



Australian Government
Department of Resources,
Energy and Tourism

*Second Triennial Review of the
Operational Effectiveness of
the National Offshore
Petroleum Safety Authority
Report, November 2011*

FINAL GOVERNMENT RESPONSE

MAY 2012

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Executive Summary

The Minister for Resources and Energy, the Hon Martin Ferguson AM MP, commissioned the 2011 National Offshore Petroleum Safety Authority (NOPSA) Operational Review in accordance with the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGSA). The Review commenced on 8 July 2011.

Under section 695 of the OPGGSA, the Minister is required to initiate a review of NOPSA¹ every three years². The Review must include an assessment of NOPSA's operational effectiveness in bringing about improvements in the occupational health and safety of persons engaged in offshore petroleum operations or offshore greenhouse gas storage operations. The Terms of Reference for the 2011 Operational Review also included an examination of NOPSA's current engagement with stakeholders, particularly in relation to Safety Case development and implementation, and the promotion of safety culture.

The Terms of Reference for the Review also incorporated the outcomes of the Government's Final Response to the *Offshore Petroleum and Safety Regulation Inquiry* (OPSRI) reports, and the Government's Final Response to the Report of the Montara Commission of Inquiry, particularly in relation to stakeholder engagement and emergency response.

The Review Panel, Mr Chris Raper (Chair), Mr Robin Stewart-Crompton and Dr Agu Kantsler, presented the *Second Triennial Review of the Operational Effectiveness of the National Offshore Petroleum Safety Authority Report* (the Report) to Minister Ferguson on the 29 November 2011.

The Report discussed 12 themes which reflect the inter-related and interdependent nature of the Review's Terms of Reference.

The themes include the effectiveness and capacity of NOPSA; NOPSA's approach to stakeholder engagement and relationship with other agencies; the consistency of NOPSA's decision-making and approach to securing compliance; the effectiveness of the NOPSA Board; industry's safety performance; safety case requirements; the legislative arrangements for early engagement safety cases; the interface between the OPGGSA and the Commonwealth maritime legislation and NOPSA's role in emergency management.

Overall, the Report concluded that notwithstanding some recommendations for further improvement, NOPSA has firmly established itself as a respected and competent offshore petroleum safety regulator. The Report recognises the commitment of NOPSEMA to improving its regulatory approach and a reflected high level of responsiveness to the reform process.

¹ This Government Response uses NOPSA and NOPSEMA inter-changeably, reflecting the pre- and post 1 January 2012 offshore regulatory reforms.

² The first review of NOPSEMA will relate to the three-year period beginning 1 January 2012. Subsequent reviews will relate to successive five-year periods.

The first recommendation of the Report is the development of an overarching national understanding to entrench and improve regulatory cooperation between Commonwealth and State and Territory offshore petroleum regulators. This recommendation is an opportunity to assess national cooperation arrangements recognising the value of a holistic approach to cross-jurisdictional projects and viable interaction between regulators of occupational health and safety, environmental management and structural integrity.

This recommendation is particularly relevant following the *Report of the Montara Commission of Inquiry* and the Productivity Commission's 2009 *Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector* which pointed to the need for one, coordinated national body to have responsibility for regulating offshore activities so that preventable risks to the safety of workers and the environment can be mitigated in the future.

Amendments to the OPGGSA to augment the functions and powers of NOPSA to include regulatory oversight of environmental management and day-to-day operations and to change the name of NOPSA to the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) took effect on 1 January 2012 and apply to offshore petroleum activities in Commonwealth waters.

The States and Northern Territory regulate offshore petroleum operations in State coastal waters, recognising that the option to confer those powers on the national regulator remains with the State and Northern Territory jurisdictions.

The Terms of Reference for the 2011 NOPSA Operational Review incorporated a strong focus on the adequacy of stakeholder engagement by NOPSA, including the level and type of interaction NOPSA could and should be reasonably undertaking without compromising regulatory independence and the regulator's commitment to a best-practice regime. The Panel noted that stakeholder engagement is an intrinsic element of an effective safety regulatory model but not at the expense of regulatory independence³.

The Government supports the approach taken by the Panel which incorporated engagement into 8 of the 12 themes addressed in the Report. The approach included a commitment by NOPSEMA to representative, tripartite and consultative engagement, supported by a clear program for stakeholder engagement building on existing work programs and fora and incorporating processes to specifically address recommendations 2a, 3a, 6, 8 and Findings 2 and 3. This Response supports, as a priority, ongoing, constructive engagement by NOPSEMA with the industry and the offshore workforce, directly and through their representatives.

A commitment to consultative engagement is not the responsibility of the safety regulator alone. The Report notes that the safety performance of the Australian offshore industry lags international peers⁴. This Response encourages industry to continue to maintain focus on addressing key hazards and risks, in conjunction with the regulator and the workforce. The Response to Recommendation 8a seeks

³ *Second Triennial Review of the Operational Effectiveness of the National Offshore Petroleum Safety Authority Report*, November 2011, Theme 9, p. 63-67

⁴ *Ibid* p. 37

commitment by employers, the workforce and government to a strategic partnership, respecting the views of all members, encouraging full and open cooperation, with a focus on the continued improvement of safety in the Australian offshore petroleum industry.

A draft Government Response to the *Second Triennial Review of the Operational Effectiveness of the National Offshore Petroleum Safety Authority Report* was released for stakeholder consultation on 1 April 2012, with submissions closing on 18 April 2012. Stakeholder comments were considered in finalising the Government Response.

Appendix A to the Government Response is an implementation plan to progress the accepted outcomes of the Report. There are 20 recommendations (grouped into nine) plus three findings. Of these, implementation of eight recommendations and one finding are the responsibility of Government, to be progressed by the Department of Resources, Energy and Tourism (RET), ten recommendations and two findings are the responsibility of the Chief Executive Officer of NOPSEMA and two recommendations are joint responsibility.

Appendix B to the Government Response is the Final Implementation Report for the September 2010 Government Response to the *Offshore Petroleum Safety Regulation Inquiry* and the 2008 *Review of the National Offshore Petroleum Safety Authority Operational Activities*. Some of the implementation activities are, by their nature, ongoing activities, including stakeholder engagement and consideration of the role of standards in the regime. These activities will continue to remain a focus of future reviews of NOPSEMA.

Recommendations

Recommendation 1

In order to improve the effectiveness of NOPSEMA, with similar benefits for State or Territory regulators, attention should be given to the following actions.

- a) Ministers should consider developing an overarching national understanding under which Commonwealth and State or NT regulators are expected to work cooperatively in respect of a large or complex OPGGS project or activity that requires their regulatory attention in their respective jurisdictions.
- b) The aim of that cooperation would be to ensure that, as far as possible:
 - i. information about such projects is shared,
 - ii. regulatory actions are co-ordinated under a regulatory plan relating to the project or activity;
 - iii. approvals and other necessary steps in each jurisdiction occur speedily,
 - iv. possible regulatory gaps or inconsistencies arising from the cross-jurisdictional nature of the project or activity are identified and addressed; and
 - v. there is continuous improvement in the cooperative regulatory inter-action.
- c) The understanding would provide a framework for MOUs or similar arrangements between regulators and provide accountability by requiring annual reporting to Ministers on:
 - i. the OPGGS projects or activities that had come within the scope and application of the MOUs or similar arrangement;
 - ii. how well the MOUs or other arrangements were working;
 - iii. what action had been taken or should be taken to improve regulatory co-operation;
 - iv. whether any significant regulatory gaps or inconsistencies had been identified.
- d) To allow for a smooth transition to the Ministerial understanding and supporting regulatory cooperation, the understanding should be developed for early consideration by Ministers.

Response

The Government accepts this recommendation, with further consideration, consultation and implementation to be undertaken through the Standing Council on Energy and Resources (SCER).

Recommendation 1a seeks to improve the effectiveness of the national offshore petroleum regulator, NOPSEMA,⁵ with similar benefits for State or Territory regulators. by entrenching and improving regulatory cooperation and continuous improvement across jurisdictions. The Government supports developing a cooperative framework with a focus on occupational health and safety, environmental management and structural integrity that facilitates large or complex offshore petroleum or greenhouse gas storage projects that cross jurisdictional boundaries, for consideration by SCER.

SCER seeks to ensure the safe, prudent and competitive development of the nation's mineral and energy resources and markets to optimise long-term economic, social and environmental benefits to the community.

SCER's role includes facilitating national oversight and coordination of governance, policy development and program management to address the opportunities and challenges facing Australia's energy and resources sectors into the future; and enhancing national consistency between regulatory frameworks to reduce costs and improve the operation of the energy and resources sectors.

Of relevance to this recommendation, SCER has particular policy responsibility for progressing constructive and compatible changes to the basic legislative and policy framework for the sustainable development of resources. SCER's work program includes a focus on governance and regulatory frameworks, with priority on progressing consistent upstream petroleum administration and regulation standards, (including through the establishment of a National Offshore Petroleum Regulator and responding to the Productivity Commission *Review of Regulatory Burden on Upstream Petroleum (Oil & Gas) Sector* (PC Review)).

At the 9 December 2011 meeting of SCER, Ministers noted the considerable co-operation from the States and the Northern Territory to minimise the impact on industry of progressing the transition to the new regulatory arrangements applying in Commonwealth offshore areas from 1 January 2012 (outlined in the Executive Summary of this Response).

The Review Report, in discussing factors that influence NOPSA's regulatory performance, identifies conformance complexities arising from the contiguous onshore and offshore jurisdictions as an issue, including for pipelines that are necessarily subject to State or Commonwealth jurisdictions at different geographical points⁶. Recommendation 1 addresses the increased risk of interface problems identified by the PC Review⁷ between jurisdictional regulators, which can contribute to unnecessary regulatory burdens.

⁵ NOPSEMA has responsibility for the regulation of occupational health and safety, structural integrity of facilities, wells and well-related equipment, environmental management and day to day operations of offshore petroleum and greenhouse gas storage operations in Commonwealth waters, and in coastal waters where powers are conferred on it by the relevant State or Territory jurisdiction.

⁶ *Second Triennial Review of the Operational Effectiveness of the National Offshore Petroleum Safety Authority Report*, November 2011, Table 7 p. 30

⁷ Productivity Commission, *Review of Regulatory Burden on Upstream Petroleum (Oil & Gas) Sector*, Research Report, Canberra, April 2009, ppxxxix-xxxiii

One approach to address this issue is provided in the Memorandum for Cooperative Arrangements between the Commonwealth and Western Australian Governments to improve petroleum administration and regulation which took effect on 17 August 2011. This memorandum envisages the Parties will enter into agreements with sufficient detail and certainty to enable the implementation of proposed cooperative arrangements. These agreements are still under development.

Extending this approach to an inter-governmental agreement by SCER on a framework for cooperation with a focus on occupational health and safety, environmental management and structural integrity has the potential to create consistency and efficiencies in regulating activities that cross jurisdictional boundaries.

This framework could incorporate the principle of regulator independence while committing stakeholders to nationally consistent regulation, recognising that the option to confer State and Northern Territory powers on the national regulator remains with the State and Northern Territory jurisdictions.

The framework could provide a clear statement of intentions to ensure consistency across jurisdictional boundaries through shared expertise when dealing with issues in either jurisdiction, to maximise effectiveness, minimise duplication and establish appropriate mechanisms, systems and practices to facilitate openness, cooperation and exchange of information.

In relation to Recommendation 1b, protocols underpinning a nationally agreed framework would identify clear regulatory responsibility where projects cross jurisdictional boundaries, including functional obligations, and areas of cooperation, for example through joint inspections and shared, agreed guidance material. A regulatory plan for the project or activity could be developed between regulators based on the protocols and framework developed and agreed by SCER.

Reporting requirements on arrangements specific to particular projects, in line with Recommendation 1c, could be undertaken annually by regulators to SCER. Reporting could include the effectiveness of the cooperative arrangement for each project, action that may be taken to improve regulatory co-operation and any regulatory gaps or inconsistencies that may need to be addressed.

In response to Recommendation 1d, SCER may wish to consider tasking the Senior Committee of Officials with developing a framework for cooperation which may form the basis of an agreement, for consideration by SCER at the 14 December 2012 meeting in Hobart.

Recommendation 2

- a) For the purposes of designing and implementing its regulatory activities, NOPSA should continue to identify priority hazards and risks and their underlying causes, in consultation with the NOPSA Advisory Board and stakeholders (see Theme 9, *Stakeholder engagement*).
- b) NOPSA should consult Safe Work Australia about how the National OHS Strategy 2002-12 and its forthcoming replacement may assist strategic planning over safety performance and its measurement in the offshore oil and gas industry.

Response

The Government accepts Recommendation 2a, noting that since the 21 August 2009 uncontrolled oil and gas release at the Montara oil field and the 20 April 2010 incident at the Macondo oil field in the Gulf of Mexico, there has been an increasing focus by regulators and industry internationally on process safety culture and leadership, asset integrity, aging facilities and maintenance management, particularly in relation to maintenance backlogs and maintaining safety critical equipment, as essential to reducing the risk of major accident events.

The duty of care requirement underpinning the offshore petroleum regime, as set out in Schedule 3 of the OPGGSA, is imposed on operators to take all reasonable 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.⁸ The Report notes that Australia's safety performance substantially lags the world's best and that gap is unlikely to close unless the primary duty holders achieve and maintain safety cultures within their organisations that equal world's best practice.⁹ Incorporating leading practice and continuous improvement is as essential for the regulator as it is for industry.

The Report confirms that NOPSA is now "in a position to make good evidence-based decisions about its strategic priorities" but "could consider the potential for using its engagement with stakeholders over its policies and programs more effectively"¹⁰. Improved dialogue with stakeholders will provide NOPSEMA, moving forward, with additional sources to inform, identify, monitor and prioritise those risks and hazards that could compromise the safety of offshore petroleum operations. While NOPSA has progressed the level and focus of stakeholder engagement activities, continuing to build principles of stakeholder engagement into organisational culture and communication strategies will facilitate further dialogue.

The OPGGSA gives NOPSEMA responsibilities for promoting occupational health and safety. This is reflected in the Statement of Expectations¹¹ provided to NOPSEMA by the Commonwealth Minister for Resources and Energy, which

⁸ *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, Schedule 3, Part 2, Division 1, Clause 9.

⁹ *Second Triennial Review of the Operational Effectiveness of the National Offshore Petroleum Safety Authority Report*, November 2011, paragraph 67 p. 39

¹⁰ *Ibid* November 2011, paragraph 70 p. 39

¹¹ Available at www.nopsema.gov.au

includes the principle of proactive engagement. The intent is to encourage information sharing to and from the regulator through open, consultative engagement which may inform the regulator on industry activities, concerns and trends as well as promoting and securing compliance by industry with the regulatory regime. Utilising this approach will assist the regulator to identify priority hazards and risks, and their underlying causes, and to develop appropriate strategies to mitigate these.

The Government's response to Recommendation 3a and 8 expand further on the level of appropriate engagement, including a clear commitment to representative, tripartite and consultative engagement. A primary consideration in increasing guidance and engagement with stakeholders is ensuring there is a balance achieved that does not compromise NOPSEMA's regulatory independence.

In relation to Recommendation 2b, the Government notes that the harmonised *Work Health and Safety Act* (WHS Act) and Regulations, which took effect on 1 January 2012, do not apply in circumstances where the OPGGSA applies. The WHS Act specifically states that it will not apply in relation to a facility to which Schedule 3 of the OPGGSA applies (Subsection 12A(2)).

The Government accepts Recommendation 2b which will allow NOPSEMA to draw on the experience and work of Safe Work Australia, particularly in relation to improving measuring and reporting on OHS performance and data management.

NOPSEMA routinely publishes its Health and Safety Performance Report which is now able to show trends in industry performance in various areas. NOPSEMA uses this information to inform its inspection and promotion focus areas.

The Chief Executive Officer of NOPSEMA is responsible for the implementation of Recommendations 2a and 2b and will report to the Minister for Resources and Energy on progress by 1 October 2012.

Recommendation 3

To ensure that NOPSEMA is in a strong position to perform its functions effectively:

- a) NOPSA (and NOPSEMA) should continue and strengthen ongoing, constructive engagement, directly and through their representatives, with the industry and the offshore workforce;
- b) agreed legislative changes should be given priority attention, including the issues of when its jurisdiction ceases to apply and the proposed updating of the compliance tools available to it under the legislation;
- c) consideration should be given to providing for the recovery of costs for NOPSA's work undertaken on a safety case that is formally submitted but (a) withdrawn before a decision is made on it, or (b) rejected.

[See related Recommendation 8]

Response

The Government accepts Recommendation 3a. Noting the findings of the Review Panel that NOPSEMA is undertaking a great deal of work to improve and strengthen its levels of stakeholder engagement, this work may be underpinned by a service charter and a clear program for stakeholder engagement as per Recommendation 8.

NOPSEMA's stakeholder liaison activities and interaction described are provided for in NOPSEMA's functions set out in the OPGGSA, Part 6.9, Division 2, Section 646. Activities currently undertaken by NOPSEMA include:

- Formal operator liaison to secure compliance including “Welcome to the regime” activities, operator registration, validation, safety case assessment and planned inspections and regular contact and an annual summary meeting outside the formal regulatory submission and inspection processes;
- Providing advice through guidance notes and early engagement; and
- Promoting occupational health and safety through the annual Health and Safety Representatives (HSR) Forum, the HSR Handbook, liaison with industry bodies and presentations to community stakeholders.

The Chief Executive Officer of NOPSEMA is responsible for the implementation of Recommendations 3a and will report to the Minister for Resources and Energy on progress by 1 October 2012.

The Government accepts Recommendation 3b, noting processes underway to address issues relating to the transition between the OPGGSA and the *Navigation Act 1912* and the Review of Compliance and Enforcement Measures that apply in the existing offshore petroleum legislative regime (*Final Government Response to the Report of the Montara Commission of Inquiry*: pg 64). The Review is being undertaken as part of the broader *Offshore Petroleum and Marine Environment Legislative Review*, which is being taken forward as a Better Regulation Ministerial Partnership between the Minister for Finance and Deregulation and the Minister for Resources and Energy (see the response to Recommendation 4).

The Department of Resources, Energy and Tourism is responsible for implementing Recommendation 3b in line with timeframes at Recommendations 4 (Review of Compliance and Enforcement Measures), 9a (interface between the OPGGSA regime and the maritime regime) and 9b (ability for NOPSEMA to board a dive vessel whenever well-related operations are being carried out, including up until a diver has completed decompression procedures).

Recommendation 3c is accepted in principle noting that NOPSEMA is established on a full cost-recovery basis and recognising that some safety cases and Diving Safety Management Systems are submitted without the intention of use unless the operator/contractor is successful in tendering for work in the offshore industry. This recommendation requires further consideration, including further evidence on the financial impact on NOPSEMA. All options will be considered in determining how this issue may be addressed through the Government's cost recovery framework. The Chief Executive Officer of NOPSEMA and the Department of Resources, Energy and

Tourism are responsible for the implementation of Recommendation 3c which will be finalised by the end of the 2012-2013 financial year.

Recommendation 4

Equipping the regulator with a wider range of compliance tools under the legislation should continue to be a policy priority. The aim should be to enhance the regulator's capacity to secure compliance in an appropriately graduated way. The opportunity should be taken to ensure that the regulator and inspectors can, in appropriate cases, bring proceedings that do not require referral to the Commonwealth Director of Public Prosecutions, such as actions for civil penalties or injunctions.

Response

The Government accepts Recommendation 4, noting the response to Recommendation 3b and the current Review of Compliance and Enforcement Measures that apply in the existing offshore petroleum legislative regime.

The issue of providing the regulator with an increased means of securing the compliance of offshore petroleum operators in a graduated manner has been canvassed in a number of reports and inquiries, including the *2008 NOPSA Operational Review* and the *Montara Commission of Inquiry*. Graduated compliance was also discussed at the International Offshore Petroleum Regulators and Operators Summit in August 2011.

As part of the broader *Offshore Petroleum and Marine Environment Legislative Review*, which is being taken forward as a Better Regulation Ministerial Partnership between the Minister for Finance and Deregulation and the Minister for Resources and Energy, the Government is reviewing compliance and enforcement measures that apply in the existing offshore petroleum legislative regime, including regulations. The Review will determine whether these measures are adequate and effective enough to prevent or deter parties from breaching their legislative obligations, potentially resulting in the occurrence of incidents with substantial and widespread implications for health, safety and environment.

The Review commenced with the release of the *Offshore Petroleum and Marine Environment Legislative Review Issues Paper: A rigorous compliance and enforcement regime for offshore petroleum activities in Australia* for comment in October 2011 and submissions closed on 16 December 2011. The Issues Paper identified and proposed matters for consideration which may assist in the development of a more appropriate and effective civil penalties regime for the OPGGSA. The Act and regulations currently contain only criminal offences, and no civil penalties are applied. It is important that NOPSEMA has appropriate powers to enable them to adequately fulfil their compliance monitoring and enforcement functions under the offshore petroleum legislative regime.

The Department of Resources, Energy and Tourism is responsible for progressing and finalising the Review of Compliance and Enforcement Measures, which will be

completed by mid 2012 with any changes accepted by the Government to be implemented in accordance with the Government's legislative process.

Any changes to the compliance regime proposed by the Review of Compliance and Enforcement Measures and accepted by the Government will seek to be consistent with the national WHS Act.

Recommendation 5

NOPSA should:

- a) maintain effective policies and procedures that ensure that NOPSA inspectors and other decision makers interpret and apply the OPGGS legislation and NOPSA's policies fairly and consistently in similar circumstances; and
- b) periodically examine consistency in regulatory decision making and the exercise of regulatory powers, for example, by audits or surveys.

Response

The Government accepts Recommendation 5.

The Statement of Expectations to NOPSEMA from the Minister for Resources and Energy provides that the regulator should pursue a consistent national approach to regulation in Commonwealth and State/Northern Territory (NT) waters in which NOPSEMA has jurisdiction.

Implementation of the Final Government Response to the Report of the *Montara Commission of Inquiry* included the development of a National Legislative Compliance Framework (NLCF) to develop a consistent good practice regulatory framework with general application as a benchmark to assess regulation of offshore petroleum and greenhouse gas storage activities and for use by regulators in their regulation of Australia's offshore petroleum industry. The NLCF was completed in July 2011 and released in October 2011. It provides standards and guidance to ensure regulators in the offshore petroleum industry maintain their regulatory objectivity and consistency, by¹²:

- Establishing arrangements to ensure regulatory authority is exercised in accordance with legislation and regulations;
- Developing standards and procedures that ensure the performance of regulators is in accordance with performance expectations; and
- Ensuring that established governance procedures are sufficient to ensure regulatory independence.

The NLCF also provides that the development and implementation of procedures for regulatory activities such as inspections, audits and investigations promotes

¹² National Legislative Compliance Framework, *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, July 2011. Pp 13-14 (available at http://www.ret.gov.au/resources/upstream_petroleum/offshore_petroleum_regulation_and_legislation/Pages/OffshorePetroleumRegulationandLegislation.aspx).

consistency in decision-making and ensures that those undertaking regulatory activities understand and meet expectations¹³.

In implementing the NLCF, in October 2011 the Minister for Resources and Energy wrote to Australian Government petroleum regulators and other Australian governments to inform them of the NLCF and encourage consistent best practice approaches by petroleum and greenhouse gas storage regulators (and other regulators) in administering their responsibilities.

The Minister also invited NOPSA to evaluate their ongoing operations against the framework and advise him of the outcomes of that assessment. NOPSA's assessment of ongoing operations against the framework demonstrated that the formal systems within the NOPSA ISO 9000 accredited Quality Management system are compliant with the framework's twenty-one standards.

Reflecting NOPSEMA's commitment to continuous improvement in the regulation of offshore petroleum activities, the Chief Executive Officer of NOPSEMA is responsible for the implementation of Recommendations 5a and 5b and will report to the Minister for Resources and Energy on progress by 1 October 2012.

Recommendation 6

We recommend that:

- a) NOPSA examine, in consultation with industry stakeholders, developing a program of workshops based on the safety case guidance notes, to provide further face to face information to operators about complying with safety case regulatory requirements;
- b) NOPSA should explain to the industry the reasons for the policy of not considering an application for the acceptance of a new safety case until an existing application has been decided and invite proposals for managing the process in a way that reduces the risk of delay; and
- c) NOPSA should invite APPEA, IADC and IMCA to organise occasional forums specifically for consultants who prepare safety cases at which NOPSA (or NOPSEMA) can explain current safety case processes and content requirements and respond to any issues raised by the participating consultants.

Response

The Government accepts Recommendation 6. The occupational health and safety regime for the offshore petroleum industry in Australia is regulated under the OPGGSA. The regime is underpinned by duty of care requirements that are set out in Schedule 3 of the OPGGSA. The central duty of care is a requirement imposed on operators to take all reasonably practicable steps to ensure that the facility and all

¹³ National Legislative Compliance Framework, *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, July 2011 p 16.

associated work is safe and without risk to the health of any person at or near the facility.¹⁴

The regulations under the OPGGSA 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.

This recommendation recognises the onus placed on operators by the safety case regime and suggests ways NOPSEMA may assist industry with understanding the obligations and requirements regarding how operators ensure that risks are appropriately managed and all legislative requirements are adhered to. The activities identified in Recommendation 6 will form part of a broader program for stakeholder engagement discussed in response to Recommendation 8, noting that a commitment to stakeholder engagement is an intrinsic element of an effective safety regulatory model but should not be pursued by regulators at the expense of regulatory independence.

In relation to Recommendation 6a, NOPSEMA has developed a detailed suite of Safety Case Guidance Notes in consultation with industry. It has now published seven out of a planned total of 11 Guidance Notes, with two more to be published in 2011-12. NOPSEMA may choose to consider a program of workshops based on any experience presented by industry on the effectiveness of the Safety Case Guidance Notes issued to date.

In relation to Recommendation 6b, the Chief Executive Officer of NOPSEMA will clarify with industry the reasons for the policy of not considering an application for the acceptance of a new safety case until an existing application has been decided and will invite proposals for managing the process in a way that reduces the risk of delay. The Chief Executive Officer of NOPSEMA will report to the Minister for Resources and Energy by 1 October 2012 to advise on progress.

In relation to Recommendation 6c, the duty of care requirement underpinning the offshore petroleum regime, as set out in Schedule 3 of the OPGGSA, is imposed on operators to take all reasonable 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 operator/titleholder is obligated under the regime to demonstrate in their safety case how they intend to acquit this duty of care. Industry organisations can assist in this effort by ensuring their members, contractors and consultants are fully informed of safety case processes and content requirements. This activity would reflect the spirit of strategic partnership discussed in response to Recommendation 8.

The Chief Executive Officer of NOPSEMA is responsible for the implementation of Recommendation 6 and will report to the Minister for Resources and Energy on progress by 1 October 2012.

¹⁴ *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, Schedule 3, Part 2, Division 1, Clause 9

Recommendation 7

We recommend that the safety case system be strengthened by including provisions for a design notification scheme along the lines of that under the British *Offshore Safety Case Regulations*.

Response

The Government accepts Recommendation 7. Certain amendments to the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* and the *Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Regulations* in June 2010 provided NOPSA with the ability to engage with industry to cost-recover activities in relation to the assessment of design-stage safety cases for proposed facilities. The amendments provided a mechanism which allowed early engagement between the proposed operator and regulator to discuss the technical complexities and the use of often new technologies associated with new facilities.

The Department of Resources, Energy and Tourism is working with NOPSEMA to examine relevant models within like jurisdictions to determine the most appropriate design notification model for Australia's offshore regulatory regime. The model will consider whole of life project engagement and will build on current arrangements as made available under the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* and NOPSEMA's experience to date. The Chief Executive of NOPSEMA and the Department of Resources, Energy and Tourism are responsible for implementing Recommendation 7 which will be finalised by June 2013.

Recommendation 8

In developing and improving its policies and practices for stakeholder engagement, NOPSA should ensure that:

- a) they are underpinned by a clearly stated commitment to representative, tripartite and consultative engagement (this could be included in a service charter)¹⁵;
- b) a clear program for stakeholder engagement be developed and implemented as part of NOPSA's Annual Operating Plan, with appropriate preliminary scoping of stakeholder needs and issues and the outcomes of such engagement analysed and reported to the Advisory Board.

[See related recommendation 3(a)]

¹⁵The ANAO's Better Practice Guide, *Administering Regulation* (op cit) advises at p.28 that Government policy requires departments and agencies with regulatory functions to publish a service charter and report annually on performance against the charter. In addition, regulators are expected to develop, in consultation with stakeholders, a regulatory code of conduct.

Response

The Government accepts Recommendation 8, noting that the OPGGSA gives NOPSEMA responsibilities for promoting occupational health and safety of persons engaged in offshore petroleum operations or offshore greenhouse gas storage operations¹⁶ and to provide advice on occupational health and safety matters relating to offshore petroleum operations or greenhouse gas storage operations¹⁷. This is supported by the Statement of Expectations provided to NOPSEMA in March 2012 by the Minister for Resources and Energy, to promote and secure compliance by dutyholders with the regulatory regime through monitoring, enforcement and proactive engagement with stakeholders.

The commitment to stakeholder engagement identified in Recommendation 8a is an intrinsic element of an effective safety regulatory model but should not be at the expense of regulatory independence. The Australian National Audit Office's (ANAO) *Better Practice Guide to Administering Regulation* describes a relationship based on the direct application of a private sector customer service model as simplistic and inappropriate for a regulator. However, a client service charter that enables regulators to interact with stakeholders in a manner that emphasises timeliness, technical competence, courtesy and respect has benefits for:

- regulated entities by improving their understanding of regulators' operations and compliance expectations;
- regulators by improving their understanding of the motivation and abilities of regulated entities to meet compliance obligations; and
- improving information flow among regulators, regulated entities and other stakeholders.¹⁸

The Government supports the development of a service charter by NOPSEMA that is appropriate for a regulator and inclusive of a commitment to consultative tripartite engagement with its stakeholders, including industry and the offshore workforce, directly and through their representatives.

A commitment to representative, tripartite and consultative engagement, including employers, the workforce and government, is a commitment to a strategic partnership that must be made by all stakeholders, respecting the views of all to encourage full and open cooperation. Full engagement by stakeholders must also recognise that there are issues of relevance to industry and the workforce, including industrial relations issues, that are outside the jurisdiction of the national offshore petroleum regulator and therefore outside the tripartite process established for the purposes identified here.

The commitment undertaken in response to Recommendation 8a may be implemented through Recommendation 8b, with the development of a clear program for stakeholder engagement.

¹⁶ *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, Chapter 6, Part 6.9, Division 2, Clause 646 (c)

¹⁷ *Ibid*, Clause 646 (f)

¹⁸ Australian National Audit Office (March 2007). *A better practice guide to administering regulation*. Commonwealth of Australia, page 26

NOPSEMA currently undertakes a range of stakeholder engagement activities and has commenced a body of work to guide those activities which will provide options for improvement in the areas of organisational culture, information technology and communications strategy.

A program for stakeholder engagement will build on existing work programs, including the annual Health and Safety Representatives Forum and other activities discussed in the response to Recommendation 3.

Operationalising the stakeholder engagement program through NOPSEMA's Annual Operating Plan will clarify how the regulator will achieve the commitments it may make in a service charter. The development of a clear stakeholder engagement strategy by NOPSEMA will improve consistency of approach to stakeholder interaction, and provide a measure of how well it is meeting the objectives of a service charter.

The Government anticipates that this could be completed as part of NOPSEMA's 2013-14 Annual Operating Plan. The Chief Executive Officer of NOPSEMA is responsible for the implementation of Recommendations 8a and 8b and will report to the Minister for Resources and Energy on progress by 1 October 2012.

Recommendation 9

We recommend that:

- a) legislative action to resolve the issues of the interface between the OPGGS legislation and Commonwealth maritime laws should continue to be given priority attention; and
- b) NOPSA (or NOPSEMA) inspectors be given continuing authority on facilities that have reverted to being vessels where the inspectors are exercising powers or performing functions in relation to diving operations that are within the scope of the OPGGS legislation.

Response

The Government accepts Recommendation 9a, noting processes underway to address issues relating to the disapplication of the *Navigation Act 1912* by the OPGGSA.

Section 640 of the OPGGSA disapplies the *Navigation Act 1912* in relation to ship-like petroleum facilities in the limited circumstances where the vessels are stationary and undertaking specific offshore oil and gas industry related activities. The disapplication ensures that the major hazard OHS regime under the OPGGSA applies without overlap with the maritime safety regime.

During 2011, RET and the Department of Infrastructure and Transport (DIT) reviewed the need to amend the OPGGSA and Regulations to require ship-like petroleum facilities to formally comply with IMO Convention requirements concerning seaworthiness and pollution prevention. Drafting of amendments to the OPGGSA is currently underway to require that ship-like petroleum facilities, while

operating on-site, maintain ship seaworthiness and marine pollution prevention certification in line with relevant international conventions.

Drafting of amendments to clarify the point of transition between a petroleum facility and a marine vessel, are also underway. It is intended that stakeholder consultation on amendments will be undertaken as part of the legislative process during 2012.

The Government accepts Recommendation 9b. The Government is progressing amendments to Schedule 3 of the OPGGSA to enable NOPSEMA to board a dive vessel when well-related operations are being carried out for the purpose of inspecting compliance with OHS obligations.

The amendments to the OPGGSA will provide for NOPSEMA to board a dive vessel whenever well-related operations are being carried out, including up until a diver has completed any necessary decompression procedures, for the purpose of inspecting compliance with the OHS duties of the titleholder, the diving contractor and diving supervisors. They will also provide for the issuing of enforcement notices. The amendments being drafted will enable NOPSEMA to board a dive vessel when well-related operations are being carried out.

The Department of Resources, Energy and Tourism has responsibility for implementing this recommendation which will be finalised by June 2013.

Findings

Finding 1

The concerns expressed in previous reviews about the role of the Advisory Board have been addressed appropriately. The Board is performing its functions in accordance with its mandate. The Minister should periodically renew the Ministerial Statement of Expectations given to the Board.

Finding 2

To assist its participation in national coordination arrangements for offshore emergencies (including testing of their effectiveness), NOPSA (or NOPSEMA) should periodically examine emergency response arrangements and issues in its consultations with stakeholders.

Finding 3

NOPSA has established an appropriate framework for cross-agency cooperation and activity. It may be useful for NOPSA (or NOPSEMA) to have a program for reviewing those arrangements and any associated understandings to ensure that they are current, effective and meet best practice standards.

Response

The Government accepts the Findings.

In relation to Finding 1, the Ministerial Statement of Expectations in relation to the Board has been renewed following the transition to the NOPSEMA Board on 1 January 2012.

In relation to Finding 2 and consistent with the *Final Government Response to the Report of the Montara Commission of Inquiry*, the Department of Resources, Energy and Tourism has commenced work to develop an incident management and coordination framework for an offshore petroleum incident in Commonwealth waters. The framework is being developed in consultation with relevant Commonwealth departments and agencies and will be finalised during 2012. A simulation to test the framework and the *National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances* (the National Plan) is planned for late 2012.

The Chief Executive Officer of NOPSEMA is responsible for the implementation of Finding 2 and will report to the Minister for Resources and Energy on progress by 1 October 2012.

Finding 3 may be aligned with the program for stakeholder engagement to be developed and implemented as part of NOPSEMA's Annual Operating Plan

(Recommendation 8b). The Chief Executive Officer of NOPSEMA is responsible for the implementation of Finding 3 and will report to the Minister for Resources and Energy on progress by 1 October 2012.

Proposed Implementation Plan for the Government Response to the *Second Triennial Review of the Operational Effectiveness of the National Offshore Petroleum Safety Authority Report*

RECOMMENDATION AND GOVERNMENT RESPONSE	RESPONSIBILITY FOR IMPLEMENTATION AND TIMEFRAME
<p>One - In order to improve the effectiveness of NOPSEMA, with similar benefits for State or Territory regulators, attention should be given to the following actions.</p> <p>a) Ministers should consider developing an overarching national understanding under which Commonwealth and State or NT regulators are expected to work cooperatively in respect of a large or complex OPGGS project or activity that requires their regulatory attention in their respective jurisdictions.</p> <p>b) The aim of that cooperation would be to ensure that, as far as possible:</p> <ul style="list-style-type: none"> vi. information about such projects is shared, vii. regulatory actions are co-ordinated under a regulatory plan relating to the project or activity; viii. approvals and other necessary steps in each jurisdiction occur speedily, ix. possible regulatory gaps or inconsistencies arising from the cross-jurisdictional nature of the project or activity are identified and addressed; and x. there is continuous improvement in the cooperative regulatory inter-action. <p>c) The understanding would provide a framework for MOUs or similar arrangements between regulators and provide accountability by requiring annual reporting to Ministers on:</p> <ul style="list-style-type: none"> i. the OPGGS projects or activities that had come within the scope and application of the MOUs or similar arrangement; ii. how well the MOUs or other arrangements were working; iii. what action had been taken or should be taken to improve regulatory co-operation; iv. whether any significant regulatory gaps or inconsistencies had been identified. 	<p>A proposal incorporating actions in Recommendation 1 SCER may wish to consider tasking the Senior Committee of Officials with developing a framework for cooperation which may form the basis of an agreement, for consideration by SCER at the 14 December 2012 meeting in Hobart..</p>

RECOMMENDATION AND GOVERNMENT RESPONSE	RESPONSIBILITY FOR IMPLEMENTATION AND TIMEFRAME
<p>d) To allow for a smooth transition to the Ministerial understanding and supporting regulatory cooperation, the understanding should be developed for early consideration by Ministers.</p> <p>(Accepted, with further consideration, consultation and implementation to be undertaken through the Standing Council on Energy and Resources (SCER))</p>	
<p>Two:</p> <p>a) For the purposes of designing and implementing its regulatory activities, NOPSA should continue to identify priority hazards and risks and their underlying causes, in consultation with the NOPSA Advisory Board and stakeholders (see Theme 9, <i>Stakeholder engagement</i>).</p> <p>b) NOPSA should consult Safe Work Australia about how the National OHS Strategy 2002-12 and its forthcoming replacement may assist strategic planning over safety performance and its measurement in the offshore oil and gas industry.</p> <p>(Accepted)</p>	<p>The Chief Executive Officer of NOPSEMA is responsible for the implementation of Recommendations 2a and 2b and will report to the Minister for Resources and Energy on progress by 1 October 2012.</p>
<p>Three - To ensure that NOPSEMA is in a strong position to perform its functions effectively:</p> <p>a) NOPSA (and NOPSEMA) should continue and strengthen ongoing, constructive engagement, directly and through their representatives, with the industry and the offshore workforce;</p> <p>b) agreed legislative changes should be given priority attention, including the issues of when its jurisdiction ceases to apply and the proposed updating of the compliance tools available to it under the legislation;</p> <p>c) consideration should be given to providing for the recovery of costs for NOPSA's work undertaken on a safety case that is formally submitted but (a) withdrawn before a decision is made on it, or (b) rejected.</p> <p>(Recommendations 3a and 3b are accepted. Recommendation 3c is accepted in principle, noting that NOPSEMA is established on a full cost-recovery basis)</p>	<p>The Chief Executive Officer of NOPSEMA will be responsible for implementing recommendation 3a and will report to the Minister for Resources and Energy on progress by 1 October 2012.</p> <p>The Department of Resources, Energy and Tourism is responsible for implementing Recommendation 3b in line with timeframes at Recommendations 4 (Review of Compliance and Enforcement Measures), 9a (interface between the OPGGSA regime and the maritime regime) and 9b (ability for NOPSEMA to board a dive vessel whenever well-related operations are being carried out, including up until a diver has completed decompression procedures).</p> <p>The Chief Executive Officer of NOPSEMA and the Department of Resources, Energy and Tourism are responsible for implementing Recommendation 3c, noting that further consideration will be required in determining how this issue may be addressed through the Government's cost recovery framework. This issue will be finalised by the end of the 2012-2013 financial year.</p>

RECOMMENDATION AND GOVERNMENT RESPONSE	RESPONSIBILITY FOR IMPLEMENTATION AND TIMEFRAME
<p>Four - Equipping the regulator with a wider range of compliance tools under the legislation should continue to be a policy priority. The aim should be to enhance the regulator's capacity to secure compliance in an appropriately graduated way. The opportunity should be taken to ensure that the regulator and inspectors can, in appropriate cases, bring proceedings that do not require referral to the Commonwealth Director of Public Prosecutions, such as actions for civil penalties or injunctions.</p> <p>(Accepted)</p>	<p>The Department of Resources, Energy and Tourism is responsible for progressing and finalising the Review of Compliance and Enforcement Measures, which will be completed by mid 2012 with any changes accepted by the Government to be implemented in accordance with the Government's legislative process.</p>
<p>Five - NOPSA should:</p> <ul style="list-style-type: none"> a) maintain effective policies and procedures that ensure that NOPSA inspectors and other decision makers interpret and apply the OPGGS legislation and NOPSA's policies fairly and consistently in similar circumstances; and b) periodically examine consistency in regulatory decision making and the exercise of regulatory powers, for example, by audits or surveys. <p>(Accepted)</p>	<p>The Chief Executive Officer of NOPSEMA is responsible for implementing Recommendation 5a and 5b and will report to the Minister for Resources and Energy on progress by 1 October 2012.</p>
<p>Six – It is recommended that:</p> <ul style="list-style-type: none"> a) NOPSA examine, in consultation with industry stakeholders, developing a program of workshops based on the safety case guidance notes, to provide further face to face information to operators about complying with safety case regulatory requirements; b) NOPSA should explain to the industry the reasons for the policy of not considering an application for the acceptance of a new safety case until an existing application has been decided and invite proposals for managing the process in a way that reduces the risk of delay; and c) NOPSA should invite APPEA, IADC and IMCA to organise occasional forums specifically for consultants who prepare safety cases at which NOPSA (or NOPSEMA) can explain current safety case processes and content requirements and respond to any issues raised by the participating consultants. <p>(Accepted)</p>	<p>The Chief Executive Officer of NOPSEMA will be responsible for implementing Recommendations 6a, b and c, and will report to the Minister for Resources and Energy on progress by 1 October 2012.</p>

RECOMMENDATION AND GOVERNMENT RESPONSE	RESPONSIBILITY FOR IMPLEMENTATION AND TIMEFRAME
<p>Seven – It is recommended that the safety case system be strengthened by including provisions for a design notification scheme along the lines of that under the British <i>Offshore Safety Case Regulations</i>.</p> <p>(Accepted)</p>	<p>The Chief Executive Officer of NOPSEMA and the Department of Resources, Energy and Tourism are responsible for implementing Recommendation 7 which will be finalised by June 2013.</p>
<p>Eight - In developing and improving its policies and practices for stakeholder engagement, NOPSA should ensure that:</p> <ul style="list-style-type: none"> a) they are underpinned by a clearly stated commitment to representative, tripartite and consultative engagement (this could be included in a service charter); b) a clear program for stakeholder engagement be developed and implemented as part of NOPSA's Annual Operating Plan, with appropriate preliminary scoping of stakeholder needs and issues and the outcomes of such engagement analysed and reported to the Advisory Board. <p>(Accepted)</p>	<p>The Chief Executive Officer of NOPSEMA is responsible for the implementation of Recommendations 8a and 8b and will report to the Minister for Resources and Energy on progress by 1 October 2012.</p>
<p>Nine – It is recommended that:</p> <ul style="list-style-type: none"> a) legislative action to resolve the issues of the interface between the OPGGS legislation and Commonwealth maritime laws should continue to be given priority attention; and b) NOPSA (or NOPSEMA) inspectors be given continuing authority on facilities that have reverted to being vessels where the inspectors are exercising powers or performing functions in relation to diving operations that are within the scope of the OPGGS legislation. <p>(Accepted)</p>	<p>The Department of Resources, Energy and Tourism is responsible for implementing Recommendation 9. Recommendation 9a will be finalised during 2012. Recommendation 9b will be finalised by June 2013.</p>

FINDING AND GOVERNMENT RESPONSE	RESPONSIBILITY FOR IMPLEMENTATION AND TIMEFRAME
<p>Finding One - The concerns expressed in previous reviews about the role of the Advisory Board have been addressed appropriately. The Board is performing its functions in accordance with its mandate. The Minister should periodically renew the Ministerial Statement of Expectations given to the Board.</p> <p>(Accepted)</p>	<p>In relation to Finding 1, the Ministerial Statement of Expectations in relation to the Board has been renewed following the transition to the NOPSEMA Board on 1 January 2012.</p> <p>The Chief Executive Officer of NOPSEMA is responsible for the implementation of Finding 2 and 3 and will report to the Minister for Resources and Energy on progress by 1 October 2012.</p>
<p>Finding Two - To assist its participation in national coordination arrangements for offshore emergencies (including testing of their effectiveness), NOPSA (or NOPSEMA) should periodically examine emergency response arrangements and issues in its consultations with stakeholders.</p> <p>(Accepted)</p>	
<p>Finding Three - NOPSA has established an appropriate framework for cross-agency cooperation and activity. It may be useful for NOPSA (or NOPSEMA) to have a program for reviewing those arrangements and any associated understandings to ensure that they are current, effective and meet best practice standards.</p> <p>(Accepted)</p>	

Implementation Report for the *Offshore Petroleum Safety Regulation Inquiry, and Review of the National Offshore Petroleum Safety Authority Operational Activities March 2008*

RECOMMENDATION AND GOVERNMENT RESPONSE	ACTION	TIMEFRAME
Better Practice and the Effectiveness of NOPSA (NOPSA REPORT)		
<p>One –Recommends that 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> <p>(Accepted with further consideration as to the extent of NOPSA's jurisdictional authority)</p>	<p>In November 2010, the <i>Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Act 2010</i>, extended the functions and powers of the National Offshore Petroleum Safety Authority (NOPSA, now the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA)) to include structural integrity for petroleum facilities, wells and well-related equipment in Commonwealth waters, in addition to its existing occupational health and safety-related functions and powers under the OPGGSA and the Safety Regulations.</p> <p>This amendment in effect provides NOPSEMA with regulation and oversight of the whole of structural integrity of petroleum facilities (including pipelines), wells and well-related equipment in Commonwealth waters. This includes assessment of Well Operation Management Plans (WOMPs) and individual well activities. This responsibility is given effect through the <i>Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011</i> (RMA Regulations). Amendments to the RMA Regulations to enable NOPSA to discharge its augmented functions in relation to wells took effect on 29 April 2011.</p> <p>These amendments have addressed issues arising from the 21 August 2009 uncontrolled oil and gas release at the Montara oil field, in respect of wells operation approvals, compliance and monitoring.</p> <p>The amendments to the <i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i> (OPGGSA) which established the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) provided the States and the Northern Territory with the ability to confer occupational health and safety, structural integrity and environmental management functions and powers for designated coastal waters to NOPSEMA. The Commonwealth recognises that this extension is at State and Territory discretion.</p>	<p>Completed.</p> <p>In addition, RET and NOPSEMA are undertaking a review of Part 5 of the RMA Regulations to determine whether the current content requirements for a WOMP are consistent with objective-based regulation of well integrity. Stakeholders will be consulted on any options for improvement and recommendations to amend the WOMP requirements.</p> <p>The review is due to be completed by 31 April 2012.</p>

RECOMMENDATION AND GOVERNMENT RESPONSE	ACTION	TIMEFRAME
<p>Better Practice and the Effectiveness of NOPSA (NOPSA REPORT)</p>		
<p>Two – Recommends that 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.</p> <p>(Accepted in part)</p>	<p>In November 2010, <i>the Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Act 2010</i>, extended the functions and powers of the National Offshore Petroleum Safety Authority (NOPSA, now the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA)) to include structural integrity for petroleum facilities, wells and well-related equipment in Commonwealth waters, in addition to its existing occupational health and safety-related functions and powers under the OPGGSA and the Safety Regulations. This amendment also clarified that titleholders have a duty of care in relation to wells.</p> <p>This responsibility is given effect through the RMA Regulations. Amendments to the RMA Regulations to enable NOPSA to discharge its augmented functions in relation to wells took effect on 29 April 2011.</p> <p>The Commonwealth does not consider that the requirement for the implementation of the safety case at facilities should be provided for within the OPGGS Act itself. A facility cannot be constructed, installed, operated, modified or decommissioned without a safety case in force at that particular stage of the life of a facility. The <i>Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulation 2009</i> set out the requirements for the contents of a safety case.</p> <p>The Commonwealth continues to support a balanced approach that recognises the duty of care responsibility of the operator and titleholder (in relation to wells) and stakeholder expectations 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.</p>	<p>Completed</p>
<p>Three – Recommends that 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</p>	<p>Amendments to the <i>Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009 (Safety Regulations)</i> and the <i>Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Regulations in June 2010</i> provided the National Offshore Petroleum Safety Authority (NOPSA) with the ability to engage with industry to cost recover activities in relation to the assessment of design-stage safety cases for proposed facilities. The amendments recognised the technical complexities and the use of often new technologies associated with new facilities. Prior to these amendments, no mechanism or legislative basis existed for NOPSA to provide advice to titleholders or operators during a facility's early design stage.</p> <p>However, operational experience with the early engagement safety case regime has revealed insufficient flexibility for operators and the regulator to appropriately address design phase</p>	<p>Completed</p>

RECOMMENDATION AND GOVERNMENT RESPONSE	ACTION	TIMEFRAME
Better Practice and the Effectiveness of NOPSA (NOPSA REPORT)		
<p>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> <p>(Accepted)</p>	<p>issues.</p> <p>The Commonwealth has agreed to examine a design notification scheme and is working with NOPSEMA to examine all relevant models within like jurisdictions to determine the most appropriate model for Australia's offshore regulatory regime.</p> <p>Stakeholder engagement in relation to safety case development, content requirements, implementation and compliance was an element of the Terms of Reference for the 2011 NOPSA Operational Review, reflecting the role of stakeholder engagement as a central element of modern safety regulation.</p> <p>The OPGGSA gives NOPSEMA responsibilities for promoting occupational health and safety. This is reflected in the Statement of Expectations provided to NOPSEMA by the Commonwealth Minister for Resources and Energy, to:</p> <ul style="list-style-type: none"> • Promote and secure compliance by dutyholders with the regulatory regime through monitoring, enforcement and proactive engagement with stakeholders. <p>NOPSEMA continues to focus on stakeholder engagement through formal and informal processes and has commenced a project to develop principles to guide stakeholder engagement activities.</p>	
<p>Four – Recommends 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> <p>(Accepted in-principle)</p>	<p>Amendments to the OPGGS Act that came into effect on 29 April 2011 provide NOPSEMA with regulation and oversight of the whole of structural integrity of petroleum facilities (including pipelines), wells and well-related equipment in Commonwealth waters.</p> <p>The amendments to the OPGGSA, which established NOPSEMA, also provided the States and the Northern Territory with the ability to confer occupational health and safety, structural integrity and environmental management functions and powers for designated coastal waters to NOPSEMA. The Commonwealth recognises that this extension is at State and Territory discretion.</p>	Completed.
<p>Five – Recommends 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</p>	<p>NOPSA's Inspection & Audit process now includes a risk matrix to guide inspection frequencies.</p> <p>Consistent with this risk-based approach, a target of two inspections per annum for normally</p>	Completed.

RECOMMENDATION AND GOVERNMENT RESPONSE	ACTION	TIMEFRAME
<p>Better Practice and the Effectiveness of NOPSA (NOPSA REPORT)</p>		
<p>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> <p>(Accepted)</p>	<p>attended facilities was adopted for NOPSA's 2010-2011 Annual Operating Plan (AOP), which is publically available on NOPSEMA's website. Amendments to NOPSEMA's inspection policy and procedures reflect the increased target of two inspections per annum for normally attended facilities. NOPSA met the increased inspection target for the 2010-11 Financial Year and is on track for 2011-2012.</p>	
<p>Six –Recommends 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> <p>(Further consideration required)</p>	<p>Work is underway by the Government in relation to Recommendation 71 of the Report of the Montara Commission of Inquiry, which stated that “there should be a review to determine whether it is appropriate to introduce a rigorous civil penalty regime and/or substantially increase some or all of the penalties that can be imposed for breaches of legislative requirements relating to well integrity or safety” (Report of the Montara Commission of Inquiry pg 233).</p> <p>The Review of Compliance and Enforcement Measures is being undertaken as part of the broader <i>Offshore Petroleum and Marine Environment Legislative Review</i>, which is being taken forward as a Better Regulation Ministerial Partnership between the Minister for Finance and the Minister for Resources and Energy.</p> <p>This task will be completed by mid 2012 and any changes implemented accordance with the Government's legislative process.</p>	<p>In progress.</p> <p>This work forms part of the the <i>Offshore Petroleum and Marine Environment Legislative Review</i> will be completed by mid 2012 and any changes implemented in the second half of 2012.</p>
<p>Seven – Recommends 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> <p>(Accepted in part)</p>	<p>NOPSA has been progressively incorporating assurance of safety culture, including 'Process Safety Culture' as a themed promotional project in NOPSA's 2010-2011 Annual Operating Plan (AOP). This project included senior management questions and workforce surveys with the aim of increasing the understanding of process safety culture. .</p> <p>NOPSA has completed the 2nd year of its process safety culture surveys conducted as part of its offshore inspection program. While the surveys involve a relatively small number of persons (approx 300) in the industry, at least one survey round was done at each offshore processing facility (platform or FPSO). The results were benchmarked against similar international surveys, and showed the Australian industry generally on par save for the area of personnel training.</p>	<p>Completed</p>

RECOMMENDATION AND GOVERNMENT RESPONSE	ACTION	TIMEFRAME
Better Practice and the Effectiveness of NOPSA (NOPSA REPORT)		
	<p>NOPSEMA continues to provide process safety culture feedback from the surveys to individual operators and will explore further opportunities with APPEA.</p> <p>The bulk of the NOPSA inspectorate undertook human factors training in 2011 (14 in July/Aug; 16 in Sept). In addition NOPSEMA has now recruited a Human Factors/Safety Culture specialist into its OHS regulatory group.</p>	
<p>Eight – Recommends 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> <p>(Accepted)</p>	<p>Detailed analysis of current and future staffing requirements for NOPSEMA is an ongoing activity.</p> <p>In its transition to its new national regulatory arrangements, NOPSEMA developed a transition plan that enabled it to take up the additional environmental management and day-to-day operations responsibilities on 1 January 2012.</p> <p>NOPSEMA has recruited skilled and experienced staff to meet its new functional obligations; the appointment of Petroleum Project Inspectors to assist the National Offshore Petroleum Titles Administrator as required has been completed; a General Manager Environment, two Environment Managers and six Environment Specialists have been appointed. Around 50% of required environmental staff were in place in January 2012. It may take a further 6 months to fill all positions. NOPSEMA faces challenges in recruiting and training competent staff to build to an establishment of around 108 due to the tight labour market and operational priorities.</p>	Ongoing
<p>Nine – Recommends that MCMR 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> <p>(Accepted in-principle)</p>	<p>The establishment of NOPSEMA as the national regulator for petroleum activities in Commonwealth waters, or in designated coastal waters where the States and the Northern Territory have conferred powers on the Regulator, includes responsibility for environmental management. As the <i>Productivity Commission Review of Regulatory Burden on Upstream Petroleum (Oil & Gas) Sector</i> found, the regulatory burdens on industry could be reduced through institutional arrangements that provide an integrated approach to the regulation of safety, structural integrity and environmental management.</p> <p>In light of the new regulatory arrangements under NOPSEMA, the <i>Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009</i> are under review to ensure that the Regulations are a suitable basis for regulators to minimise impacts on the environment arising from offshore exploration, development, operation and decommissioning of petroleum and carbon storage activities and facilities. The review is expected to be completed by the end of 2012.</p>	In progress

RECOMMENDATION AND GOVERNMENT RESPONSE	ACTION	TIMEFRAME
Better Practice and the Effectiveness of NOPSA (NOPSA REPORT)		
<p>Ten – Recommends 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> <p>(Accepted in-part)</p>	<p>The Minister for Resources and Energy amended the OPGGSA in September 2009 to allow 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 occurs.</p> <p>The Review of Compliance and Enforcement Measures (see Recommendation 6) includes consideration of graduated compliance tools which may provide additional support for future investigations.</p>	<p>Completed.</p>

FINDING AND GOVERNMENT RESPONSE	ACTION TO DATE	TIMEFRAME
Better Practice and the Effectiveness of NOPSA (NOPSA REPORT)		
<p>One – Notes 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> <p>(Accepted in-part)</p>	<p>The NOPSEMA Advisory Board's role is clearly defined in Section 654 of the OPGGSA and does not require amendment.</p> <p>In relation to concerns raised by stakeholders as to the functions of the Board, the Minister for Resources and Energy provided the Board with a Statement of Expectations. This Statement of Expectations clearly outlines what the Minister considers to be the agreed roles, functions and responsibilities of the Board.</p> <p>The Minister provided an updated Statement of Expectations to the NOPSEMA Board early in 2012.</p>	Completed.
<p>Two – Notes 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> <p>(Accepted)</p>	<p>The review of MOUs was included in NOPSA's 2010-2011 Annual Operating Plan (AOP). The review identified a more efficient approach to cross agency arrangements via the National Collaboration Framework (NCF). All NOPSA MOU's were analysed in against the NCF which consists of a system for documented cross agency arrangements utilising a tiered structure of increasing detail and formality.</p> <p>Specific arrangements in line with the NCF are being progressively prepared and implemented as part of discharging NOPSEMA's AOP commitments.</p>	Completed.
<p>Three – Notes 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> <p>(Accepted)</p>	<p>In the 2009-10 Offshore Health and Safety Performance Report, NOPSA reported on its national Facility Integrity (FI) and Lifting Operations (LO) programs.</p> <p>The FI program was completed in 2009, and consisted of an analysis of incidents and the results of facility inspections. The Report noted that that less than half of the inspections conducted under the program resulted in all FI expectations being met. The LO program found that about 60 percent of</p>	Completed.

FINDING AND GOVERNMENT RESPONSE	ACTION TO DATE	TIMEFRAME
Better Practice and the Effectiveness of NOPSA (NOPSA REPORT)		
	<p>inspections met expectation levels.</p> <p>NOPSA's Inspection & Audit process now includes a risk matrix to guide inspection frequencies.</p> <p>Consistent with this risk-based approach, a target of two inspections per annum for normally attended facilities was adopted for NOPSA's 2010-2011 Annual Operating Plan (AOP) publically available from NOPSA's website.</p> <p>Amendments to NOPSA's inspection policy and procedures to reflect the increased target of 2 inspections per annum for normally attended facilities. It is noted NOPSA met its inspection target for the 2010-11 Financial Year.</p> <p>Recruitment to take into account the revised target for inspection of normally attended facilities has progressed, with NOPSA recruiting five new OHS inspectors since 1 July 2010.</p> <p>It is anticipated that the 2010-11 Offshore Health and Safety Performance Report will be released at the 2012 APPEA National Conference and Exhibition in May.</p>	
<p>Four – Notes 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> <p>(Accepted with further consideration as per the response to Recommendation 1 of the NOPSA Report)</p>	As per Recommendation 1.	Completed.
<p>Five – Notes the recent agreement that separate industry or hazard specific laws relating to OHS should only be maintained where objectively justified. We believe that</p>	<p>The harmonised <i>Work Health and Safety Act</i> (WHS Act) and Regulations, which took effect on 1 January 2012 specifically states that it will not apply in relation to a facility to which</p>	<p>Ongoing.</p> <p>To be completed during 2012.</p>

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<p>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> <p>(Noted)</p>	<p>Schedule 3 to the OPGGSA applies (Subsection 12A(2)).</p> <p>Noting this finding, any changes to the compliance regime put forward by the Review of Compliance and Enforcement Measures and accepted by the Government will seek to be consistent with the national <i>Work Health and Safety Act</i>.</p>	
<p>Six – Notes 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> <p>(Noted)</p>	<p>NOPSEMA's website currently provides public access to over 4,400 pages of information including: 3 year Corporate and Annual Plans as well as a range of, Policies (15), Guidance (27), Presentations (22), CEO's Newsletter (94 issues), Safety Alerts (43), and Leaflets (12) that address NOPSEMA's functions and priorities, operational policy and advice as well as drawing attention to notable publications from other regulators.</p> <p>As part of the Safety Case Guidance Note project NOPSEMA has been actively reviewing, utilising, and referencing source material from a range of sources with recent publications drawing on:</p> <ul style="list-style-type: none"> • Policy, guidance, research and technology reports from the UK HSE, • Australian (AS/NZS), International (ISO), Norwegian Industry (NORSOK) and International Electrotechnical Commission (IEC) Standards, • Research from the National Centre for OHS Regulation, and • Publications from: Oil and Gas UK, the American Institute of Chemical Engineers, and WorkSafe Victoria. <p>NOPSEMA has formalised a documented process to monitor and review guidance material from the UK HSE, Norway PSA and a subscription to the SAI Global OHS newsfeed (for domestic material). The process incorporates a quarterly</p>	Completed

FINDING AND GOVERNMENT RESPONSE	ACTION TO DATE	TIMEFRAME
Better Practice and the Effectiveness of NOPSA (NOPSA REPORT)		
	<p>review of guidance material from the defined sources and an annual review of the sources.</p> <p>Quarterly reviews are captured in the 2011-12 AOP</p>	
<p>Seven – Notes 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> <p>(Noted)</p>	<p>The Government notes the ongoing collaboration between NOPSEMA and APPEA on the Health and Safety Representatives (HSR) Forum held every 12 months as a collaborative opportunity for HSRs to come together to share their experiences and solutions, and learn new skills to be more effective in their HSR roles.</p> <p>The OPGGSA gives NOPSEMA responsibilities for promoting occupational health and safety. This is reflected in the Statement of Expectations provided to NOPSEMA by the Commonwealth Minister for Resources and Energy, to:</p> <ul style="list-style-type: none"> • Promote and secure compliance by dutyholders with the regulatory regime through monitoring, enforcement and proactive engagement with stakeholders. <p>NOPSEMA continues to focus on stakeholder engagement through formal and informal processes and commenced a project in the 2011-12 annual business plan to develop principles to guide stakeholder engagement activities.</p>	Ongoing
<p>Eight – Notes 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>	<p>A formalised Operator Liaison process, addressing involvement of other duty holders and considerations for establishing an appropriate frequency for liaison meetings with each operator, has been developed and includes a policy and standard operating procedure. The Operator Liaison process includes the requirement for an annual review.</p> <p>The policy addressing Operator Liaison Meetings is available on NOPSEMA's website.</p>	Completed

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Better Practice and the Effectiveness of NOPSA (NOPSA REPORT)		
(Accepted)	<p>The standard operating procedure provides internal direction and guidance on the frequency, agenda and record keeping of liaison meetings. The revised Operator Liaison process is now being actively implemented.</p> <p>Total recorded operator and stakeholder liaison are estimated to be about 200 in 2011-2012.</p>	
<p>Nine – Notes 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 ALARP 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> <p>(Accepted)</p>	<p>NOPSA has improved the systems it uses to ensure ready access to all relevant Standards and other technical publications via an intranet website. NOPSEMA continues to consider the role of standards in the regime and to participate in the development of International Standards Organisation's Asset Integrity Management Standard as part of the Australian Mirror group. In its 2011-12 Annual Operating Plan, NOPSA committed to prepare a paper on the experience gained as a mirror group participant with respect to undertaking any further, or more widespread, involvement in standards development.</p>	Ongoing
<p>Ten – Notes 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> <p>(Further consideration required)</p>	<p>Validation statements are received and considered as part of NOPSEMA's safety case assessment processes, in accordance with the requirements of the regulations.</p>	Completed.
<p>11 – Notes 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</p>	<p>NOPSA's safety case assessment policy includes a requirement to consider previously gathered information in developing the scope for the detailed portion of the assessment.</p>	Completed.

FINDING AND GOVERNMENT RESPONSE	ACTION TO DATE	TIMEFRAME
Better Practice and the Effectiveness of NOPSA (NOPSA REPORT)		
should reflect this requirement. (Accepted in part)		
12 – Notes 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. (Accepted in-principle)	As per Recommendation 7.	Completed.
13 – Notes 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. (Accepted)	As per Recommendation 7	Completed.
14 – Notes 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. (Accepted)	As per Recommendation 3	Completed
15 – Notes 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. (Noted)	The Government is of the view that a Canberra based NOPSEMA position is not required at the present time. NOPSEMA and RET have a well-established quarterly meeting process which facilitates formal consultation at the operational level on safety and environmental policy and implementation, along with other matters relating to NOPSEMA's ongoing regulation of Australia's offshore petroleum industry.	Completed.

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16 – Notes 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.	NOPSEMA's Regulatory Operations includes an investigation team staffed by trained and experienced inspectors and investigators.	Completed.

RECOMMENDATION AND GOVERNMENT RESPONSE	ACTION TO DATE	TIMEFRAME
MARINE ISSUES REPORT		
<p>One – Recommends 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.</p> <p>(Accepted)</p>	<p>The process leading to amendments to Schedule 3 of the <i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i> is currently underway, to require that petroleum facilities that are able to revert to a marine vessel upon leaving the offshore regime, maintain and comply with ship seaworthiness and marine pollution prevention certification in line with Australia's international obligations.</p> <p>Stakeholder consultations will be undertaken in Q1 2012, with a view to amendments being included in the Autumn Parliamentary Sitting.</p>	<p>To be completed during 2012.</p>
<p>Two – Recommends 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.</p> <p>(Accepted in-principle)</p>	<p>The process leading to amendments to Schedule 3 of the <i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i> is currently underway to clarify the point of transition between a petroleum facility and a marine vessel. The point of transition recognises the necessary prerequisite of the cessation of petroleum risk.</p> <p>Stakeholder consultations will be undertaken in Q1 2012, with a view to amendments being included in the Autumn Parliamentary Sitting.</p>	<p>To be completed during 2012.</p>
<p>Three – Recommends 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</p>	<p>The Government does not propose re-application of the <i>Navigation Act 1912</i> to vessels that are facilities.</p> <p>The role for AMSA in assuring continuing marine standards is being resolved in conjunction with Recommendations 1 and 2 above.</p> <p>Stakeholder consultations will be undertaken in Q1 2012, with a view to amendments being included in the Autumn Parliamentary Sitting.</p>	<p>To be completed during 2012.</p>

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MARINE ISSUES REPORT		
<p>first option is preferable.</p> <p>(Further consideration required)</p>		
<p>Four – Recommends that the Commonwealth consider a plain English rewrite of the Navigation Act 1912 with the aim of producing a modern, performance-based Act.</p> <p>(Accepted)</p>	<p>An exposure draft of the Navigation Act 1912 was released for stakeholder consultation in January 2012. Submissions to the Department of Infrastructure and Transport closed on 16 March 2012.</p>	<p>Ongoing.</p>

RECOMMENDATION AND GOVERNMENT RESPONSE	ACTION TO DATE	TIMEFRAME
2008 NOPSA OPERATIONAL REPORT		
<p>One – Recommends that NOPSA should develop guidelines in consultation with stakeholders to provide clarity and consistency to the process which ultimately will result in better safety outcomes.</p> <p>(Accepted)</p>	<p>As per the response to Recommendation 3 of the NOPSA Report, stakeholder engagement in relation to safety case development, content requirements, implementation and compliance was an element of the Terms of Reference for the 2011 NOPSA Operational Review, reflecting the role of stakeholder engagement as a central element of modern safety regulation.</p> <p>NOPSEMA is in the process of preparing a suite of Safety Case Guidance notes, and has published seven out of a total of 11 Guidance Notes.</p>	<p>Ongoing.</p> <p>To be completed during 2012-2013.</p>
<p>Two – Recommends that the consequences of the disapplication of the Navigation Act 1912 should be analysed, the actual consequences identified and unintended consequences addressed.</p> <p>(Accepted, with further consideration required)</p>	<p>As per the response to the Marine Issues Report recommendations.</p>	<p>To be completed during 2012.</p>
<p>Three – Recommends that the regulations pertaining to vessels of opportunity or their interpretation should be changed to facilitate a risk based approach to regulation. This approach would therefore be consistent with the approach undertaken in other jurisdictions.</p> <p>(Accepted, with further consideration required)</p>	<p>Consolidation of the Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009, which came into effect on 1 January 2010, specify offshore vessels or structures that are exempt from the definition of facility or associated offshore place.</p> <p>Other amendments to the OPGGSA relating to vessels under the command of a master are currently being considered.</p>	<p>Completed.</p>
<p>Four – Recommends that 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.</p>	<p>The Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Act 2010, which received Royal Assent on 16 November 2010, amended the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (the OPGGSA) in a number of ways, including to:</p> <ul style="list-style-type: none"> Augment NOPSA's functions to include the functions conferred by the OPGGS Act, and by the regulations, with respect to non-occupational health and safety (non-OHS) structural integrity of facilities, wells and well-related equipment. This addition to its functions gave NOPSA the capacity to regulate (among other 	<p>Completed.</p>

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2008 NOPSA OPERATIONAL REPORT		
(Accepted, with further consideration required)	<p>things) the structural integrity of wells and well operations over the life of the well;</p> <ul style="list-style-type: none"> • Clarify that an OHS duty of care applies to titleholders in relation to wells and well-related equipment; and • Provide NOPSA with inspection and investigation powers to enable it to investigate suspected breaches of the titleholder duty of care in relation to wells and well-related equipment. 	
<p>Five – Recommends that 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.</p> <p>(Accepted, with further consideration required)</p>	<p>In November 2010, the <i>Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Act 2010</i>, extended the functions and powers of NOPSA, (now NOPSEMA) to include structural integrity for petroleum facilities, wells and well-related equipment in Commonwealth waters, in addition to its existing occupational health and safety-related functions and powers under the OPGGSA and the Safety Regulations.</p> <p>This amendment in effect provides NOPSEMA with regulation and oversight of the whole of structural integrity of petroleum facilities (including pipelines), wells and well-related equipment in Commonwealth waters. This includes assessment of WOMPs and individual well activities.</p> <p>The amendments to the <i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i> (OPGGSA) which established NOPSEMA provided the States and the Northern Territory with the ability to confer occupational health and safety, structural integrity and environmental management functions and powers for designated coastal waters to NOPSEMA. The Commonwealth recognises that this extension is at State and Territory discretion.</p> <p>Under the new regulatory arrangements, the responsible Commonwealth Minister continues to be the corresponding decision-maker with respect to greenhouse gas titles.</p>	Completed.
Six – 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	Emergency response and planning are required as part of the safety case submitted to the regulator by the operator.	Ongoing.

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<p>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.</p> <p>(Noted, with further consideration required)</p>	<p>In response to the Montara Commission of Inquiry, the offshore petroleum industry has developed a program of collaborative activities aimed at improving Australia's well incident prevention, intervention and response capabilities, including a commitment to designing and constructing a well capping solution for Australian conditions; signing a memorandum of understanding on mutual aid for companies to assist each other when responding to offshore well incidents; and expanding the Australian petroleum industry spill response capability.</p> <p>In its response to the Montara Commission of Inquiry, the Government committed to establishing an incident management and coordination framework specific to offshore petroleum incidents in Commonwealth waters. The Framework is being developed in consultation with relevant key agencies and will be agreed during first quarter of 2012.</p> <p>The Government is also undertaking a review of the National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances.</p>	
<p>Seven – Recommends for 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.</p> <p>(Accepted)</p>	<p>As per Recommendation 3 of the NOPSAs Report.</p> <p>NOPSEMA is in the process of preparing a suite of Safety Case Guidance Notes, and has published seven out of a total of 11 Guidance Notes, with two more to be published in 2011-12.</p> <p>This process is being undertaken in consultation with stakeholders.</p>	Ongoing.
<p>Eight – Recommends that the initial acceptance of a new facility Safety Case should be in conjunction with inspection of a facility upon commencement of operations.</p> <p>(Noted, with further consideration required)</p>	<p>NOPSAs policy provides for the inspection of new facilities within six weeks of the commencement of operations. NOPSAs recently amended policy provides for the inspection of drilling facilities within 3 weeks of entering the regime.</p> <p>The current regime clearly separates safety case assessment and subsequent verification through inspection and audit.</p>	Completed.
<p>Nine – Recommends that there is a need for industry in consultation with NOPSAs to establish a priority programme of</p>	Accredited education modules are a matter for industry.	Completed.

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<p>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.</p> <p>(Accepted)</p>	<p>NOPSEMA has and will:</p> <ul style="list-style-type: none"> • continue to conduct workshops with industry on specific safety case topics; • Incorporate safety case awareness as an ongoing feature of the HSR Forums; • Support to the APPEA Common Safety Training Program initiative, which was launched by APPEA in April 2010. 	
<p>Ten – Recommends that 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.</p> <p>(Accepted)</p>	<p>This is a matter for the offshore petroleum industry.</p> <p>NOPSEMA has and will:</p> <ul style="list-style-type: none"> • Verify operator commitments with respect to training and competency as a standard part of its published inspection methodology; • Provide support to the APPEA Common Safety Training Program, which was launched by APPEA in April 2010; • Actively engage with and encourage industry associations to develop training capacity and improve competency levels. 	Completed.
<p>11 – Recommends that the current KPI measures used by the Regulator and the offshore petroleum industry 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. NOPSAs should continue discussions with the Australian Safety and Compensation Council (ASCC), with a view to adopting their goals.</p> <p>(Accepted, with further consideration required)</p>	<p>NOPSEMA:</p> <ul style="list-style-type: none"> • publishes industry safety performance data and provides feedback to individual operators; • promotes the use of Key Performance Indicators (KPIs) for facility integrity in addition to those being developed by APPEA; • Consulted with the NOPSAs Board in relation to its strategic priority regarding industry safety performance; • Raised regulator performance measures at the Australian Petroleum Safety Regulators Forum. <p>NOPSEMA is reviewing the nature of Accident and Dangerous Occurrence information reported to NOPSEMA with a view to improving the analysis and feedback to industry.</p> <p>NOPSEMA continues to seek opportunities for working with Safe Work Australia on regulatory KPIs.</p>	Completed
12 – Recommends that the industry should develop in	NOPSAs's Inspection & Audit process now includes a risk matrix to guide	Completed.

RECOMMENDATION AND GOVERNMENT RESPONSE	ACTION TO DATE	TIMEFRAME
2008 NOPSAs OPERATIONAL REPORT		
<p>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.</p> <p>(Noted)</p>	<p>inspection frequencies. This process is consistent across the industry, and ALARP principles always apply, whether the facility is in extended life or design life operations. For facilities that are in extended life operations, the focus for inspections is on maintenance management and asset integrity.</p> <p>Consistent with this risk-based approach, a target of 2 inspections per annum for normally attended facilities was adopted for NOPSAs's 2010-2011 Annual Operating Plan (AOP) available on the NOPSEMA website.</p> <p>NOPSAs met its inspection target for the 2010-11 Financial Year.</p>	
<p>13 – Recommends that the industry should provide advice to NOPSAs 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.</p> <p>(Noted)</p>	<p>NOPSEMA is in the process of preparing a suite of Safety Case Guidance notes, and has published seven out of a total of 11 Guidance Notes, with two more to be published in 2011-12.</p> <p>This process is being undertaken in consultation with stakeholders.</p>	Ongoing.
<p>14 – Recommends that NOPSAs 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 NOPSAs CEO and management.</p> <p>(Accepted in part)</p>	<p>NOPSEMA is in the process of preparing a suite of Safety Case Guidance notes, and has published seven out of a total of 11 Guidance Notes, with two more to be published in 2011-12.</p> <p>This process is being undertaken in consultation with stakeholders.</p>	Ongoing.
<p>15 – Recommends that NOPSAs should use encouragement as the primary tool of enforcing compliance, provided that operators demonstrate willingness to improve the safety of their operations.</p> <p>(Noted)</p>	<p>As per Recommendation 6 of the NOPSAs Report, work is underway by the Government in relation to Recommendation 71 of the Report of the Montara Commission of Inquiry, which stated that "there should be a review to determine whether it is appropriate to introduce a rigorous civil penalty regime and/or substantially increase some or all of the penalties that can be imposed for breaches of legislative requirements relating to well integrity or safety" (Report of the Montara Commission of Inquiry pg 233).</p>	<p>In progress.</p> <p>This work forms part of the <i>Offshore Petroleum and Marine Environment Legislative Review</i> will be completed by mid 2012 and any changes implemented in the second half of 2012.</p>

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	<p>The Review of Compliance and Enforcement Measures is being undertaken as part of the broader <i>Offshore Petroleum and Marine Environment Legislative Review</i>, which is being taken forward as a Better Regulation Ministerial Partnership between the Minister for Finance and the Minister for Resources and Energy.</p> <p>This task will be completed by mid 2012 and any changes implemented in the second half of 2012.</p>	
<p>16 – Recommends that 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.</p> <p>(Accepted)</p>	<p>As per Finding One of the NOPSA Report, Part 6.9 Division 3 of <i>the Offshore Petroleum and Greenhouse Gas Storage Act 2006</i> sets out the agreed roles and functions and responsibilities of the NOPSEMA Board. The Minister for Resources and Energy, as the responsible Commonwealth Minister, has provided the Board with a Statement of Expectations setting out his expectations in accordance with the Board's roles, functions and responsibilities as set out in the OPGGSA.</p>	Completed.
<p>17 – Recommends that 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 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.</p> <p>(Accepted)</p>	<p>Workforce consultation in the development of a safety case is an intrinsic requirement of the OPGGS (Safety) Regulations 2009.</p> <p>NOPSEMA is in the process of preparing a suite of Safety Case Guidance notes, and has published seven out of a total of 11 Guidance Notes, with two more to be published in 2011-12.</p> <p>This process is being undertaken in consultation with stakeholders.</p>	Ongoing
<p>18 – Recommends that NOPSA should consider an audit regime that targets Greenfields operations upon their commencement.</p> <p>(Accepted)</p>	<p>This is consistent with the response to Recommendations three and five of the NOPSA Report, and Recommendation Eight of the 2008 NOPSA Operational Report in relation to risk assessment, auditing and early and increased engagement with stakeholders.</p>	Completed.
<p>19 – Recommends that 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</p>	<p>Forums for consultation are already in place through NOPSEMA and APPEA initiatives. The role of the NOPSEMA Advisory Board also currently fulfils this recommendation.</p>	Completed.

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<p>take on commitment on behalf of their stakeholder group.</p> <p>(Noted)</p>		
<p>20 – Recommends that as all stakeholders have responsibility for safe outcomes, decisions regarding target subjects for safety promotion need to have the support of all stakeholders (including NOPSAs) and the workforce. Industry, which ultimately has the responsibility for managing risk as well as funding the promotion of safety, should take a leadership in the role of safety implementation.</p> <p>(Noted)</p>	<p>APPEA and NOPSEMA have a range of initiatives in place relating to safety promotion which is support by the Government.</p>	<p>Completed.</p>