

# Review of the Circumstances that Led to the Administration of the Northern Oil and Gas Australia (NOGA) Group of Companies

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## Executive Summary

On 20 September 2019 the Northern Oil and Gas Australia Pty Ltd (NOGA) group of companies went into voluntary administration and subsequently, on 7 February 2020, into liquidation. One of the companies in the group, Timor Sea Oil & Gas Australia Pty Ltd (TSOGA), was the petroleum titleholder for the Laminaria and Corallina (LamCor) oil fields situated approximately 550 km offshore of Darwin, and owned the associated Northern Endeavour floating production storage and offtake facility (FPSO).

As a consequence of NOGA's liquidation, the Commonwealth Government set up the Northern Endeavour Temporary Operations program, taking control of the Northern Endeavour until a longer-term solution could be agreed. During the drafting of this Review, the Northern Endeavour was no longer producing hydrocarbons and remained in lighthouse mode under the management of a small crew.

On 23 March 2020, the Minister for Resources, Water and Northern Australia, the Hon Keith Pitt MP, appointed me to conduct a Review into the circumstances that led to this situation. He asked me to examine the roles, responsibilities and behaviours of the key stakeholders: the NOGA group, the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), and the National Offshore Petroleum Titles Administrator (NOPTA) and Joint Authorities (JAs). My remit was also to provide advice to the Government on possible areas for reform of the offshore oil and gas regulatory regime.

### The Northern Endeavour and the LamCor fields

The LamCor fields lie within two Petroleum Production license areas, AC/L5 and WA-18-L. The Northern Endeavour and associated wells are within AC/L5. Production of both fields commenced in 1999, with peak production of 180,000 bbl/day. By 2015, the titleholder for AC/L5 was a joint venture of Woodside Energy Ltd (Woodside) and Talisman Oil & Gas Pty Ltd (Talisman), with Woodside owning and operating the Northern Endeavour. Talisman was the sole titleholder of WA-18-L.

Based upon its own commercial and technical analysis, Woodside announced its intention to cease production from the Northern Endeavour in the second half of 2016 and move to decommissioning the fields soon afterwards.

NOGA was incorporated in August 2015, with a sole company director. The director felt that the region had potential for further oil and gas development, and believed that the LamCor fields could continue producing commercially. In September 2015 NOGA entered into a sales agreement (the LamCor Agreement) with then titleholders Woodside and Talisman which resulted in NOGA acquiring Talisman, and Talisman acquiring both the Northern Endeavour and Woodside's interest in the AC/L5 title. This facilitated NOGA's acquisition of 100 per cent of the assets and titles of AC/L5 and WA-18-L through its ownership of Talisman, which subsequently changed its name to TSOGA.

TSOGA intended to extend the life of the LamCor asset through a combination of operational efficiencies and incremental increases in production by in-fill drilling and future developments in the area. Upstream Production Solutions Pty Ltd (UPS) was contracted to be the operator and safety case holder for the Northern Endeavour.

A number of events over the next three years disrupted production, including malfunctioning subsea valves, hydrate formation, and the temporary closure of the helideck

NOPSEMA's early assessment of how TSOGA and UPS were complying with their environmental and safety statutory requirements identified concerns about TSOGA's capability and capacity to respond to an oil spill, an obvious and fundamental titleholder responsibility. This led to formal enforcement three days after TSOGA became titleholder. Soon after, NOPSEMA undertook its first offshore UPS inspection to assess the appropriateness of its safety management systems. Corrosion risks were a focus of the inspections, acknowledging Woodside's expectations that the facility was coming to the end of its production life and the extensive corrosion present on the facility. UPS was unable to convince NOPSEMA that it had identified the baseline of the corrosion hazards on the facility, nor undertaken subsequent assessment, prioritisation and planning to address those risks. This was another fundamental matter.

There was a gradual ratcheting up of NOPSEMA inspection frequency and enforcement actions as NOPSEMA's concerns grew, specifically with regard to the quality of responses to inspectors' findings, missed deadlines for improvements, doubts about the availability of financial resources, and the consequences of the contractual relationships between TSOGA and UPS. In a little over three years NOPSEMA used the full breadth of its regulatory powers, with two Prohibition Notices, three Improvement Notices<sup>1</sup>, four General Directions and four requests to revise permissioning documents. Numerous, less formal recommendations were raised and tracked at each inspection. NOPSEMA gradually lost confidence in the ability of the titleholder and the operator to fulfil their statutory obligations and resolve the identified concerns over the adequate safety and environmental management of the ageing Northern Endeavour facility.

NOPSEMA's concerns about the cumulative impact of all its individual concerns came to a head in 2019. An environmental inspection identified that TSOGA could not demonstrate sufficient financial assurance to cover its liabilities in the case of an oil spill, and this required prompt enforcement to resolve. There was concern about how the interface between TSOGA and UPS was working to collectively deliver the necessary safety standards on the Northern Endeavour. There were continuing issues with corrosion management which still had not been fully resolved since they were first raised in 2016, and two dangerous occurrences arising from corrosion occurred on the Northern Endeavour at the beginning of July.

As a result, NOPSEMA issued a Prohibition Notice on UPS on 10 July 2019 and a General Direction on TSOGA on 18 July 2020, enforcing the cessation of production on the Northern Endeavour until a range of long-standing, serious issues were resolved, particularly related to corrosion. NOPSEMA held meetings with UPS and TSOGA to fully explain the requirements of the Prohibition Notice and General Direction, and the work needed to consider them closed.

The loss of production until the Prohibition Notice and General Direction were resolved had serious implications for TSOGA's cash flows. The NOGA group was loss making and had not generated a net profit after tax for the past four consecutive financial years. NOGA had received a substantial injection of funding from Castleton Commodities Merchant Asia Co Pte Ltd (CCMA) in 2017, secured against the Northern Endeavour, the production licences and the oil inventories, but by July 2019 the funds from the CCMA revolving credit facility had been fully utilised. CCMA provided NOGA/TSOGA with a further finance facility in August 2019.

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<sup>1</sup> Two of these Improvement Notices were subsequently reviewed by the Fair Work Commission.

NOPSEMA made a follow-up inspection of the Northern Endeavour over 10-13 September 2019. Although considerable progress had been made, there were still significant requirements to be completed, relating to both the Prohibition Notice and General Direction. The possibility of resuming production was at least 6 weeks off. On 18 September 2019, NOPSEMA endorsed the inspectors' recommendations not to lift either the Prohibition Notice or the General Direction for the time being. With that clear NOPSEMA decision, and with CCMA's additional funding having been fully utilised, TSOGA/NOGA went into voluntary administration two days later.

The NOGA group of companies had been significantly undercapitalised, and in the end had insufficient funds to meet its liabilities. However, the situation was more complex and reflects the fragility of NOGA's business model. It had taken over an ageing FPSO and with the LamCor fields approaching their end of life. The NOGA group had limited background in the offshore industry, and with no other income generating assets was significantly reliant on day-to-day production for cash flows. Ultimately, TSOGA lost the confidence of the regulator, NOPSEMA, who witnessed an increasing number of examples where the necessary high standards of maintaining an ageing asset such as the Northern Endeavour were not being reached. After NOPSEMA required production to cease until long-standing issues were dealt with, the NOGA group did not have sufficient financial reserves to resolve the accumulated issues before funding ran out.

## NOPSEMA

My Review concluded that NOPSEMA is a robust, professional and independent regulator that had significant concerns right from the start of the change of operator/titleholder for the Northern Endeavour. As fears about the cumulative impact of the individual concerns increased, the decisions on the appropriate course of action to take were well informed.

My Review has identified some opportunities for improvement, though. NOPSEMA could benefit from more strategic planning of interventions at the facility and/or dutyholder level, whereby the priorities for the scope/type of inspection activities are regularly assessed and incorporated into a long-term plan. Different facilities and dutyholders ought to require different strategies for inspection. Consideration with regard to dutyholders' previous performance, the type and condition of facility, and company-related factors need to be identified in developing such plans. Strategic plans could provide an improved approach to help focus priorities, clarify objectives and manage resources. Such an approach may have helped NOPSEMA to bring its concerns over the Northern Endeavour to a conclusion somewhat earlier.

Another opportunity relates to NOPSEMA's practice around recommendations arising from inspections. While raising and tracking recommendations is an indication of a robust regulator, the sheer number and types of recommendations present the potential for the regulator, and not the operator/titleholder, to take over the agenda of the safety and environmental management. My discussions with industry tended to support my perception here. I recommend that NOPSEMA seeks wider stakeholder views on how it can best encourage strong titleholder/operator ownership and continuous improvement of this agenda. I also recommend that NOPSEMA review its inspection practices to identify the root causes of non-compliance, and not just the symptoms, and monitor dutyholders' corporate culture and compliance processes.

## NOPTA

NOPTA had a number of opportunities during 2015-2019 to influence the change of titleholder to TSOGA, including responding to the LamCor agreement, advising the JA on the AC/L5 production licence renewal in 2018, registering dealings associated with the LamCor fields, and day-to-day monitoring of the Northern Endeavour facility performance. What NOPTA did, NOPTA did thoroughly. However, it was having to work under a number of legislative limitations which it considered prevented it from being able to fully consider, and influence, the ramifications of the change of titleholder. These limitations allowed TSOGA to become the titleholder for LamCor without, in my opinion, being subject to adequate scrutiny.

The experience of the Northern Endeavour has demonstrated that titleholder governance is a crucial issue worthy of NOPTA and JAs' oversight. Issues such as having an effective Board, clear division of responsibilities at the top of the company, appropriate involvement of non-executive Directors, rigorous business risk management, and transparency are all key issues against which companies should be benchmarked before approval of a transfer of title. Any uncertainty over NOPTA's powers to obtain financial, technical capacity and governance information about the titleholder throughout the life cycle of the title should also be resolved.

## Decommissioning Liability

Australia's offshore petroleum regime has a number of checks and balances to ensure that titleholders decommission their assets at the end of field life and restore the environment. The events at the Northern Endeavour has shown, though, that the current situation is vulnerable. None of the regulatory controls anticipates the circumstances of a titleholder liquidation. This is a serious concern, as such events could be repeated as Australia's offshore industry matures and late-life assets are likely to be passed from established major oil companies to smaller, less-substantial titleholders.

My discussions indicated the adoption of "trailing liability", whereby a titleholder would be continually liable for the decommissioning and removal of its offshore assets even after selling its interests in a title, was receiving growing acceptance. It is a concept which could provide a final backstop for decommissioning liability and has been used in different jurisdictions. I therefore recommend that the DISER Decommissioning Framework Review consider such trailing liability provisions.

Trailing liability is only a backstop, though. In my opinion it is essential that current titleholders continue to have prime liability for decommissioning. Financial assurance of titleholders is required by S571 of the OPGGSA but the *de facto* interpretation limits this to extraordinary costs and liabilities arising from events such as a significant oil spill. This is regulated by NOPSEMA and works well. However, the issue of decommissioning liabilities is different. Decommissioning is an inevitable activity and will be planned years in advance. I do not consider that S571 of the OPGGSA, as currently drafted, is appropriate to regulate financing for decommissioning. I suggest NOPTA and the JAs are more appropriate to regulate this, rather than NOPSEMA. I recommend a stronger role for NOPTA and the JAs in assessing decommissioning plans and their funding, coupled with a new ability to require financial surety for decommissioning costs should NOPTA have concerns. I encourage such proposals to be further explored as part of the DISER Decommissioning Review.

## Overlapping responsibilities of titleholders and operators.

When TSOGA took over as titleholder for the LamCor assets, it contracted UPS to be the operator and safety case holder for the Northern Endeavour. The normal practice in Australia is different, with titleholders (or other companies within the same group) becoming operators and safety case holders for their own facilities.

Under the OPGGSA and related regulations, titleholders and operators have different responsibilities for the health, safety and environmental control of a facility. Titleholders are responsible for detailed environmental protection and response requirements whereas the facility operator has the overarching duties to take “all reasonably practicable steps” to ensure the facility and all work carried on it are safe and without risk to health, and to work to an accepted Safety Case. My Review identified a number of issues where the split of responsibilities between TSOGA and UPS did not work well enough to ensure adequate standards on the facility and concludes that there is a gap in the legislation. To address this, one option would be to put a duty on a titleholder to ensure that, where it appoints a separate operator, that operator is capable of carrying out its duties under the OPGGSA. This would ensure, for instance, that contractual arrangements would provide sufficient financial and other resources for the operator to deliver its Safety Case commitments. A further duty on the titleholder could then be to take reasonable steps to ensure that its operator actually fulfils its OPGGSA duties, “linking” the titleholder to the performance of its operator and ensuring that the titleholder has to take an active role and interest in compliance on its facility. The current DISER Offshore Oil and Gas Safety Review provides an opportunity to consider this further.



## Recommendations

**Recommendation 1:** *The DISER Decommissioning Framework Review should consider recommending trailing liability, whereby a titleholder would be continually liable for the decommissioning and removal of its offshore assets, even after selling its interests in a title on to a different titleholder. Further consideration should be given on whether such changes could be retrospective or only for new title changes, and whether the ability to claim PRRT credits for any decommissioning work in such circumstances is clear.*

**Recommendation 2:** *The DISER Decommissioning Framework Review should explore legislative changes or clarifications to enable NOPTA and the Joint Authorities to require titleholders to provide financial surety for their decommissioning liabilities, should NOPTA have concerns that the titleholder will not be in a position to meet such costs. Such sureties should be in a form that would be available to the Government in the case of the titleholder going into liquidation.*

**Recommendation 3:** *Regulatory concerns over the adequacy of legislation to allow NOPTA to have oversight of titleholder company level transactions, and to allow NOPTA to assess financial resource and technical qualification considerations before a title is transferred to an existing titleholder, should be resolved.*

**Recommendation 4:** *NOPTA's powers should be clarified (with changes to S699 of the OPGGSA if necessary) so that NOPTA can obtain financial and technical capacity information about the titleholder, and thus monitor titleholder financial performance and technical capacity, throughout the tenure of the title, including decommissioning. Titleholders should be made aware of any changes to NOPTA's current practises and expectations on this.*

**Recommendation 5:** *Consideration should be given to extending NOPTA's oversight to include the adequacy of titleholder corporate governance arrangements. In the meantime, NOPTA should consider updating the Offshore Petroleum Guideline: Transfer and Dealings Relating to Petroleum Titles to include an expanded section on titleholders' technical capacity and governance expectations.*

**Recommendation 6:** *NOPSEMA should consider developing its inspection planning processes to incorporate more formal, longer term planning of interventions at the facility and/or dutyholder level. Developing such plans could provide a more strategic approach to focus priorities, clarify objectives and manage resources.*

**Recommendation 7:** *NOPSEMA should review its inspection practices to ensure that sufficient focus is paid to identifying root causes of non-compliance and to monitoring dutyholders' corporate culture and compliance processes.*

**Recommendation 8:** *NOPSEMA should seek the views of offshore employer and employee representatives and other stakeholders over the effectiveness or otherwise of its current practices with respect to raising inspection recommendations in encouraging strong titleholder and operator ownership of the health, safety and environmental standards offshore and their continuous improvement.*

**Recommendation 9:** *The DISER Offshore Oil and Gas Safety Review should consider the benefits of creating legal duties on titleholders to ensure that, where a titleholder appoints a separate operator, that operator is capable of carrying out its duties under the OPGGSA, with a further requirement for the titleholder to then take reasonable steps to ensure that its operator actually fulfils its OPGGSA duties.*