure must take place at the same time as the changeover in health and safety regime – i.e. when the changeover between marine vessel and petroleum facility takes place.

All aspects of safety on board FPSOs and FSOs are routinely assessed during joint NOPSA/AMSA inspections, but RET agree that it is necessary to formalise these requirements to ensure that they are implemented and that compliance is monitored and enforced.

RET has asked AMSA to identify any substantive requirements of the international maritime regime in its application to ship-like petroleum facilities at present lacking express recognition in the safety case regime under the OPGGSA. The implications of this recommendation for foreign flag floating facilities will also be investigated.

This incorporates the response to Recommendation 2 of the NOPSA 2008 Operational Report.

RECOMMENDATION 2

We recommend that the MOSOF Regulations be amended to ensure that the safety case for a floating facility specifically identifies when command structure changes occur (which may be well before departing the site and associated zone). We also recommend that the OPGGS Act be amended so that a vessel becomes a facility when any part of it comes within 500 metres of the site and continues to be a facility until no part of the vessel remains within 500 metres of the site.

¹⁰ Productivity Commission 2009, *Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector*, Research Report, Melbourne, p. 183

Proposed Response

Accepted in-principle

The Government considers that, in order to maintain the integrity of the offshore petroleum health and safety regime, the changeover in command structure must take place at the same time as the changeover in health and safety regime – ie when the changeover between marine vessel and petroleum facility takes place. This transition point is specified in clause 4 (7) of Schedule 3 to the OPGGS Act:

In determining when a vessel or structure that has the potential to be used for one or more of the purposes referred to in paragraph (1)(b) or (5A)(b) is in fact being so used, the vessel or structure is taken:

(a) to commence to be so used only at the time when it arrives at the site where it is to be so used and any activities necessary to make it operational at that site are begun; and (b) to cease to be so used when operations cease, and the vessel or structure has been returned either to a navigable form or to a form in which it can be towed to another place.

Stakeholders were divided over the point at which a vessel becomes a facility. The Government agrees that clarification is required of the point at which the transition occurs. The proposal that it take place when the vessel is 500 metres from the operations site does not meet the intent of clause 4 Schedule 3 and has implications for the command structure and vessel and crew safety, particularly in an emergency sail-away situation.

The implementation of this recommendation is complex and continues to be actively considered.

The Government does not propose re-application of the Navigation Act to vessels that are facilities.

RECOMMENDATION 3

We recommend that AMSA should have a role in assuring continuing marine standards that are not inconsistent with OPGGS Act provisions and that AMSA needs defined powers to assist NOPSA in minimising risk in the offshore petroleum industry. Potential mechanisms for achieving this outcome include: providing AMSA with defined powers and obligations under the OPGGS Act, thereby ensuring that the Authority becomes an effective inspector/regulator of vessels while they are deemed to be facilities; or revising the current Commonwealth maritime legislation disapplication provisions of the OPGGS Act with the aim of achieving the same goal. If it can be readily achieved and is an efficient regulatory option, we believe the first option is preferable.

Proposed Response

Further consideration required

The Department of Resources, Energy and Tourism is reviewing the consequences of the disapplication of the Navigation Act and exploring potential mechanisms to ensure maintenance of seaworthiness and readiness to sail-away of vessels that are facilities, in consultation with DITRD LG and AMSA. The review will also incorporate the response to

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Recommendation 7.3 of the PC Review¹¹ which recommends the clarification of the role of the Navigation Act for floating production, storage and offloading (FPSOs) vessels when they are operating under the safety case regime.

The implementation of this recommendation is complex and is under active consideration in the context of the re-write of the *Navigation Act 1912*. The Department of Resources, Energy and Tourism (RET) provided a submission to the re-write of the Navigation Act 1912 Discussion Paper outlining issues with the possible application of two regulatory regimes at the time when a vessel is functioning as a facility and the provision of inspection and enforcement powers for a second regulator at that time.

The submission included a proposal for discussion around a possible addition to the safety case content requirements under the OPGGS (Safety) Regulations. That is, the safety case for a facility that is intended to be a navigable vessel when it ceases to be a facility must state what IMO Convention Certificates (relating to safety) are applicable to it when it is a vessel and describe how it will maintain the currency of those certificates while it is a facility, so that it will be ready to operate as a vessel when required. NOPSA would maintain regulatory oversight of this requirement.

The Government does not propose re-application of the Navigation Act to vessels that are facilities.

RECOMMENDATION 4

We recommend the Commonwealth consider a plain English rewrite of the *Navigation Act 1912* with the aim of producing a modern, performance-based Act.

Proposed Response

Accepted

The Minister for Infrastructure, Transport, Regional Development and Local Government has announced the Government's intention to rewrite the *Navigation Act 1912* to recast the Act in plain language, reflect contemporary conditions and practices and provide confidence and certainty for industry.

¹¹ Productivity Commission 2009, *Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector*, Research Report, Melbourne, p.182

The 2008 NOPSA Operational Report

A review of the operational effectiveness of NOPSA is a requirement under Section 695 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (previously Clause 150Z of the *Petroleum (Submerged Lands) Act 1967*). The Review was completed and tabled in Parliament in June 2008. The next operational review is due to commence in January 2011.

While the Government has already acted on the report, the Government made a decision to combine its formal response to the Operational Review with the formal response to the Offshore Petroleum Regulatory Inquiry.

The establishment of the national regulatory regime has now embedded solid governance and operational processes, and has worked to build understanding by all stakeholders involved in the regime (including the regulator, company management and the offshore workforce) of their roles and responsibilities under the legislation.

The recommendations of the Independent Review Team focussed on the broad issues that arose during the first three years of NOPSA with respect to achieving the common goal of improving safety outcomes for the industry. This response examines the feasibility of the recommendations and where possible, the most appropriate ways to implement any changes NOPSA can undertake to further improve governance, procedures and communication with stakeholders.

RECOMMENDATION 1

NOPSA should develop guidelines in consultation with stakeholders to provide clarity and consistency to the process which ultimately will result in better safety outcomes.

Proposed Response

Accepted

Consistent with Recommendation 7 of the Operational Report, the offshore petroleum industry needs to have confidence in the regulatory regime in which it operates. NOPSA has a role in promoting and clarifying with industry its understanding of its obligations under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGSA) and associated regulations.

This is a shared responsibility between all stakeholders. Consultation and interaction between all stakeholders is recognised as one of the critical themes arising from the Offshore Petroleum Safety Regulatory Inquiry. Guidelines must also be consistent with the legislative framework of operations, as per the response to Recommendation 14 of the Operational Report. This issue will be included in the 2011 NOPSA Operational Review required to be undertaken under the OPGGSA. The Terms of Reference will include a review of the safety case framework.

As noted in Recommendation 3 of the NOPSA Report, NOPSA is responsible for promoting and developing, in consultation with its stakeholders, guidance notes for clarity and the CEO is responsible for improving the interaction between the Authority and its

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stakeholders. NOPSA has commenced work to address these issues through, amongst other activities, the Safety Case Guidance Note project.

RECOMMENDATION 2

The consequences of the disapplication of the *Navigation Act 1912* should be analysed, the actual consequences identified and unintended consequences addressed.

Proposed Response

Accepted, with further consideration required

This recommendation is supported by Recommendation 7.3 of the PC Review¹² which seeks to clarify whether any significant regulatory uncertainty results from the decision that the Navigation Act would not apply to Australian registered vessels and floating production, storage and offloading vessels when these are operating under the safety case regime. The consequences of the disapplication of the Navigation Act are not fully understood by all stakeholders.

The Department of Resources, Energy and Tourism is reviewing the consequences of the disapplication of the Navigation Act by Section 640 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* in consultation with DITRDLG, AMSA and other stakeholders. Any implications of this review for the *Navigation Act 1912* will be considered in the context of the current process that is in train to rewrite that Act. The review will also consider the manner in which foreign registered vessels and floating production, storage and offloading vessels operating in the Australian industry cope with the regulatory burdens imposed by their flag States.

This response incorporates the response to Recommendation 1 of the Marine Report.

RECOMMENDATION 3

The regulations pertaining to vessels of opportunity or their interpretation should be changed to facilitate a risk based approach to regulation. This approach will be consistent with the approach taken in other jurisdictions.

Proposed Response

Accepted, with further consideration required

The Government agrees with the Review team it is not appropriate that vessels carrying out operations that are essentially ordinary marine operations should be brought within the NOPSA regime, either as 'facilities' or as 'associated offshore places', with the result that the *Navigation Act 1912* and the *Occupational Health and Safety (Maritime Industry) Act 1993* are disapplied in relation to those vessels.

¹² Productivity Commission 2009, *Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector*, Research Report, Melbourne, p.182

In support of the Government's position, the consolidated health and safety regulations (*Offshore Petroleum (Safety) Regulations 2009*), which came into effect on 1 January 2010, specify those offshore vessels or structures that are exempt from the definition of facility or associated offshore place. Schedule 3 to the Act provides for the regulations to specify these exemptions. However, this provision only applies to those petroleum activities being undertaken in Commonwealth waters. This amendment can only apply in state and territory coastal waters when the consolidated safety regulations have been mirrored and enacted by each jurisdiction, a step the Government will encourage through the Ministerial Council on Mineral and Petroleum Resources (MCMPR).

These provisions were made in consultation with NOPSA, who reviewed a number of the vessel activities which determine whether vessels engaged in Offshore Petroleum related activities are subject to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, and other key industry stakeholders.

RECOMMENDATION 4

The exploration/production operator making all major decisions related to petroleum activities (i.e. selection of rig, well design and selection of service companies) should be made responsible for demonstrating to the regulator that drilling operations can be conducted safely. Where the drilling contractor owns the rig and conducts the day-to-day management of safety on the rig, this duty can be described in a rig specific Safety Case that is owned by the drilling contractor. This rig specific Safety Case does not have to be submitted for every well/well operation.

Proposed Response

Accepted, with further consideration required

This recommendation arises from concerns that the legal burden falls to the facility operator when the titleholder has ownership of well data and design which has a significant impact on the safety of a drilling operation and is often also in effective control of the drilling operations. Recent amendments to the OPGGSA have introduced a duty of care for titleholders with respect to the design of facilities (Schedule 3 Clause 13A).

The Department of Resources, Energy and Tourism continues to consult with NOPSA and other stakeholders to review the implications and consider options to address this issue. The process may also be informed by the Government's response to the Montara Commission of Inquiry.

RECOMMENDATION 5

Coverage of the regime should be increased to cover the complete hydrocarbons production system from wells through to custody transfer point or reasonable physical/technical system boundary. If NOPSA is also to be responsible for Carbon Capture and Storage it needs to be resourced to ensure that this does not detract from NOPSA's current responsibilities.

Proposed Response

Accepted, with further consideration required

Consistent with the response to Recommendation 1 and Finding 4 of the NOPSA Report, current changes to the OPGGS Act, the Government support this recommendation in-principle, particularly in relation to pipelines and with ongoing consultation in relation to wells. NOPSA's jurisdictional boundary at the territorial sea baseline will have to be observed, however, unless states/NT choose to extend that boundary and legislate accordingly. As noted earlier, the ability for the States and Northern Territory to extend NOPSA's jurisdiction to waters landward of the territorial sea baseline and/or to extend, for pipelines, to the nearest valve on the mainland above the shore crossing is provided for in the Commonwealth OPGGS Act, but must be actioned by the States and Northern Territory to take effect.

In relation to greenhouse gas storage activities, as a cost recovery agency NOPSA will need to ensure that its future activities relating to greenhouse gas storage are identified and costed accordingly.

Supporting this requirement the *Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Amendment Regulations 2009*, which came into effect on 1 January 2010, among other matters, prescribes fees for greenhouse gas titles. The fees for greenhouse gas titles are set at similar levels to the fees prescribed for petroleum titles, setting out a fee structure for the administration of greenhouse gas titles.

RECOMMENDATION 6

Because some issues related to emergency response are beyond any single operator and usually occur outside the title area, there is a need for the representatives of the offshore industry to work together with other governments, interested and involved parties to develop the strategies to be utilised and the emergency planning model that will satisfy the requirements of all parties.

Proposed Response

Noted, with further consideration required

The reviews and this Government response are concerned specifically with occupational health and safety of the offshore petroleum workforce at petroleum facilities. The reviews are therefore confined to risks to the workforce that arise, and must be dealt with, at or near the facility. Emergency response and emergency planning are requirements of the Safety Case for all operators and an essential element of any safety culture. The involvement of all stakeholders ensures that emergency planning and response mechanisms are fully effective.

Emergency procedures and processes are critical for the health and safety of personnel during any emergency, whether it is managed on the facility or whether an evacuation (medical or full) is implemented.

There was a significant health and safety and environmental incident following uncontrolled release of hydrocarbons from the Montara Wellhead Platform on 21 August 2009. While the workforce was evacuated safely and there were no injuries in this instance, the incident had the potential to escalate to a fire and explosion situation rapidly with attendant loss of life, as was evidenced by the 20 April 2010 uncontrolled release at the BP operated Macondo field in the Gulf of Mexico. Further, the June 2008 fire and explosion at Apache Energy's Varanus Island could also have escalated and involved far worse consequences. These major incidents serve to highlight the need to ensure the emergency planning and response model is appropriate to deal with major incidents.

The Government supports better industry and government coordination and consultation, particularly where it can improve safety for the offshore petroleum industry. The Department of Resources, Energy and Tourism is working with NOPSA, DITRDG, AMSA, APPEA and other stakeholders in reviews of current arrangements and will consider options to address this issue. The process may also be informed by the Government's response to the Montara Commission of Inquiry and AMSA's review of the response to the Montara incident.

RECOMMENDATION 7

Improved and agreed guidelines for Safety Case application and assessment, including suggested structure and content, would alleviate many current problems related to Safety Case processes.

Proposed Response

Accepted

As per Recommendation 1 of the Operational Report, NOPSA has a role in promoting and clarifying with industry its understanding of and obligations under the OPGGS Act and associated regulations.

NOPSA has commenced implementation of this recommendation with the launch of a model Safety Case Guidance Project in October 2008. This project has a long term focus which will progressively deliver guidance notes on safety case preparation. Further information is available on the NOPSA website (www.nopsa.gov.au). Guidance notes on *The Safety Case in Context*, *Safety Case Lifecycle Management* and *Safety Case Content and Level of Detail* were published in June 2009.

The response to this recommendation will be considered as part of the review of safety case development, implementation and ongoing compliance, which will be the focus of the 2011 Operational Review of NOPSA, undertaken in accordance with the legislation establishing NOPSA. This review is outlined in the response to Recommendation 3 of the NOPSA Report.

This is an operational matter and the CEO of NOPSA is responsible for continuing this process.

RECOMMENDATION 8

The initial acceptance of a new facility Safety Case should be in conjunction with inspection of a facility upon commencement of operations.

Proposed Response

Noted, with further consideration required

The Government notes stakeholder comments in relation to the need for pre-acceptance inspections.

This is an operational matter for the CEO of NOPSA. The carrying out of inspections by NOPSA staff is a matter for the CEO. Consistent with the response to Finding 13 of the NOPSA Report, the CEO is responsible for ensuring that the framework guiding the Authority's inspection activities and audits is utilising NOPSA resources effectively and focussing on the highest priority activities.

RECOMMENDATION 9

There is a need for industry in consultation with NOPSA to establish a priority programme of accredited education modules in the Safety Case regime targeting stakeholders in the regime at their respective levels to improve the understanding of the Safety Case and correspondent responsibilities.

Proposed Response

Accepted

The Government notes that the proposal is that industry will establish accredited educational modules, in consultation with NOPSA. The promotion of occupational health and safety of persons engaged in offshore petroleum operations is a legislated function of NOPSA.¹³ NOPSA already has a number of appropriate forums in which it engages, educates and promotes the occupational health and safety regime of Australia's offshore industry with a variety of stakeholders.

This is a matter for industry to take forward. NOPSA will provide advice and support as appropriate. The Minister has asked the CEO of NOPSA to consider this recommendation further, in consultation with APPEA, and report back by the end of 2010 on future plans.

RECOMMENDATION 10

As professional competency is one of the key pillars of any Safety Case, commitment to training for current and future needs remains a fundamental requirement for achieving best practice outcomes in safety. Industry should be encouraged to build on its training commitment now being made to achieve a competent and fully accredited workforce over the next five years.

¹³ *The Offshore Petroleum and Greenhouse Gas Storage Act 2006, Section 646*

Proposed Response

Accepted

Industry continues to work constructively with NOPSA on appropriate training and education initiatives, in the interests of best practice safety outcomes for the offshore petroleum industry.

Consistent with the response to Recommendation 9 of the Operational Report, this is a matter for industry to take forward. NOPSA will provide advice and support as appropriate. The Minister has asked the CEO of NOPSA to consider this recommendation further, in consultation with APPEA, and report back by the end of 2010 on future plans.

RECOMMENDATION 11

The current KPI measures used by the Regulator and industry need to be reassessed and the performance indicators need to be related to the risk profiles of the industry. The industry needs to develop the indicators, which need to be agreed and measured by the industry in discussion with other stakeholders. The KPI's selected should be published in comparison with the worldwide offshore industry and with other industries. NOPSA should continue discussions with Australian Safety and Compensation Council (ASCC) with a view to adopting their goals.

Proposed Response

Accepted, with further consideration required

NOPSA collects and summarises data on the safety performance of the industry and on its own regulatory performance, updating and publishing quarterly a set of charts of significant key performance indicators. Based on this information, NOPSA published its first annual Offshore Health and Safety Performance Report in August 2009. The value of having clear and measurable KPIs is noted.

The Minister has asked the CEO of NOPSA to review the KPIs as recommended and consider this recommendation further, in consultation with APPEA and ASCC, and report back by the end of 2010 on future plans. The advice of the NOPSA Board could also be sought.

RECOMMENDATION 12

The industry should develop in conjunction with the Regulator a process for addressing the need to maintain the risk profile of a facility moving into extended life operation at the same risk profile as when it was within design life.

Proposed Response

Noted

A mature and robust risk management system is crucial for the effective administration of regulatory activity. This recommendation provides industry with the opportunity to make a reciprocal commitment to that made by NOPSA in Recommendation 5 of the NOPSA Report, to examine the risk profile for facilities.

It is noted that the ALARP principle applies to all operations and there is no diminution of this requirement in extended life operations compared with design life operations.

RECOMMENDATION 13

The industry should provide advice to NOPSA on where the regulations do not provide sufficient clarity and consider developing broad policy/process guidelines in consultation with the regulator to provide clarity and consistency. Regulators should not take personal views or preferences.

Proposed Response

Noted

The response to this recommendation and Recommendation 14 of this report reflects one of the critical themes coming out of the Reports, which is the importance of ongoing consultation and interaction between all stakeholders.

The Government notes that it is important that the industry has an understanding and confidence in the regulatory regime within which it operates. The Government will look to NOPSA and the offshore petroleum industry to consider this recommendation as part of ongoing stakeholder consultations. The CEO of NOPSA is responsible for improving the interaction between the Authority and its stakeholders.

RECOMMENDATION 14

NOPSA should complete the next revision of Safety Case guidelines in consultation and agreement with stakeholders and continue its program to achieve consistency with a firmer hand from the CEO and management.

Proposed Response

Accepted in part

Consistent with the response to Recommendation 1 and as per the response to Recommendation 7 of this report, the Government will look to NOPSA and the offshore petroleum industry to consider this recommendation as part of ongoing stakeholder consultations.

This response recognises that NOPSA has in place a long-term Safety Case Guidance Project, and is responsible for continuing to develop and promote Safety Case guidance

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notes, in consultation with stakeholders. While broad agreement with stakeholders is desirable, as the responsible regulator, NOPSA must make final decisions on guidance notes.

RECOMMENDATION 15

NOPSA should use encouragement as the primary tool of enforcing compliance provided willingness to improve is exhibited by the players.

Proposed Response

Noted

The response to this recommendation is incorporated into the response to Recommendation 6 of the NOPSA Report.

Encouragement is one important and desirable tool available to the regulator, but it would be inappropriate for NOPSA to be fettered in its enforcement responsibilities.

RECOMMENDATION 16

The role of the advisory Board, namely to give advice to Ministers and NOPSA when asked, should be made clear to Board members and all stakeholders. The Board and NOPSA should consider the need for a clear description of who does what based on the legislated responsibilities of the NOPSA CEO.

Proposed Response

Accepted

The role of the NOPSA Board in providing advice is clearly established through the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act).

The Government supports the functions of the NOPSA Board as an advisory Board. The independent advisory function of the Board provides the Government and NOPSA with a valuable resource.

As per the response to Finding 1 of the NOPSA Report, relating to the need for clarity as to the Board's role and functions, the Minister for Resources and Energy has provided the NOPSA Board with a "Statement of Expectations". The Statement of Expectations sets out the Minister's expectations in accordance with the Board's roles, functions and responsibilities set out in the OPGGS Act.

RECOMMENDATION 17

The Safety Case proponent should be allowed some flexibility to involve appropriate experience matched with the proposed workforce competencies to enable the Safety Case to be developed with value adding processes. Subsequent to the hiring of the workforce

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and preferably before the commencement of operations a review of the Safety Case should take place with the new workforce to ensure they understand the accepted Safety Case, its risks and Safety Management Plan.

Proposed Response

Accepted

Recognising the intent of this recommendation to instigate mechanisms to educate the workforce as early as possible in the development of the Safety Case, this recommendation is supported as per the response to Recommendation 3 of the NOPSA Report.

The CEO of NOPSA is responsible for improving the interaction between NOPSA and its stakeholders.

RECOMMENDATION 18

NOPSA should consider an audit regime that targets Greenfields operations at commencement of operations.

Proposed Response

Accepted

The Government's response to Recommendations 3, 5 and 7 of the NOPSA Report and Recommendation 8 of the Operational Report, in relation to risk assessment, auditing and early and increased engagement with stakeholders deals with this recommendation.

RECOMMENDATION 19

NOPSA should consider establishing a small forum for consultation consisting of representatives of relevant stakeholders. The representatives should have standing, with authority to participate in decision making and take on commitment on behalf of their stakeholder group.

Proposed Response

Noted

Forums for consultation are already in place through NOPSA and APPEA initiatives. Implementation of risk-management and a strong safety culture have been discussed in responses to a number of recommendations.

The Government is of the view that the advisory role identified in the Operational Report is a function of the NOPSA Board.

RECOMMENDATION 20

As all stakeholders have responsibility for safe outcomes, decisions regarding target subjects for safety promotion need to have the support of all stakeholders including NOPSA and the workforce. Industry, which ultimately has the responsibility for managing risk as well as funding the promotion, should take a leadership role in implementation.

Proposed Response

Noted

APPEA and NOPSA have a range of initiatives in place relating to safety promotion and these initiatives are supported by the Government.

Acronyms and Abbreviations

ACEPT	Australian Centre for Energy and Process Training
ALARP	As low as reasonably practicable
AOP	Associated Offshore Place
ASCC	Australian Safety and Compensation Council
ATSB	Australian Transport Safety Bureau
CEO	Chief Executive Officer
COAG	Council of Australian Governments
DA	Designated Authority
DMP	Department of Mines and Petroleum Resources (WA)
DOCEP	Department of Consumer and Employment Protection (WA)
DOIR	Department of Industry and Resources (now WA DMP)
DPI	Department of Primary Industries (Victoria)
FSA	Formal safety assessment
HSE	Health and Safety Executive (United Kingdom);
HSR	Health and safety representative
IADC	International Association of Drilling Contractors
KPI	Key performance indicator
MAEs	Major accident events
MAH	Major accident hazard
MCMPR	Ministerial Council on Mineral and Petroleum Resources
MHF	Major hazard facility
MOSOF	Commonwealth Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996
NOPR	National Offshore Petroleum Regulator
NOPSA	National Offshore Petroleum Safety Authority
OHH	Occupational health hazard
OHS	Occupational Health and Safety
OPA	Offshore Petroleum Act 2006
OPGGS Act	Offshore Petroleum and Greenhouse Gas Storage Act 2006
PC	Productivity Commission
PMP	Pipeline Management Plan
PSLA	Commonwealth Petroleum (Submerged Lands) Act 1967
PSMP	Pipeline Safety Management Plan
QRA	Quantitative risk assessment
RET	Department of Resources, Energy and Tourism (Commonwealth)
SFAIRP	So far as is reasonably practicable
SMS	Safety Management System
WA PSLA	Western Australian Petroleum (Submerged Lands) Act 1982