



Australian Government

Department of Industry, Science,
Energy and Resources

2020 REVIEW OF OPERATIONS OF THE NATIONAL OFFSHORE PETROLEUM SAFETY AND ENVIRONMENTAL MANAGEMENT AUTHORITY

*Report for the Minister for Resources, Water
and Northern Australia*

Contents

Summary	5
1 Executive summary	6
2 Our recommendations and identified opportunities	13
3 Review approach and method	22
4 Understanding the current industry landscape	25
Detailed findings	31
5 How does NOPSEMA enable improvements in industry?	32
6 How does NOPSEMA effectively regulate and use its powers?	38
7 How does NOPSEMA regulate and respond to industry through its capability and capacity?	60
8 How does the NOPSEMA Advisory Board enable NOPSEMA to carry out its functions?	73
9 How does NOPSEMA effectively engage with external parties to improve regulatory outcomes and build community confidence?	79
10 How efficient is NOPSEMA, and how does it reduce burden for industry and recovering costs?	98
11 2020 Endorsed Program Assessment	112
12 Strategic matters: Looking to the future industry	154
Appendices	162
Appendix A: Terms of Reference	163
Appendix B: NOPSEMA personnel interviewed	164
Appendix C: External parties consulted	165
Appendix D: Key NOPSEMA documentation examined	167
Appendix E: Status of NOPSEMA's 2015 statutory review recommendations	169
Appendix F: ANAO board governance recommendations and analysis	174
Appendix G: Summary of stakeholder feedback	176

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Summary

1 Executive summary

1.1 Background

The National Offshore Petroleum Safety and Environmental Management Authority (**NOPSEMA**) is established under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (**OPGGs Act** or **the Act**) as Australia's regulator for all offshore oil and gas (**petroleum**) operations and greenhouse gas injection and storage activities (**GHG storage**). NOPSEMA's authority is for activities in Australia's Commonwealth waters and coastal waters where regulatory powers and functions have been conferred by the applicable state or territory¹.

In 1999, the Australian Government commissioned a review into the adequacy of offshore safety regulation in Australia. The outcome of the review was for a single regulator for offshore safety to be established – resulting in the formation of the National Offshore Petroleum Safety Authority (**NOPSA**) for safety in Commonwealth waters.

In 2010, the Australian Government commissioned an inquiry into the Montara oil spill. The outcome of the review was for the existing regulatory framework to be revised to establish a single body for the regulation of offshore safety, well integrity, and environmental management. The recommendation was accepted by the Australian Government and NOPSA's powers were subsequently expanded to include well integrity (2011) and environmental management (2012) – rebranding NOPSA to NOPSEMA.

In 2014, the Minister for the Environment endorsed NOPSEMA's environmental management authorisation process after a comprehensive assessment of its practices made under Part 10 of the *Environment Protection and Biodiversity Conservation Act 1999* (the **EPBC Act**). The endorsement (the **Endorsed Program**), and related class approval of activities accepted by NOPSEMA, streamlined the regulation of offshore activities. NOPSEMA became the sole environment regulator in Commonwealth waters.

There are four parties responsible for delivering the OPGGS Act and its associated regulations (the **offshore legislative framework**²). These are:

- The Department of Industry, Science, Energy, and Resources (**DISER**) Offshore Resources Branch – responsible for the development of government policy in relation to the OPGGS Act (the 'policy development' arm)
- The National Offshore Petroleum Titles Administrator (**NOPTA**), a branch of DISER – responsible for the administration and assessment of petroleum and GHG title applications, with specified functions under section 695B of the OPGGS Act (the 'administrative' arm)
- NOPSEMA – responsible for the regulation of safety, well integrity, and environment matters as specified under section 646 of the OPGGS Act (the 'regulatory' arm)
- The Joint Authorities – responsible for decision-making as defined in Part 1.3 of the OPGGS Act (the 'decision-making' arm).

In accordance with section 695 of the OPGGS Act, NOPSEMA is subject to a review (the **review**³ or the **report**) of its operations every five-year period after its first review. Our review of NOPSEMA is the second to be conducted, the last being undertaken in 2015. The previous review (the *2015 Operational Review of the National Offshore Petroleum Safety and Environmental Management Authority* (the **2015 Operational Review**)) found NOPSEMA "to be demonstrating the characteristics of an effective regulator" and identified 16 recommendations, 15 of which were accepted by the Australian Government and one noted.

1.2 Objective of the review

Deloitte ("we", "our", "us", or "the review team") was engaged in July 2020 to undertake an independent operational review of NOPSEMA in accordance with the terms of reference (**TOR**) prepared by DISER, attached at **Appendix A**, for the period of 1 January 2015 to 31 December 2019. In writing our report, we have given some consideration to the period up to October 2020 in specific circumstances. It would have been remiss to not consider this additional time period given the extraordinary circumstances that emerged in 2020 due to COVID-19, and the role that played in shaping NOPSEMA and the industry. This will undoubtedly be the subject

¹ Only Victoria at the time of the assessment has conferred powers to NOPSEMA for health and safety and well integrity matters (2013).

² For the purposes of our report, we use the term 'offshore legislative framework' to refer to the collective relevant legislation, regulation, policies, regulators, and government departments (state, territory and Commonwealth) that collectively enable offshore resource exploration. For simplicity of language we use the term 'offshore' through our report to refer to Commonwealth waters as defined by the OPGGS Act. Where a state or territory has conferred powers to NOPSEMA for coastal waters, offshore is taken to include these elements.

³ The review of NOPSEMA's activities is not designed to provide assurance as defined by the Australian Auditing Standards Board.

of much comment in the next five-year review period. We also considered future directions of the industry and the associated implications for NOPSEMA.

With the recent decline in commodity prices, low industry confidence and the ongoing impacts of COVID-19, the role of the regulator in maintaining appropriate oversight and challenge to industry to maintain health and safety, well integrity, and environmental management practices is paramount.

Against this broader context, the review's legislative objective was to determine whether NOPSEMA has been effective in bringing about improvements in:

- The Occupational Health and Safety (OHS) of persons engaged in offshore petroleum operations or offshore greenhouse gas storage operations
- The structural integrity of facilities, wells, and well-related equipment
- Offshore petroleum environmental management
- Offshore GHG storage environmental management⁴.

The TOR also called for examination of:

- NOPSEMA's progress in achieving the objective of the Endorsed Program under the EPBC Act of ensuring all offshore petroleum and GHG are carried out in a manner consistent with the Object of the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009
- A review of the actions of both NOPSEMA and the Department of Agriculture, Water and the Environment (DAWE) required under the 2017 Program Administrative Arrangements and provide advice on if all commitments are being met.

We examine these latter two items as part of our 2020 Endorsed Program Assessment, which is found in **Section 11**. The 'Our findings' and 'Our recommendations and identified opportunities' sections below include a summary of findings, recommendations, and opportunities from the 2020 Endorsed Program Assessment in order to provide a consolidated view of our assessment of NOPSEMA across the review period.

1.3 Our findings

Our review has found NOPSEMA to be appropriately focused on bringing about improvements in OHS, well integrity, and environmental management across the offshore petroleum industry in accordance with its functions under section 646 of the OPGGS Act. We also consider NOPSEMA to be compliant with its obligations in administering the streamlined Endorsed Program under the EPBC Act.

NOPSEMA's transformation of its approach to stakeholder engagement across the review period is commendable. Nevertheless, the level of trust and confidence in NOPSEMA requires further improvement, including the transparency over decision-making and enforcement. The current suite of 'permissioning documents' are perceived by many industry stakeholders as complex and burdensome in their delivery.

The Australian offshore petroleum industry will face many challenges and threats over the coming decades, including declining fields, aging assets, increasing asset transition activity, decommissioning, and intensifying pressure to reduce emissions. The need for a cohesive approach to regulation is a key theme of our report. A recommendation at the regulator-level is embracing an integrated 'One NOPSEMA' approach to assessments, inspections, and investigations across safety, well integrity, and environment functions. Underpinning this is the need for a 'One Government' approach to the delivery of the offshore legislative framework.

In support of our findings we offer **31 recommendations** for consideration and have identified **21 opportunities**, which are outlined in **Table 2.1** and **Table 2.2**, respectively, in **Section 2**. Collectively, these recommendations and opportunities seek to prepare NOPSEMA, and other parties involved in delivering the offshore legislative framework, to respond to emergent challenges facing the offshore industry in a decisive and effective manner.

⁴ See the OPGGS Act, section 695(2).

1.3.1 NOPSEMA is a competent regulator focused on bringing about improvements in OHS, well integrity, and environmental management but a ‘One NOPSEMA’ approach is needed

NOPSEMA’s practices are robust but would benefit from a more risk-based approach and a clearer regulatory strategy

NOPSEMA has established appropriate practices for discharging its assessment, inspection, investigation, and enforcement functions. NOPSEMA has adequate policies, processes, and procedures that support capable staff in delivering its functions. The review outcome is positive, but we have identified areas where the effectiveness of NOPSEMA’s regulatory approach could be improved further.

Risk-based approaches to permissioning assessments and inspections could be enhanced. NOPSEMA currently has limited access to a suitable set of lead indicator data from responsible parties to assist with predictive analysis. There are also limitations with its Regulatory Management System’s (RMS) ability to derive risk-based insights. Industry stakeholders tended to support our view that NOPSEMA could be more risk-based in its approach, with these stakeholders claiming that NOPSEMA was not always focused on the areas of highest risk. As the petroleum industry matures, its risk profile and complexity will increase. The ability to adopt data-driven approaches to risk identification will be essential. Our recommendations look to address issues in accessing lead indicator data, developments of RMS’s functionality, and the standardisation of structure, integration, and digitisation of permissioning documents.

NOPSEMA’s enforcement powers should be bolstered and enforcement actions more clearly communicated to stakeholders

NOPSEMA’s suite of enforcement powers are adequate for its purpose and enables a graduated enforcement approach. However, NOPSEMA would benefit from being given the equivalent power to prosecute for a ‘section 27 offence’ (i.e. an officer of a corporation’s duty to exercise due diligence to ensure the corporation is complying with its obligations) as provided for under the harmonised Work Health and Safety (WHS) laws. The ability for NOPSEMA to ‘lift the corporate veil’ in order to also prosecute officers of a corporation (in addition to the corporation) should help improve confidence in NOPSEMA’s capacity to regulate and better address root causes of non-compliance. NOPSEMA would also benefit from being provided access to investigative powers, such as the express power to electronically record answers to questions during an interview.

There is a perception by some non-industry stakeholders of insufficient enforcement action by NOPSEMA, citing NOPSEMA’s low rate of prosecutions relative to accidents and injuries. However, we noted evidence of NOPSEMA having undertaken a range of other enforcement actions in response to incidents and non-compliance by titleholders. In reconciling these two views, we conclude that stakeholders do not have sufficient visibility over NOPSEMA’s enforcement activities. NOPSEMA should more actively communicate to stakeholders its enforcement approach and the full suite of enforcement actions it undertakes. We note the Commonwealth Director of Public Prosecutions (the CDPP) has final discretion as to whether to file a prosecution in court.

NOPSEMA’s capabilities and capacity will need to evolve to meet the demands of a maturing industry

NOPSEMA has developed strong skillsets across its OHS, well integrity, and environment functions and this view is supported by stakeholder feedback. We found emerging capability gaps, which will become more pronounced going forward, in financial assurance and decommissioning. NOPSEMA should actively pursue the development of these capabilities as a priority. We view NOPSEMA’s capacity for delivering its current remit as sufficient, with the exception of the Well Integrity function, which appears resource constrained. Addressing of capacity constraints should consider process and job redesign, as well as personnel recruitment.

Pending Government agreement, NOPSEMA’s remit may be expanded to incorporate offshore renewables⁵ safety and environmental management regulation, which would have capability and capacity implications. NOPSEMA would be required to develop new capabilities to support this complex emerging industry, where Australia has relatively little experience. Scarcity of talent and unfamiliarity with offshore renewables risks would need to be carefully managed. NOPSEMA would also need to demonstrate its ability to impartially regulate two industries (i.e. petroleum and renewables) that could be viewed as in competition with one another. Examination of practices applied in more mature markets and proactive sourcing of talent is suggested. Equally, NOPSEMA’s regulation of GHG activities has many of the same challenges outlined above and an uncertain demand profile for NOPSEMA to monitor closely.

A transition to a ‘One NOPSEMA’ operating model is required

Consistency in approach and the integration of OHS, well integrity, and environment functions is essential for delivering an effective and cohesive regulatory response to industry. Industry stakeholders we consulted with frequently cited inconsistencies in assessments or inspections undertaken by NOPSEMA’s divisions and inconsistencies in the capabilities of some inspectors. NOPSEMA acknowledged to us the need for greater consistency and coordination between its functions. NOPSEMA’s structure, processes, and operational documents are functionally orientated. In our experience this orientation perpetuates the delivery of regulatory activities in a siloed

⁵As of writing this report no formal decision has been made by Government as to whether NOPSEMA will inherit responsibility for regulating safety and environment matters for offshore renewables and clean energy in Commonwealth waters (offshore renewables). Consequently, we preface all comments made in respect to offshore renewables as a potential, but not confirmed, direction for NOPSEMA.

manner. There are risks in inconsistent approaches, particularly as the petroleum industry matures and decommissioning activities and asset transactions increase in volume.

A fundamental change to a 'One NOPSEMA' operating model will help achieve the internal consistency and collaboration required. This operating model should consider the needs of the industries NOPSEMA regulates (rather than functionally, as it is now) and enable greater cross-functional interaction. We also recommend improved integration of permissioning documents and greater alignment across NOPSEMA's inspectorate. NOPSEMA's formation of the Compliance Committee and trialling of cross-functional inspections are good examples of a 'One NOPSEMA' approach in practice. These should be built on and formalised further.

Our analysis shows that NOPSEMA is generally operationally efficient and cost recovering in an effective manner across the review period. Further improvements to operational efficiency may be achieved through the aforementioned operating model realignment, streamlining of regulatory processes, and adoption of data enabled risk-based processes.

The following recommendations apply to section 1.3.1: 1, 4, 5, 6, 7, 8, 9, 10, 11, 23, 25, 26

1.3.2 The permissioning assessment process may not be delivering its full value

NOPSEMA and industry should collaborate to improve the permissioning process

NOPSEMA administer three permissioning documents through the application of an objectives-based offshore legislative framework: the *Well Operations Management Plan (WOMP)*, the *Environment Plan (EP)*, and the *Safety Case*. Feedback from industry was compelling: the permissioning process as it is currently administered is not efficient and does not enable the appropriate focus on the areas of highest risk. We noted feedback that the process and documents are difficult to scale, unsuitable for workforce engagement, and requiring increasingly high levels of effort to attain acceptance by NOPSEMA. Industry had mixed views of the outcomes from improved transparency from the publication of EPs, citing increased effort required to make documents consumable publicly.

We also heard from our conversations with NOPSEMA that the regulator is being used by some titleholders to identify weaknesses in documents and provide lists of deficiencies to enable the titleholder to submit an acceptable document. NOPSEMA also observed some negative perceptions may stem from its conscious drive towards 'continuous industry improvement' and the appearance of 'raising the bar' that such an approach can give.

Our findings support the principles of an objective-based regime. However, our impression is that the full value from permissioning documents is not being obtained and the process is not efficient – for industry or NOPSEMA. Longer documents are not necessarily better – they must be usable as a management tool by relevant parties. The issues we have observed are not the responsibility of NOPSEMA alone to address. A joint industry-NOPSEMA approach will be required. A 'One NOPSEMA' approach and enhancements to RMS may also be of benefit in streamlining the permissioning assessment process.

The following recommendations apply to section 1.3.2: 3, 4, 9

1.3.3 An Advisory Board or Governing Board?

The Advisory Board should take a more active role in helping set NOPSEMA's strategic direction

The NOPSEMA Advisory Board (the **Advisory Board**) is established in accordance with section 653 of the OPGGS Act as an entity separate to NOPSEMA and is not a Board as defined by the *Corporations Act 2001* (the **Corporations Act**).

Our analysis shows that the Advisory Board is composed of highly experienced individuals with the skillsets required to advise NOPSEMA management, now and as the industry evolves. However, the Advisory Board over the review period was mainly used by NOPSEMA to address specific issues as requested by the Chief Executive Officer (**CEO**), and we find the Board is likely being underutilised relative to the advice and guidance they could provide. Specifically, the Advisory Board could have been more active in helping set NOPSEMA's strategic direction and in providing greater input into non-Major Accident Event (**MAE**) risk factors pertinent to the industry – factors such as mental health, decommissioning and financial assurance practices. Input from the Advisory Board in this manner may help challenge NOPSEMA management's thinking on strategic direction and any assumptions or cognitive bias.

A move to become a Governing Board could provide more structure with regard to the dual outcomes of compliance and performance. The exact remit of a NOPSEMA Governing Board would need to be thoughtfully considered, but the Board could take on some more formal, traditional Board responsibilities including supporting the CEO to achieve high levels of compliance and performance and also being involved in evaluating the CEO's performance.

The Advisory Board should look to apply lessons learned from the Australian National Audit Office's (**ANAO**) guidance on Government Boards. Consideration should be given by Government to the benefits of reforming the Advisory Board as a Governance Board. There may also be improvements to stakeholder trust and confidence in NOPSEMA from a more active and visible governance structure.

Lastly, should a unified offshore resources regulator and administrator ultimately be established (discussed below), the need for a Governing Board structure would become more important.

The following recommendations apply to section 1.3.3: 12, 13, 14, 15, 16

1.3.4 A transformed stakeholder engagement approach but persistent challenges in building trust and confidence

NOPSEMA is open and accessible but should demonstrate how it ‘listens’ through its engagements

NOPSEMA has made considerable improvement to its stakeholder engagement since the 2015 Operational Review. Improvements were, on the whole, acknowledged across stakeholder segments. A step change is evident in the level of NOPSEMA’s engagement across stakeholder segments, particularly with environmental advocacy groups, community groups, and other marine estate users.

NOPSEMA’s accessibility and openness to engagement has improved and it has also made a concerted effort to increase transparency over its actions and the regulatory processes it oversees. For instance, the introduction (in conjunction with DISER) of mandatory publication of EPs, a public comment period for EPs related to exploration activities and the establishment of the Community and Environment Reference Group (CERG) are examples of actions NOPSEMA has undertaken to improve transparency and its relationships with stakeholders.

We see further work required in demonstrating how the regulator listens to its stakeholders and processes feedback it receives. As an example, there was a general sentiment that, while NOPSEMA is approachable and accessible, the outcomes of engagements can feel predetermined and NOPSEMA does not always appear to action feedback received. This detracts from trust and confidence in NOPSEMA. NOPSEMA should provide greater clarity on how it ‘listens’ to stakeholders – even where it disagrees, utilise engagement activities that elicit anonymous feedback about NOPSEMA, and increase visibility over the stakeholder activities it undertakes.

Building trust and confidence will require a multifaceted approach

The role of the regulator is not to please all of its stakeholders – this is an unrealistic expectation to have of NOPSEMA – but it should inspire confidence in stakeholders in its ability to be impartial and make evidence-based decisions that support appropriate risk mitigation by the industry. The role of the regulator is not to set policy or to prioritise, for example, competing uses of the marine estate. Such misconceptions have served to set expectations of the regulator that it cannot meet.

NOPSEMA should more transparently communicate its decision-making process and rationale to stakeholders, although we acknowledge NOPSEMA has made positive advances in this regard. As noted above, NOPSEMA could more actively articulate its enforcement approach and enforcement activities to demonstrate that it has a robust approach to non-compliance. The development of an organisation-wide regulatory strategy, which we see as a missing element of NOPSEMA’s strategic document suite⁶, would provide clarity of strategic intent and direction to stakeholders. Clarity over strategic intent and direction will likely remove some of the negative perceptions about NOPSEMA. Such a strategy should articulate how NOPSEMA’s activities are tied to the overarching requirements of the OPGGS Act; demonstrating its goals, focus areas and measures of success.

Overall, NOPSEMA should undertake a more strategic approach to stakeholder engagements. NOPSEMA reported limited historical success with predicting where specific stakeholder issues might arise. This can place NOPSEMA in a ‘reactive’ position when responding to stakeholder concerns. The application of scenario-based communication and engagement planning approaches may assist NOPSEMA management in proactively and rapidly identifying and responding to ‘at risk’ situations before they escalate.

The following recommendations apply to section 1.3.4: 1, 2, 17, 18, 19, 20

1.3.5 Adopting a ‘One Government’ approach

The various role and functions of the different facets of the offshore legislative framework are not well understood

Through our stakeholder consultation with industry, we identified a lack of understanding of the various roles and responsibilities of the administrative, policy development, regulatory and decision-making arms of the offshore legislative framework. This is a common finding in legislative frameworks, particularly where there is a relatively complex legislative delivery model encompassing multiple entities. Further exacerbating this is the misaligned and sometimes contradictory understanding of the respective parties’ roles under the offshore legislative framework by other members of the framework. We suggest that the Government take a more active approach to communicating the respective roles and functions of the arms of the regime to its stakeholders and the community.

⁶ NOPSEMA has a published Corporate Plan. We do not consider the Corporate Plan, in its current format, to be a ‘regulatory strategy’.

A ‘One Government’ approach is required

All arms of the offshore legislative framework (administrative, policy, regulatory, and decision-making) must work in unison to address the challenges ahead – even where elements remain independent of one another. A cohesive approach and independence are not mutually exclusive outcomes.

There have been improvements to NOPTA’s and NOPSEMA’s collaboration and coordination across the review period. Example actions implemented by NOPTA and NOPSEMA include joint meetings with titleholders on areas of regulatory overlap, co-location of personnel, sharing of capabilities, and seconding staff where appropriate. However, NOPTA and NOPSEMA could work together more effectively to share knowledge, coordinate on strategic matters of industry significance, and break down information silos.

We have observed a degree of deviation between the various arms over understanding in roles and responsibilities and, in some instances, interpretations of the OPGGS Act. These inconsistencies within the framework do not support effective and efficient outcomes and may serve to perpetuate misconceptions by stakeholders in the various roles of each party. We recommend the pursuit of greater alignment between the facets of the offshore legislative framework.

A clear theme emerged that NOPSEMA and its state regulator counterparts are limited in the information and data they can exchange. While we understand appropriate limitations need to be applied to the types of information and data that cannot be shared, we consider further sharing of data and information on matters such as risks and trends would be of benefit. Current arrangements are not pragmatic or supportive of a cohesive application of policy or regulation. There is a risk of disconnect of regulatory and policy application, missed policy improvement benefits, and inefficiencies with the current siloed approach. Exchange of data and information is the foundation of any successful partnership. We recommend that the Government identify and address these barriers, applying an outcome-based approach in determining the scope of data to be exchanged, whilst still protecting mandatory privacy and commercial sensitivity requirements.

The following recommendations apply to section 1.3.5: 21, 22

1.3.6 Exploration of a unified offshore resources regulator and administrator

Exploration of a unified model could be given but governance challenges in managing conflicting regulatory purviews must be addressed

An obvious question is whether the current offshore model that separates the administrative functions of NOPTA from the regulatory functions of NOPSEMA, remains fit-for-purpose in responding to change and delivering the collaboration and coordination required for the industry. The establishment of a unified offshore resources model by moving NOPTA from DISER into NOPSEMA would align to the recommendation for a single national offshore regulator made by the 2009 Productivity Commission *Review of the Regulatory Burden on the Upstream Petroleum (Oil and Gas) Industry* (2009 Productivity Commission Review) and result in a more cohesive regulatory landscape.

Conversely, there are strong arguments as to why NOPTA and NOPSEMA were established as separate entities. The primary reason being to avoid actual or perceived conflicts of interest and ensure there is a distinct separation between the administration and assessment of titles applications (NOPTA), the decision makers (the Joint Authorities) and the regulatory objectives for safety, well integrity and the environment (NOPSEMA). This argument is in line with the Hon Lord Cullen’s report into the 1988 Piper Alpha Disaster. International precedent for offshore petroleum regulatory frameworks is generally to have separate administration and licencing from health, safety, and environmental matters (e.g. the United Kingdom and Norway) but this is not universal (e.g. in the case of the Canada-Newfoundland & Labrador Offshore Petroleum Board (C-NLOPB)).

A unified offshore resources model would need to establish appropriate mechanisms for addressing such concerns. That said, should NOPTA take a more influential and proactive role in relation to resources management (as we recommend in our *2020 Statutory Review of the National Offshore Petroleum Titles Administrator*), the need for clear delineation of functions will become more, not less, important.

While we have not taken a position on the question of whether a unified offshore resources model should be established by moving NOPTA from DISER into NOPSEMA – as it requires analysis beyond the scope of the current report – there is merit in the concept being explored further and recommend the Government considers the appropriateness of this. We also note that the balance of our recommendations are made on the assumption that the status quo model remains in place.

The following recommendation applies to section 1.3.6: 24

1.3.7 Endorsed Program under the EPBC Act – 2020 Endorsed Program Assessment

NOPSEMA is achieving the objective of the Endorsed Program under the EPBC Act

Our assessment has found NOPSEMA to be meeting its obligations in administering the streamlined Endorsed Program under the EPBC Act. We have found:

- NOPSEMA is adhering to the Objects of the OPGGS (Environment) Regulations. Specifically, NOPSEMA aligns to the five principles of ecologically sustainable development (**ESD**) and seeks to ensure activities are carried out by titleholders in a manner that reduces environmental impacts to ‘As Low As Reasonably Practicable’ (**ALARP**) and ‘acceptable’ levels
- NOPSEMA is meeting all of its commitments and outcomes specified under the Endorsed Program so that environmental impacts on protected matters (as defined in Part 3 of the EPBC Act) are not unacceptable
- NOPSEMA is appropriately implementing continuous improvement opportunities identified through prior reviews
- NOPSEMA is meeting its commitments under the Administrative Arrangements
- NOPSEMA’s Environment Plan (**EP**) assessment process to be robust in its approach, but viewed by stakeholders as highly complex, prescriptive in its delivery, and resulting in a high level of effort to comply with the process regardless of the level of risk by the proposed activity.

The recommendations and opportunity identified below fall within the category of ‘continuous improvement’ for the administration of the environment assessments and related IT tools and expert advice.

NOPSEMA could work to improve implementation of the subjective ‘acceptability’ tests. This could potentially be achieved by providing greater internal and external transparency of the assessment criteria and the limits of ‘acceptability’. NOPSEMA could also work with titleholders at an earlier and more informal stage to ensure that their draft EPs address the most significant risks and issues. This would help to reduce the number of EPs that are rejected or returned for amendment, and potentially streamline the size of EP documents. These measures would help to improve stakeholder views of NOPSEMA as being consistent in its approach to assessments.

The following recommendations apply to section 1.3.7: [EPBC-R-1](#), [EPBC-R-2](#), [EPBC-R-3](#), [EPBC-R-4](#), [EPBC-R-5](#)

2 Our recommendations and identified opportunities

Our recommendations and opportunities are consolidated in **Table 2.1** and **Table 2.2**, respectively. Additional considerations and detail relating to recommendations and opportunities are contained within the respective sections where they are raised.

We distinguish between opportunities and recommendations. Opportunities are improvements or enhancements that are tactical in nature and, while important, do not reach the threshold for a formal recommendation. In contrast, recommendations are strategic in nature or are critical improvement areas that exceed the threshold for an opportunity.

Table 2.1: Consolidated list of recommendations for consideration by Government

Section	Recommendation
NOPSEMA's enablement of improvements in industry	1 The Government should engage with industry and adjacent stakeholders to develop a clear and common understanding among these groups of the various roles, powers, and functions of the administrative, regulatory, policy, and decision-making facets of the offshore legislative framework.
NOPSEMA's enablement of improvements in industry	2 NOPSEMA, in consultation with the Minister and in alignment with the OPGGS Act, should develop a regulatory strategy (or update its current Corporate Plan document/approach) to reflect the broader risks and trends of the industry, how NOPSEMA is responding, and its role in influencing, overseeing, and enforcing expectations with industry.
NOPSEMA's effective regulation and use of its powers	3 NOPSEMA should consider establishing an industry working group to understand issues with the safety case regime (including WOMPs and EPs), as currently regulated. The focus should be on the underlying principles associated with the regime, clarifying the requirements for permissioning documents and the role of guidance in their development, the accepted ways of working between parties in relation to assessment processes, and what better practice looks like to enable the regulator and industry to work together in a cooperative manner.
NOPSEMA's effective regulation and use of its powers	4 NOPSEMA should continue to invest in the development of RMS, leveraging its data to provide meaningful, risk-based information of titleholders and their facilities at an aggregate level, while also enabling interrogation at a facility level. This should also consider the ability for greater digitisation of information contained in safety cases, WOMPs, and EPs.
NOPSEMA's effective regulation and use of its powers	5 NOPSEMA should consider the feasibility of: <ul style="list-style-type: none">• Redesigning its inspection regime to be a single regime of inspection procedures and supporting guidelines, tools, forms and templates, drawing upon, leveraging and building upon the 'top of class' documents that currently exist across the (3) regimes with particular nuances of the (3) subject matters accommodated as required, to give effect to the NOPSEMA Inspection Policy and Enforcement Policy in the OHS, environmental management and well integrity context

Section	Recommendation
	<ul style="list-style-type: none"> Driving the combined OHS, environmental and well integrity inspections performed at the same time by multi-disciplinary teams.
NOPSEMA's effective regulation and use of its powers	6 The Government should consider updating the OPGGS Act with respect to the power of NOPSEMA Inspectors to electronically record answers when using their powers to question under the Act.
NOPSEMA's effective regulation and use of its powers	7 NOPSEMA should publish guidance for the benefit of all stakeholders as to how and in what circumstances the law concerning self-incrimination is relevant when a NOPSEMA Inspector exercises their powers to compel relevant parties to answer questions.
NOPSEMA's effective regulation and use of its powers	8 The Government should consider amending the OPGGS Act to include provisions similar to a 'section 27 offence' under the Australian Work Health and Safety harmonised laws (that is, for officers of the organisations to have a duty to demonstrate they have exercised due diligence to ensure the organisation has complied with its duty under the OPGGS Act).
Capability and capacity of NOPSEMA	9 NOPSEMA should develop an integrated plan for enabling a shift to a 'One NOPSEMA' operating model which considers cross-functional alignment of capabilities. This recommendation reflects that people change, process change, and technology change must occur in unison to achieve the desired outcome of a more coordinated, collaborative, and consistent delivery of regulatory functions.
Capability and capacity of NOPSEMA	10 NOPSEMA should increase the capacity of the Well Integrity capability. At minimum, an increase in the capacity of the Well Integrity capability should consider: <ul style="list-style-type: none"> Likely industry activity moving forward (the forecast demand for the Well Integrity capability) The actual and desired allocation of the Well Integrity team's effort across inspection and assessment activities Identifying potential operational efficiencies through process redesign, technology improvement, job design and/or, where a gap remains, addressing capacity shortages through the sourcing of talent.
Capability and capacity of NOPSEMA	11 NOPSEMA and NOPSEMA should, once the policy framework for offshore decommissioning has been developed and agreed by the Government, coordinate on the building of capability and capacity for decommissioning and aging asset management (including facilities engineering) and financial/commercial analysis (including transaction analysis and financial capacity). NOPSEMA and NOPSEMA may consider engaging with peers in more mature jurisdictions to identify the specific capability skillsets required. NOPSEMA and NOPSEMA should consider opportunities for building a shared capability that can be accessed by both parties to avoid duplication of capabilities and capacity.
Effectiveness of the Advisory Board in enabling	12 The NOPSEMA Advisory Board, in consultation with the Minister and NOPSEMA, should develop a Terms of Reference or similar Charter that clearly details its scope, role, function, and responsibilities in the support of NOPSEMA and the industry. The Terms of Reference should clearly outline what it does, as well as

Section	Recommendation
NOPSEMA to carry out its functions	what it does not do given its status as an Advisory Board. The Terms of Reference should be made public to continue to drive transparency in approach and direction.
Effectiveness of the Advisory Board in enabling NOPSEMA to carry out its functions	<p>13 NOPSEMA's Advisory Board should be:</p> <ul style="list-style-type: none"> Involved in conducting industry-wide risk, issue, and trend analysis to identify areas for NOPSEMA focus or support to industry Formally consulted on the build and development of the NOPSEMA Corporate Plan.
Effectiveness of the Advisory Board in enabling NOPSEMA to carry out its functions	<p>14 DISER should, in consultation with the Advisory Board and NOPSEMA, determine the broader range of skills needed to reflect the current industry trends and issues faced by the industry. The Advisory Board mix should then be re-evaluated to determine if there is the right balance of skills as the industry changes (e.g. determine if there is a need for a psychology/mental health expertise, financial assurance, safety regulation to supplement the skillset of the current Board members).</p>
Effectiveness of the Advisory Board in enabling NOPSEMA to carry out its functions	<p>15 The NOPSEMA Advisory Board should perform a self-evaluation against the ANAO insights to identify areas of improvement. We recommend NOPSEMA and the Advisory Board look to address the gaps we have identified in the ANAO board governance recommendations and analysis (Appendix F).</p>
Effectiveness of the Advisory Board in enabling NOPSEMA to carry out its functions	<p>16 DISER, in consultation with the NOPSEMA Advisory Board and the CEO of NOPSEMA, should consider whether the Advisory Board should be retained, or whether it should be restructured to become a Governing Board.</p>
Effectiveness of NOPSEMA's engagement with external parties	<p>17 NOPSEMA should place focus on demonstrating how it 'listens' to stakeholders through stakeholder engagement activities. Where feasible, NOPSEMA should ensure it provides clearer feedback to stakeholders on how their inputs have (or have not) been reflected in outputs from engagement activities and why. NOPSEMA may also wish to consider additional means of gathering candid stakeholder feedback, utilising mechanisms such as anonymous third-party delivered stakeholder engagement surveys.</p>
Effectiveness of NOPSEMA's engagement with external parties	<p>18 NOPSEMA should take a more strategic and proactive approach to stakeholder engagement. This may be achieved through the application of scenario-based planning to common 'high risk' stakeholder engagement issues. Emphasis should be placed on identifying the 'early warning indicators' of at-risk situations to enable NOPSEMA to more proactively address emergent stakeholder engagement issues.</p>

Section	Recommendation
Effectiveness of NOPSEMA's engagement with external parties	19 NOPSEMA should more actively promote the stakeholder engagement activities it undertakes and investigate the publication of reporting (for instance through its website, <i>The Regulator</i> magazine, or other means) of stakeholder engagement activities it has undertaken and how stakeholders can engage with them. This may take the form of a quarterly snapshot of stakeholder engagement activities undertaken.
Effectiveness of NOPSEMA's engagement with external parties	20 NOPSEMA should identify further mechanisms for transparently communicating its decision-making rationale, including: <ul style="list-style-type: none"> • Greater use of proactive communication by NOPSEMA of decision-making documents to impacted stakeholders who have raised concerns, beyond communication through the NOPSEMA website • Establishing clarity and transparency for stakeholders over the process and methodologies used to arrive at the decisions, ensuring such explanations are accessible to non-technical audiences • Reinforcing the independence of NOPSEMA and its assessment processes. NOPSEMA may wish to engage with stakeholders on how it could further build trust and confidence in its role as the regulator.
Effectiveness of NOPSEMA's engagement with external parties	21 The administrative (NOPTA), regulatory (NOPSEMA), and policy development (DISER Offshore Resources Branch) arms of the offshore legislative framework should seek to improve their alignment, coordination and collaboration on matters such as policy development, interpretations of the OPGGS Act, exchange of data and information, and shared priorities to deliver a more cohesive 'One Government' approach.
Effectiveness of NOPSEMA's engagement with external parties	22 DISER, NOPSEMA, NOPTA, and relevant state/territory government departments should examine and address barriers inhibiting the secure, seamless, and sensible exchange of information and data between parties to deliver a more cohesive 'One Government' approach.
Strategic matters: Looking to the future	23 NOPSEMA should develop a staged and risk-based work program for assessing existing titleholder financial capacity, applying a portfolio lens to these assessments.
Strategic matters: Looking to the future	24 The Government should, in consultation with other stakeholders as appropriate, consider if there should be a single offshore resources regulator covering: <ul style="list-style-type: none"> • Offshore petroleum, GHG storage and titles administration • Regulation of safety and environmental matters for offshore petroleum and GHG storage. In undertaking this recommendation, there should be regard for: <ul style="list-style-type: none"> • The relative merits of alternative options, such as retaining the current model

Section	Recommendation
	<ul style="list-style-type: none"> Governance models for such an entity, with reference to how governance structures can ensure the appropriate involvement of the Joint Authorities, maintenance of regulatory independence by NOPSEMA, and independence between titles administration activities and safety and environmental management regulation.
Strategic matters: Looking to the future	25 NOPSEMA, in collaboration with other stakeholders as required, should identify areas where advanced technologies could be applied, particularly for augmenting in-person inspection processes or commissioning document assessments.
Strategic matters: Looking to the future	26 NOPSEMA (with the support of DISER as required) in consultation with industry, should explore mechanisms to enable NOPSEMA to gather relevant data from titleholders on safety, well integrity, and environment related matters outside of current incident or accident reporting parameters to inform trends and predictive analytics. Mechanisms in this context may include any necessary legislative and/or regulatory change to section 699 of the OPGGS Act or other sections as applicable.
The following recommendations relate to the 2020 Endorsed Program Assessment, which is found in Section 11	
2020 Endorsed Program Assessment	EPBC-R-1 NOPSEMA should continue improving their guidance on how they assess 'ALARP' and 'acceptable' environmental risk and ensure that the approach is consistent between assessments (where appropriate).
2020 Endorsed Program Assessment	EPBC-R-2 NOPSEMA, with the support of other Government Departments as required, should enable more effective cumulative impact assessment in the marine environment over spatial and temporal extents as well as across other industries.
2020 Endorsed Program Assessment	EPBC-R-3 In reference to the opportunities for improvement and observations from the 2015 Endorsed Program Assessment: <ul style="list-style-type: none"> NOPSEMA should update the <i>Environment Plan Content Requirements</i> N-04750-GN1344 (A339814) to reflect additional information on defining acceptable levels as currently provided in the <i>Offshore Project Proposal Content Requirements Guidance Note</i> N-04790-GN1663 (A473026) NOPSEMA should consider further transparency in the assessment process, including publication of assessment timeline and progress (e.g. the issue of Response to Request for Further Written Information) DAWE should consider options to make the process of identifying protected matters and related plans for management more efficient.
2020 Endorsed Program Assessment	EPBC-R-4 NOPSEMA, in consultation with DAWE, should agree acceptable levels on particular sensitive receptors, or within a significant location (such as a Biologically Important Area (BIA)). This could support an outcome to improve cumulative impact assessments on key species at certain locations. This recommendation should be read in conjunction with recommendation EPBC-R-2 .

Section	Recommendation
2020 Endorsed Program Assessment	EPBC-R-5 DAWE, in consultation with NOPSEMA, should focus on ensuring Recovery Plans that are relevant to the offshore petroleum industry are unambiguous, contain contemporary information and fit for purpose. Further, DAWE, in consultation with NOPSEMA should upgrade interactive IT tools such as the National Conservation Values Atlas (NCVA) (or a subsequent platform with relevant data) to be consistent with marine threatened species Recovery Plans. Information in those tools should be updated close to real time when the Recovery Plans are made or amended.

Table 2.2: Consolidated list of opportunities for consideration by Government

Section	Opportunity
NOPSEMA's effective regulation and use of its powers	1 NOPSEMA is encouraged to develop and implement a 'Causal Investigation Policy', considering the substance of the NSW Resources Regulator <i>Causal Investigation Policy</i> as a starting point.
NOPSEMA's effective regulation and use of its powers	2 NOPSEMA is encouraged to update its investigation framework and Investigation Level Determination Tool to provide criteria and discretion for inspectors in determining investigation requirements for exceptional or compassionate grounds with oversight or approval provided by the NOPSEMA Compliance Committee.
NOPSEMA's effective regulation and use of its powers	3 NOPSEMA is encouraged to consider amending Level 3 and Level 4 investigation procedures to incorporate by reference or provide linkage to detailed NOPSEMA procedures, work instructions, guidelines, forms and templates that translate or operationalise coercive powers of entry and powers available upon entry that are conferred upon NOPSEMA Inspectors by the OPGGS Act and Regulatory Powers Act.
NOPSEMA's effective regulation and use of its powers	4 NOPSEMA is encouraged to consider the design of an Investigation Checklist (or similar) directed toward identifying elements of offences and potential defences, together with counterpart evidence, to support the Investigation Plan for category 3 and 4 investigations (i.e. investigation levels justifying it) to be reviewed and approved by the Representative of NOPSEMA (Level 3) or Investigation Manager (Level 4).
NOPSEMA's effective regulation and use of its powers	5 NOPSEMA is encouraged to amend the <i>Level 3 Investigation Procedure</i> and <i>Level 4 Investigation Procedure</i> to: <ul style="list-style-type: none"> Mandate that a legal officer must be at the first case management meeting (soon after commencement of an investigation) and last case management meeting (immediately prior to finalisation of an investigation when critical decisions are made) and otherwise 'as required' in the case of Level 3 and Level 4 investigations Record case management outcomes in documented <i>Case Management Notes</i> annexed to the <i>Investigation Plan</i> that are continually updated as live documents throughout the life of the investigation (including decisions, reasons for decision, decision makers, actions, responsible persons and due dates)

Section		Opportunity
NOPSEMA's effective regulation and use of its powers	6	<ul style="list-style-type: none"> Consider clearly defining Case Management Notes as a 'Critical Decision Record'⁷ – 'Critical Decision Records' are currently referred to in the Level 3 Investigation Procedure as being required so treating Case Management Notes in this manner would deliver efficiencies and avoid duplication. <p>NOPSEMA is encouraged to more visibly publish its approach to enforcement activities across its graduated set of enforcement options. Clarity should be provided to stakeholders on the rigour and rationale of NOPSEMA's approach to enforcement actions.</p>
	7	<p>Capability and capacity of NOPSEMA</p> <p>NOPSEMA is encouraged to apply a consistent approach to capturing current and future capability requirements across its divisions.</p>
	8	<p>Capability and capacity of NOPSEMA</p> <p>NOPSEMA is encouraged to:</p> <ul style="list-style-type: none"> Identify digital capability requirements, with reference to industry and regulatory practice trends globally and the strategic direction of NOPSEMA Undertake a digital skills and literacy capability gap assessment to determine where digital capability maturity is lowest Develop or source appropriate training to address high priority gaps.
	9	<p>Capability and capacity of NOPSEMA</p> <p>NOPSEMA is encouraged to further develop stakeholder engagement capabilities at the middle management and inspector level.</p>
	10	<p>Capability and capacity of NOPSEMA</p> <p>NOPSEMA is encouraged to develop a talent strategy that outlines the required approach to "buy, build and borrow" the capability required for the future.</p>
NOPSEMA	11	<p>Capability and capacity of NOPSEMA</p> <p>NOPSEMA is encouraged to ensure performance management outcomes are more explicitly linked to personnel learning and development plans.</p>
	12	<p>Capability and capacity of NOPSEMA</p> <p>NOPSEMA is encouraged to continue building capability in its leaders for managing underperformance through targeted leadership development training. This training should seek to build familiarity and confidence with leading practice techniques for managing underperformance in line with APS guidelines. Consideration should be given to building a culture where leaders and followers feel safe to provide open and constructive feedback to one another.</p>

⁷ Section 4.16 'Case Decision Record' of the Level 3 Investigation Procedure provides that 'critical decisions are recorded at key junctions of investigations and are an important record of decision making. The Lead Investigator is responsible for creating all critical decision records in RMS and forwarding to the RON for review and approval (with the Head of Division, as investigation sponsor, advised).

Section	Opportunity
Effectiveness of NOPSEMA's engagement with external parties	13 NOPSEMA is encouraged to conduct an evaluation of and develop a business case for implementing an appropriately scaled Customer Relationship Management (CRM) tool to support its growing stakeholder engagement requirements.
Effectiveness of NOPSEMA's engagement with external parties	14 NOPSEMA is encouraged to identify, with broad industry input, any potential gaps in engagement with non-operator Health and Safety Representatives (HSRs).
Effectiveness of NOPSEMA's engagement with external parties	15 NOPSEMA, in collaboration with industry and unions, is encouraged to establish tripartite forum(s) (beyond its current applications) to facilitate proactive engagement on health and safety matters. This could consider the establishment of a mutually agreed set of engagement principles and a clear terms of reference for the forum(s).
Effectiveness of NOPSEMA's engagement with external parties	16 NOPSEMA, in collaboration with DISER, is encouraged to explore mechanisms for reducing engagement burden on adjacent industry stakeholders where there are identified overlaps in permissioning documents covering a single geography.
Effectiveness of NOPSEMA's engagement with external parties	17 The Australian Government is encouraged to identify opportunities for NOPSEMA and Australian Maritime Safety Authority (AMSA) in building and delivering joint guidance, briefings, or information packages for industry on issues of strategic importance or regulatory overlap, such as decommissioning.
Effectiveness of NOPSEMA's engagement with external parties	18 NOPSEMA and NOPSEMA are encouraged to identify further opportunities for building and delivering joint guidance, briefings, or information packages for industry on issues of strategic importance or regulatory overlap, such as decommissioning.
Efficient, reducing regulatory burden and recovering costs fairly and equitably	19 NOPSEMA is encouraged to consult with industry, perhaps through the next Cost Recovery Implementation Statement (CRIS) process, on indexing levies and fees to the Consumer Price Index (CPI) or another appropriate index to ensure cost recovery keeps pace with inflation.
Efficient, reducing regulatory burden and recovering costs fairly and equitably	20 NOPSEMA is encouraged to review and update its CRIS modelling to ensure it is complete and transparent, and that it is consistent with its objectives and principles for cost recovery. The rationale for the levy amounts that are set and the factors considered through the CRIS process should be clearly documented.

Section	Opportunity
Strategic matters: Looking to the future	<p>21 If the Government formally agrees to NOPSEMA assuming the role of regulator for offshore renewables, NOPSEMA would be encouraged to:</p> <ul style="list-style-type: none">• Give sufficient emphasis in its strategic and operational planning to supporting emerging industries within its remit, given in many instances the presence of an established regulatory framework is a clear signal to potential market entrants of ‘industry readiness’ for investment• Consider how it might transparently manage perceived conflicts of interest surrounding potentially competing industries (i.e. petroleum and renewables), particularly how governance mechanisms may be structured, and stakeholder confidence built in NOPSEMA’s ability to manage potential conflicts in a transparent and effective manner• As part of its financial scenario modelling processes, forecast its financial sustainability with regards to different industry activity scenarios (e.g. an increase in transactional activity). As part of this, specifically examine the impact of different cost recovery levy and fee structures and how volatility can be managed through different structures• Avoid duplication of existing capabilities across people, processes and systems, wherever possible when preparing to inherit a new remit. However, in doing so care must be taken to evaluate whether the existing capabilities meet the needs of emerging industries as opposed to the well-established, mature petroleum industry they have been designed for• Undertake a capability gap assessment, looking to regulators in select advanced offshore renewables markets to identify what capabilities (e.g. people, process, supply chain, technology) might be required vis-à-vis NOPSEMA’s current capability maturity in these areas. NOPSEMA should leverage its existing international relationships to inform these capability assessments.

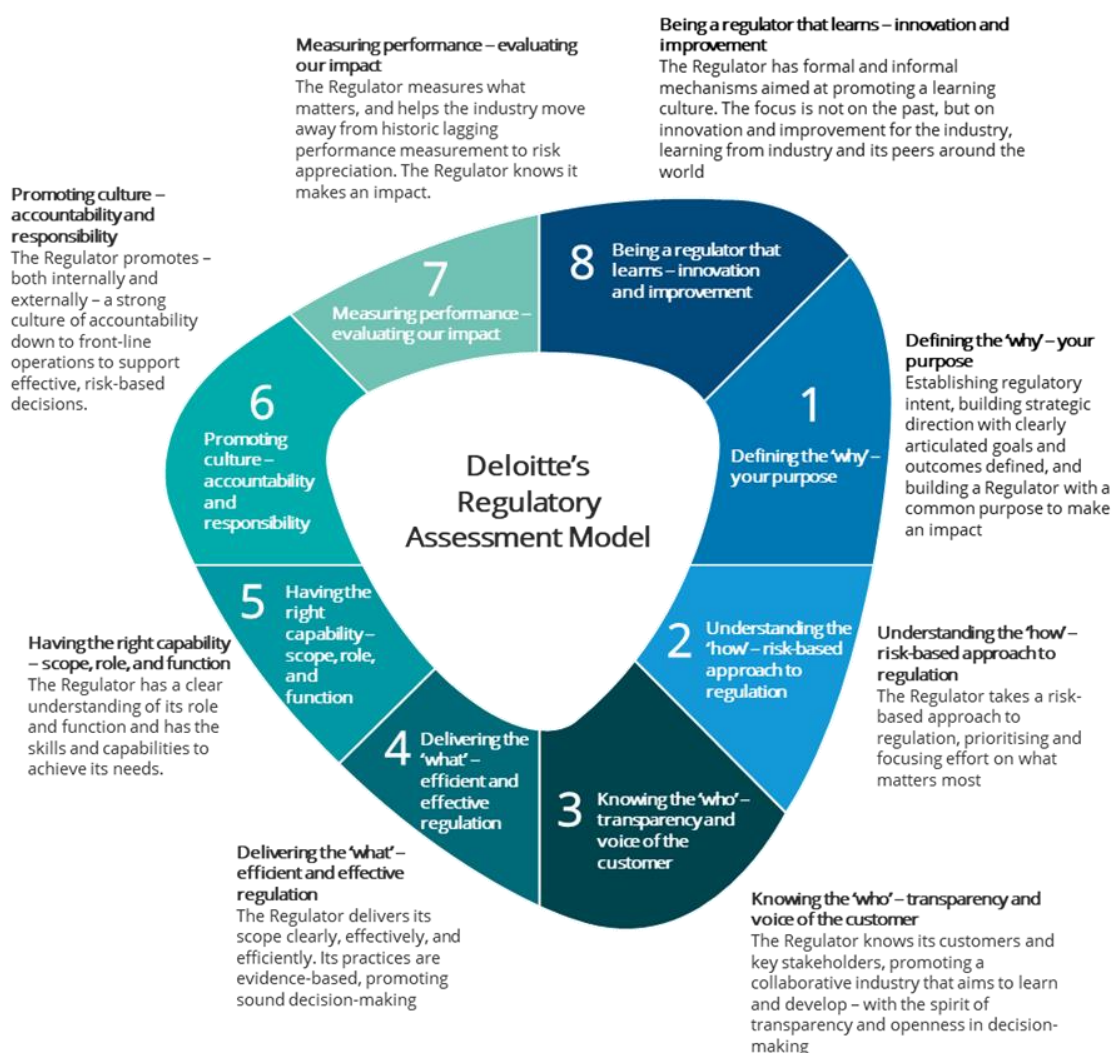
3 Review approach and method

3.1 Review approach

To guide our review, we have utilised Deloitte’s Regulatory Assessment Model. Our model has been informed by:

- Our experience in regulation across a wide-ranging number of industries – from objective and risk-based regulation models to compliance, enforcement -based regulation
- Better practice guides (e.g. ANAO Better Practice Guide for Managing Regulatory Performance)
- Learnings from the Banking Royal Commission, including how the Australian Prudential Regulation Authority (APRA) has altered its approach to regulatory oversight and involvement – resulting in the Governance, Culture, Remuneration, and Accountability framework.

Figure 3.1: Deloitte’s Regulatory Assessment Model



Our review approach centred on the following key activities:

- Interviews with key NOPSEMA personnel, including the CEO, Head of Division - Safety & Integrity, Head of Division – Environment, Head of Division – Regulatory Support, and General Counsel. Refer to **Appendix B** for NOPSEMA personnel interviewed during this review

- Consultation with a broad cross-section of industry stakeholders, including international regulators, titleholders, unions, community, environment, and conservation groups. Our approach to consultation included a detailed industry survey, an industry workshop with participants invited to discuss the current risks and trends facing the industry, and structured interviews. Please refer to **Appendix C** for a listing of industry stakeholders engaged through our consultation process and the consultation methods applied
- Examination of NOPSEMA-provided documentation, including policies, procedures, corporate plans, performance reports, financial modelling workbooks, and other materials. Refer to **Appendix D** for a list of key materials examined
- Detailed walkthrough sessions with NOPSEMA personnel to understand current processes and systems used to discharge its regulatory functions
- Attendance at key meetings or sessions to understand how meetings and decisions are made in the context of its regulatory activities, including attendance at the NOPSEMA Leadership Team meeting and the Compliance Committee meeting held in September 2020
- An interview with the NOPSEMA Advisory Board, including all current members, to discuss the activities of the Board and their current perceptions of NOPSEMA's challenges, its performance and the impact of industry trends
- Independent research and analysis of other jurisdictional approaches to regulation of offshore health and safety, well integrity, or environmental matters.

We provide additional detail on the specific assessment activities undertaken, assessment framework applied, and case studies examined in order to undertake the 2020 Endorsed Program Assessment in **Section 11**.

3.2 Reflecting on past reviews

NOPSEMA, as a regulator, is subject to a wide range of reviews from numerous bodies given its strategic importance in safety, well integrity, and environmental management. To this end, we recognise there are a number of completed reviews or reviews that are currently in progress that have had or will have an impact on the way NOPSEMA operates or regulates. Of note are the 2015 Operational Review, the *Independent review into the circumstances leading to the administration and liquidation of Northern Oil and Gas Australia (NOGA)* (the **Walker Review**) undertaken by Mr Steve Walker, and the review underway on Parts 7 – 10 and Schedules 1 – 5 of the *OPGGS Resource Management and Administration Regulations 2011 (RMA Regulations)*. We also acknowledge the drafting of a policy framework for decommissioning by DISER which, as of writing this report, has not been released for consultation.

Our review does not look to duplicate recommendations from other reviews. Where relevant, we have referenced previous reviews and the applicable findings we agree with, providing endorsement for the direction of the recommendation proposed.

3.3 How to read this report?

Our report has been structured into various sections, which are interrelated – with specific details, findings, and suggestions for government consideration throughout. To achieve the review objectives, the detailed findings section of our report has been structured to align to the following format:

Section	Heading	Description and relevant TOR items
2	Our recommendations and identified opportunities	A consolidated list of our recommendations and identified opportunities
3	Review approach and method	An overview of the review process we undertook to develop the report
4	Understanding the current industry landscape	Identifying the future direction of the offshore industry in Australia, including key implications for NOPSEMA
5	How does NOPSEMA enable improvements in industry?	TOR 1
6	How does NOPSEMA effectively regulate and uses its powers?	TOR 4

Section	Heading	Description and relevant TOR items
7	How does NOPSEMA regulate and respond to industry through its capability and capacity?	TOR 11
8	How does the NOPSEMA Advisory Board enable NOPSEMA to carry out its functions?	TOR 7
9	How does NOPSEMA effectively engage with external parties to improve regulatory outcomes and build community confidence?	TOR 5, TOR 8, and TOR 9
10	How efficient is NOPSEMA, and how does it reduce burden for industry and recover costs?	TOR 10 and TOR 12
11	2020 Endorsed Program Assessment	TOR 2 and TOR 3
12	Strategic matters: Looking to the future industry	A look ahead to addressing key industry trends and shifts and the potential impacts of the offshore legislative framework

TOR 6 has been examined as part of all relevant sections. We have collated the status of progress against recommendations made in the 2015 Statutory Review of NOPSEMA in **Appendix E**.

All charts, tables and figures with the source listed as *“Deloitte analysis adapted from NOPSEMA data”* are a reproduction of information using data from NOPSEMA provided to Deloitte as part of this review.

All monetary figures contained within this report are in Australian Dollars unless otherwise specified.

4 Understanding the current industry landscape

Key points

The Australian offshore industry is maturing and will become increasingly complex

The report should be considered in light of future industry directions. Whilst the review is necessarily ‘backwards looking,’ the recommendations we make and our observations have been informed by where we think the industry, and therefore NOPSEMA, will shift to in future.

Within the industry, cost pressures, economic uncertainty, and a decommissioning ‘wave’ all serve to create a challenging environment for operators and the government bodies with responsibility for overseeing the industry. These challenges occur against the backdrop of pressures to decarbonise and the energy transition.

As the industry matures, we expect to see divestments from Australia by larger operators and the subsequent entry of smaller operators looking to manage increasingly marginal fields. There will be an increase in transaction and decommissioning activity. As a consequence, there will also be new risks for industry and the Government to oversee. The expertise, knowledge and skillset required to effectively navigate many of these risks may need to be globally sourced.

As the result of a myriad of factors, each interconnected, we expect the industry activities and regulatory activities to increase in complexity.

Offshore GHG functions overseen by NOPSEMA are an emergent industry

NOPSEMA also oversee an emergent industry in offshore GHG storage. At this stage, only four GHG storage titles have been awarded, all in the state of Victoria. Demand from industry and therefore NOPSEMA’s capability and capacity requirements in this space are not fully known. The aforementioned drive to decarbonise and shift to cleaner forms of energy production may stimulate future demand for GHG storage activities.

There are clear implications of the future industry for NOPSEMA to consider now

Implications we have identified include:

- Importance of reducing regulatory burden and streamlining regulatory processes, where appropriate, to support an industry facing cost pressures from economic headwinds whilst ensuring adherence to safety and environmental regulations
- Ability to be agile and adaptable to changing industry characteristics, policy, and legislation
- Ability to raise safety and environment performance of an industry that will become more diverse, fragmented and cost-focused over time
- Need for greater collaboration and integration across Government to address strategic industry challenges in relation to supporting the prudent and efficient management of decommissioning
- Ability to rapidly develop new or enhance existing capabilities, people, systems and processes to support changes noted above
- A sustainable way to manage regulation of a maturing industry (petroleum) and emerging industry (GHG storage), particularly where cost recovered revenue may come under pressure
- A sustainable and transparent approach to engaging with a diverse and increasingly complex stakeholder ecosystem.

This section seeks to lay the foundation for what the future of the industry NOPSEMA regulates might look like and what we must consider in making our recommendations. We begin in **subsection 4.1** with a discussion of the industry landscape as we see it evolving including the likely trends and risks of a maturing petroleum industry. In **subsection 4.2** we identify the implications of these shifts for NOPSEMA and therefore what factors NOPSEMA and the broader offshore legislative framework might be required to address. We conclude this section with a discussion in **subsection 4.3** on GHG storage – an emergent industry NOPSEMA oversees.

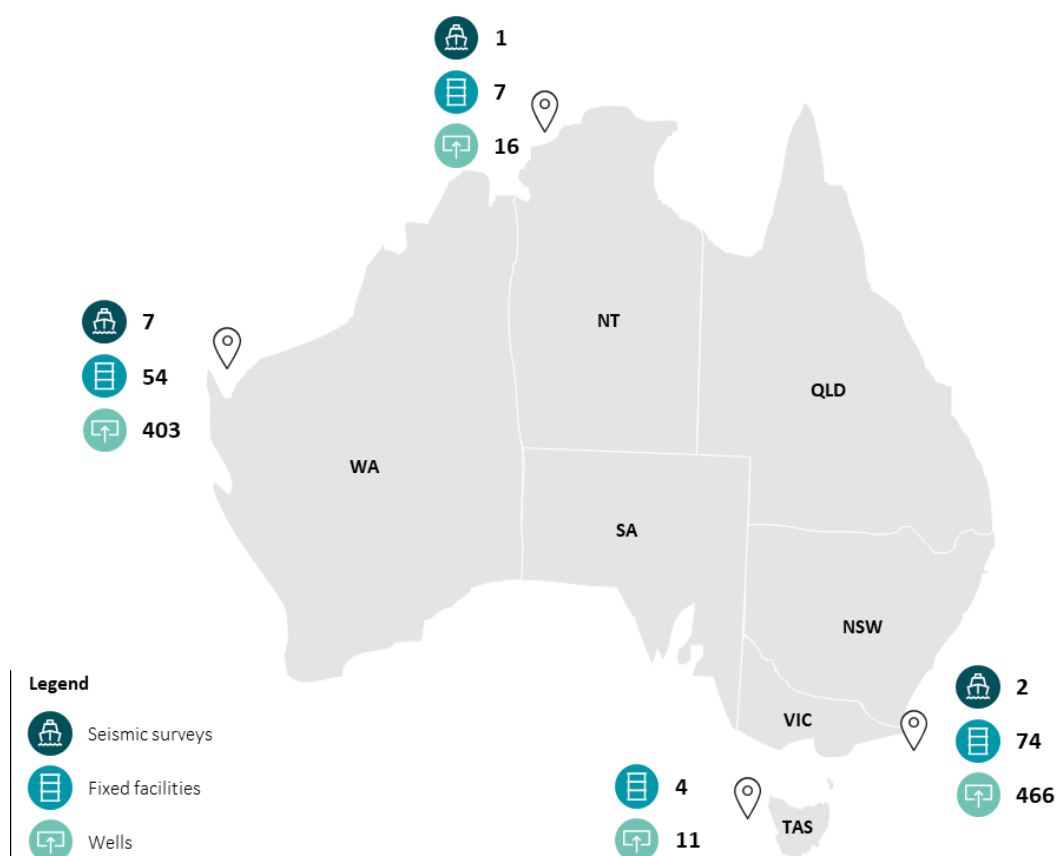
4.1 The industry landscape moving forward

Our report is anchored on key implications from broader industry strategic shifts

We open this section of the report with a discussion of the offshore industry's landscape and an identification of the key challenges it faces as it matures. This reflects our view that Australia's offshore petroleum industry is at a critical juncture, and therefore, so too is NOPSEMA as its regulator. It is our fundamental belief that this report's findings must reflect and be cognisant of the industry, as well as advancements in practices more broadly as, increasingly, the industry's future is intertwined with adjacent developments.

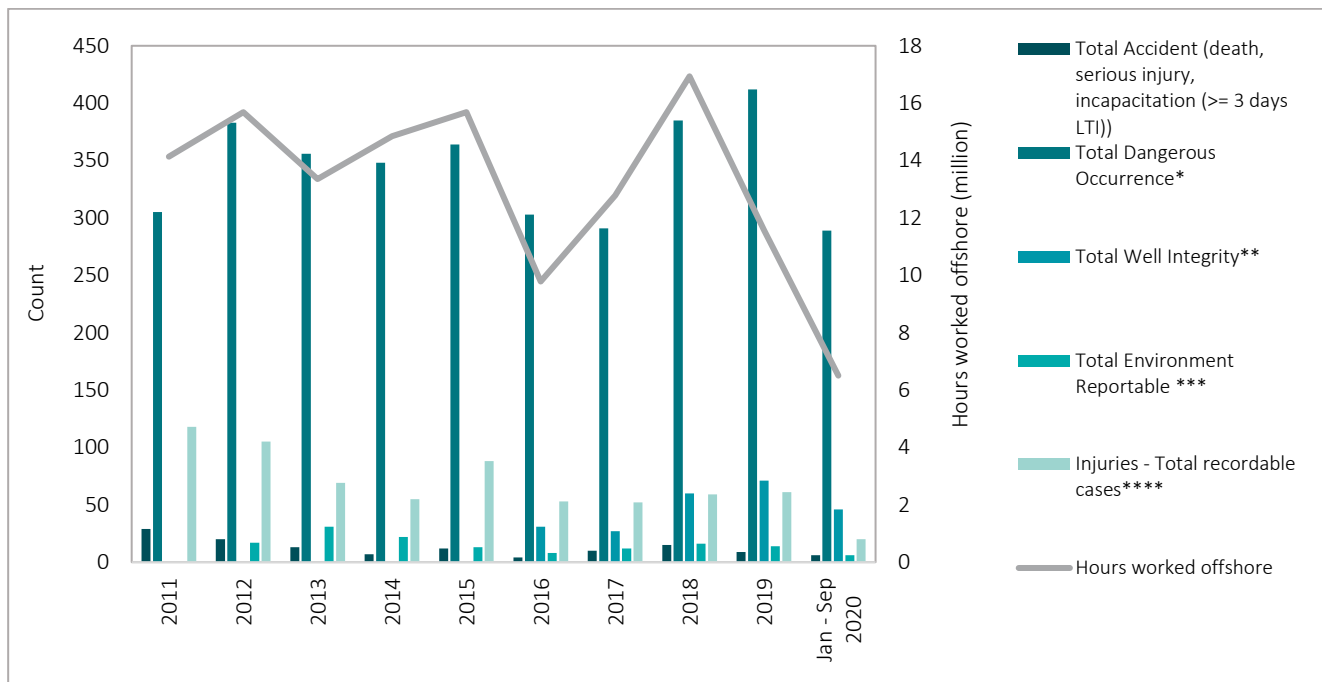
Australia has a significant geographic spread of assets. For example, the marine area under title that NOPSEMA oversees is approximately 552,383km²⁸. Referring to **Figure 4.1**, the majority of offshore activity is concentrated in Western Australia and the South East of Australia. **Figure 4.2** illustrates the offshore industry's performance from a safety and environmental outcomes perspective. While zero harm is the ultimate objective, overall, there is no discernible worsening trend of incidents of injuries based on the data presented to us across the review period.

Figure 4.1: Offshore industry activity map as at 30 June 2020



Source: NOPSEMA annual report 2019-20

⁸ NOPTA, 2020.

Figure 4.2: Offshore industry health, safety, and environmental incidents and injuries and hours worked offshore

*Total of: collision marine vessel and facility; could have caused death or serious injury; could have caused incapacitation >= 3 days LTI; damage to safety-critical equipment; fire or explosion; other kind needing immediate investigation; pipeline - kind needing immediate investigation; pipeline - significant damage; uncontrolled HC release >1 - 300 kg; uncontrolled HC release >300 kg; uncontrolled PL release >80 - 12 500 L; unplanned event - implement emergency response plan; well kick >50 barrels

**Total of: WI - loss of integrity - >1 kg gas released; WI - loss of integrity - >80 L liquid released; WI - failure of hydrostatic pressure - BOP closure and positive well pressure; WI - loss of integrity - well-related equipment damage or failure; WI - potential loss of integrity - well-related equipment damage/failure; WI - any other unplanned occurrence to regain control of the well. Notification, reporting and recording requirements for titleholders in relation to WI incidents came into effect on 1 January 2016 through amendments to Part 5 of the Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011. Consequently, as of Q1 2016, NOPSEMA has commenced publishing WI incident data as a category in its own right

*** EM - hydrocarbon vapour/petroleum liquid release; EM - chemical release; EM - drilling fluid/mud release; EM - fauna incident; EM - other





























**** Total recordable cases is the sum of fatalities, major injuries, LTIs, ADIs and MTIs.

Source: Deloitte analysis adapted from NOPSEMA data

In the short term, the industry will need to manage significant cost pressures and economic uncertainty, which are in part the result of COVID-19, recent and repeated oil price shocks, and existing pressures to reduce emissions. Over the medium term, a maturing industry and an aging asset base creates challenges for administrators, policymakers, regulators, and industry alike through a need to prudently and efficiently manage increased transactional and decommissioning activities. Maintaining community confidence in the offshore legislative framework to manage these changes will be essential. Furthermore, the transition to a lower carbon energy future is a key issue for the industry and the Government to manage. Underpinning each of these, there are heightened demands from stakeholders for transparency, engagement, and accountability by the industry and government bodies who oversee it.

As part of our review process we undertook a horizon-scanning workshop with industry stakeholders to identify key risks and trends. A summary of these risks and trends, as well as several we have identified, are outlined in **Figure 4.3**. This is not an exhaustive list but does serve to underscore the array of risks and trends facing the industry.

Figure 4.3: Summary of key risks and trends impacting NOPSEMA

	STRATEGIC	HEALTH & SAFETY	ENVIRONMENTAL	OTHER
MACRO TRENDS	 Global energy demand is expected to increase  Increasing technological innovation and use of data	 Uncertainty, COVID-19, and health/economic impacts	 Climate change and increasing pressure to decarbonise	 Risk of 'black swan' events
INDUSTRY SPECIFIC TRENDS	 The decommissioning wave and an aging asset base  Risks of under or over stakeholder consultation (e.g. fatigue)  Industry talent loss and scarcity of qualified resources  Potential for reduced exploration activity  Risks and opportunities from new technology (incl. cyber security)  Risk of Australia not being seen as attractive for investment  A more fragmented industry with shrinking margins	 Changing capabilities required as the industry matures  Risks associated with cost pressures on operators (reduction in maintenance)  Mental health risks to the offshore workforce  Differing views and definitions of ALARP/acceptable  Industry job insecurity/uncertainty  Impacts from not following a risk-based approach	 Alternative offshore energy solutions  Decommissioning impacts on the environment  Potential risks from seismic survey activity  Risks from GHG emissions and changing regulation for the sector  Risks from oil spills or other environmental impacts of oil and gas activities	 Adaptability of regulation/legislation to change  Increased use of new technologies for regulation  Changing expectations by regulators and stakeholders  Shifting social trends, reputational risk, and transparency demands  Increasingly more connected and collaborative ecosystem

Source: Industry Workshop, Deloitte analysis

The Australian offshore industry is maturing and will become increasingly complex

Australia's petroleum industry is now well established. Moving forward, it is unlikely there will be the same scale of greenfield investment in offshore petroleum activities seen over the past two decades. What does a maturing industry practically mean for Australia's offshore petroleum industry and the Government? To help answer this, we have looked to markets that are at more advanced stages of the industry lifecycle, specifically the United Kingdom and Norway.

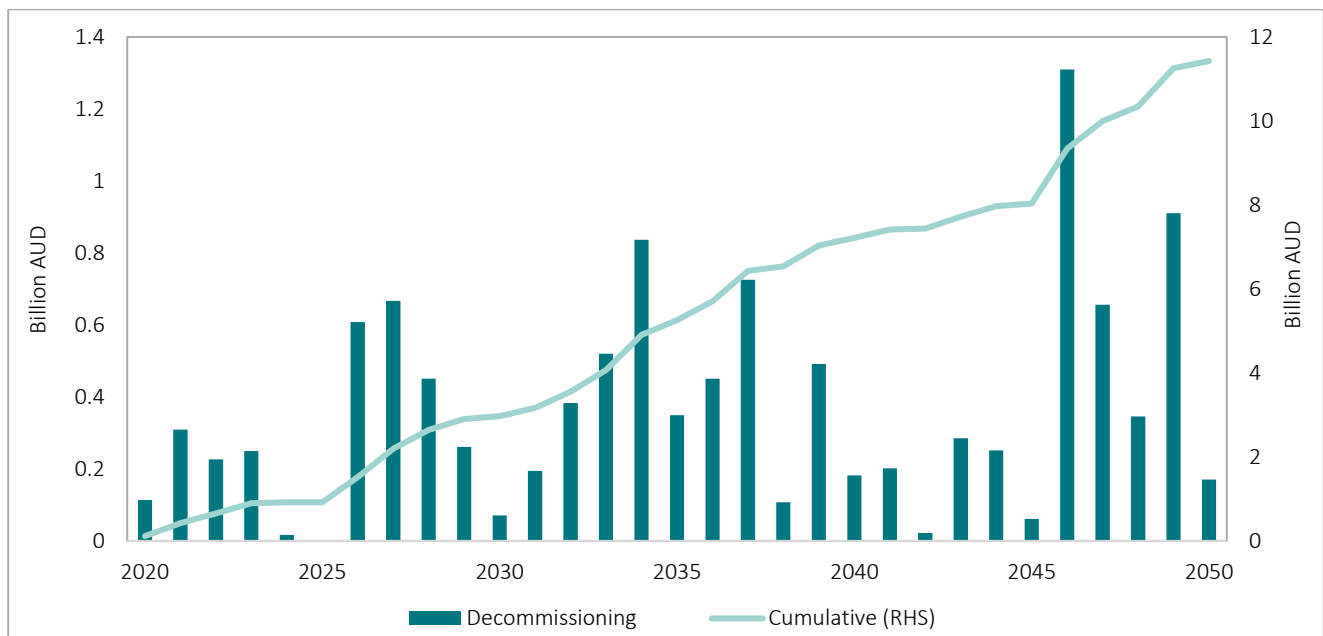
Through our discussions with NOPSEMA's and NOPTA's international peers, it was identified that in a more mature industry:

- Large offshore operators tend to divest aged assets as their cost structures best align to long-lived, highly productive assets that can be operated to take advantage of significant economies of scale
- Larger operators will attract the entry of smaller operators looking to manage late-life marginal production assets. These smaller operators will typically have lower overheads, but also smaller balance sheets, and so will likely have less financial capacity to fund investment associated with ongoing asset maintenance and decommissioning

- The entry of smaller operators into the industry and the stimulation of an active mergers and acquisitions (M&A) environment is necessary to foster the ongoing optimal recovery of assets. The clarity, consistency and timing of approval processes underpinning M&A activities also become increasingly important
- As the assets age, there is a need for greater government-led industry coordination in order to optimally recover resources in accordance with good oil field practice. The offshore legislative framework needs to place greater emphasis (and therefore resourcing) on activities that proactively influence industry to meet this aim. There may be significant lost economic value for Australia should resources not be optimally recovered through the industry's full lifecycle
- With more offshore assets reaching the end of their economic life, there will be a sharp increase in both transaction and decommissioning activity. For example, **Figure 4.4** illustrates one estimate that the total forecast decommissioning liability for all offshore facilities is expected to exceed \$11 billion by 2050. We consider this to be a highly conservative estimate. The industry will need to build the capability and capacity to manage this end-of-life phase and regulators will need to ensure this is undertaken in a prudent and efficient manner that manages safety and environment risks
- Asset ownership is likely to fragment and with increasing fragmentation comes a more complex stakeholder ecosystem to manage
- As the operating margins of late life assets decline, the industry's focus will become increasingly 'commercial' in an effort to profitably recover resources from declining and marginal operations. Operators run increasingly lean maintenance schedules and may look to defer maintenance, which can have associated health and safety risks. In addition, price volatility and cyclical nature could influence operators' decommissioning timetables significantly
- Reducing regulatory burden has a proportionately larger financial impact on the profitability of mature assets and, therefore, has a greater relative importance for these operators
- As a result of the above factors, there is a general increase in the complexity of safety and environmental regulatory activities and arguably greater oversight required. As a consequence, while industry production levels decline, there may not be a corresponding immediate reduction in the required regulatory activities in inspections. Permissioning document assessment volumes may decrease somewhat, but variations to permissioning documents and the large number of expected transactions may offset decreases in 'new' permissioning documents.

Australia's offshore industry, while maturing, still has a number of early-to-midlife assets. Therefore, NOPTA and NOPSEMA oversee an industry which could be described as a 'two-stage' industry.

Figure 4.4: Forecast decommissioning liability for offshore facilities in Australia between 2020 and 2025



Includes all facilities 'offshore' (i.e. inclusive of facilities within three nautical miles of the Australian coastline) and includes all includes subsea tieback, floater and fixed facilities; based on an exchange rate of AUD to USD of 1.416:1

Source: Rystad Energy, Deloitte analysis

The factors outlined above present challenges for industry and the Government alike. We are already seeing a number of large operators seeking to exit mature areas (e.g. ExxonMobil and BHP in the Bass Strait and ENI looking to divest its Northern Australia

assets⁹). Moreover, the events surrounding the Northern Endeavour Floating Production and Storage Offtake facility and the broader Laminaria-Corallina fields are an early indicator of the challenges ahead. The Government has begun developing a draft decommissioning framework for consultation with industry. At the time of writing this report, the draft framework had been released for public consultation but the government had not made any final decision. The need for a cohesive administrative, policy, decision-making, and regulatory approach is an imperative.

4.2 Implications for NOPSEMA

There are clear implications of the future industry for NOPSEMA to consider now

At some level, each factor mentioned above has ramifications for the future of NOPSEMA. We briefly outline key implications below. Our report must be read with these factors and their implications in mind – they underpin many of our observations and recommendations. We dedicate the final section of our report to examining strategic issues in greater detail.

Key implications for NOPSEMA include:

- Importance of reducing regulatory burden and streamlining regulatory processes, where appropriate, to support an industry facing cost pressures from economic headwinds whilst ensuring adherence to safety and environmental regulations
- Ability to be agile and adaptable to changing industry characteristics, policy, and legislation
- Ability to raise safety and environment performance of an industry that will become more diverse, fragmented and cost-focused over time
- Need for greater collaboration and integration across Government to address strategic industry challenges in relation to supporting the prudent and efficient management of decommissioning
- Ability to rapidly develop new or enhance existing capabilities, people, systems and processes to support changes noted above
- A sustainable way to manage regulation of a maturing industry (petroleum) and emerging industry (GHG storage), particularly where cost recovered revenue may come under pressure
- A sustainable and transparent approach to engaging with a diverse and increasingly complex stakeholder ecosystem.

4.3 Offshore GHG storage

Offshore GHG functions overseen by NOPSEMA are an emergent industry

NOPSEMA oversees what might be described as a second or adjacent industry: the GHG/Carbon Capture and Storage (CCS) emergent industry. The Joint Authorities have granted four GHG storage titles. At this stage, Australia's offshore CCS/GHG storage industry is in the early stages of progressing commercial scale applications as a key climate change mitigation strategy. The CarbonNet Project, which aims to establish a commercial-scale CCS network in Victoria, Australia, has an approved environment plan in place with NOPSEMA (approved in April 2019). Overall, it is unclear of the extent or timing of future demand for CCS/GHG storage and therefore the volume of administrative or regulatory oversight required. Demand will be dictated by a number of factors including the ability to commercialise technologies and government policy.

⁹ This is at the time of writing the report.

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Detailed findings

5 How does NOPSEMA enable improvements in industry?

Key points

NOPSEMA's role is not well understood by stakeholders

Through our stakeholder consultation, we identified a lack of understanding of the roles, responsibilities, and functions of the various arms of the offshore legislative framework by stakeholders. This is a common finding in regulatory frameworks. A misunderstanding of NOPSEMA's role may serve to create expectations of its functions that it simply cannot meet. More active communication of all parties' roles, responsibilities, and functions are required.

NOPSEMA contributes to desired regulatory outcomes

Our analysis shows that NOPSEMA is making a positive contribution to enabling safety, well integrity, and environment outcomes in the industry. We temper this view with the caveat that it is challenging to measure the precise contribution of a regulator in this context.

Stakeholder perception is that NOPSEMA has generally made a strong contribution to fostering a positive safety culture in the industry, facilitating proactive and preventative approaches to environmental management, and enabling continual improvement in safety and environmental management of the industry.

There were competing views, however, with some stakeholders claiming that a perceived 'overly prescriptive approach' by NOPSEMA to regulation has detracted focus from managing the risks that matter most. We discuss the challenges with permissioning documents in **Section 6**.

NOPSEMA's regulatory strategy is unclear

NOPSEMA does not have a published 'regulatory strategy', instead publishing a 'corporate plan'. Such a strategy should articulate how its activities are tied to the overarching requirements of the OPGGS Act; demonstrating its goals, focus areas and measures of success. Therefore, currently there is no established or clear definition of success for NOPSEMA as the regulator. An improved clarity of intent to industry and other stakeholders may remove some of the negative perceptions about NOPSEMA.

Through our conversations with NOPSEMA's leadership and stakeholder feedback received from industry, there is more work that can be done to promote a risk-based intent and focus by NOPSEMA. A next step of NOPSEMA's transparency journey is to encourage greater industry collaboration for the identification of industry risks and trends (both opportunities and threats) to inform strategic direction but also drive a common ground across the industry. As the industry matures, a more prospective view of shared risks and trends will become increasingly important.

Recommendations: 1, 2

Opportunities: No opportunities were identified in this section

This section examines whether NOPSEMA is effective in bringing about improvements in OHS, well integrity, and environmental outcomes. We begin in **subsection 5.1** with a discussion of NOPSEMA's functions under the OPGGS Act and stakeholders' understanding of these functions. **Subsection 5.2** seeks to answer the questions of 'what is performance in NOPSEMA's context' and 'how is NOPSEMA performing under this definition'. This section concludes with a discussion in **subsection 5.3** on NOPSEMA's strategic approach and improvements that could be made.

5.1 NOPSEMA's functions

Part 6.9 of the OPGGS Act establishes NOPSEMA. NOPSEMA has functions in relation to the occupational health and safety of persons engaged in offshore petroleum operations, offshore GHG storage operations, the structural integrity of facilities, wells, and well-related equipment, and environmental management. Importantly, NOPSEMA as the offshore legislative framework's sole regulator is independent of the administrative, policy, and decision-making arms of the framework.

"NOPSEMA regulates all offshore areas in Commonwealth waters, which comprise those areas beyond the first three nautical miles of the territorial sea. This includes the Ashmore and Cartier offshore territories and offshore areas adjacent to all states and the Northern Territory.

NOPSEMA also regulates all offshore areas in coastal waters where a state or territory has conferred regulatory powers and functions. In jurisdictions where powers to regulate are not conferred, regulatory responsibilities remain with the relevant state or territory. In 2013, Victoria conferred its functions for the regulation of health and safety and structural integrity on NOPSEMA¹⁰."

NOPSEMA operates from two sites, Perth and Melbourne, to be co-located, where possible, with the industry. The majority of NOPSEMA personnel are based in Perth. NOPSEMA has no regional offices, with inspectors traveling to remote operations as required.

NOPSEMA's role is not well understood by stakeholders

An important premise is that NOPSEMA's activities in the offshore industry is driven by its functions as specified by section 646 of the OPGGS Act. The Statement of Expectations issued by the Commonwealth Minister in October 2019 (the **Minister's Statement of Expectations**) summarises some of NOPSEMA's legislated functions, as outlined by the OPGGS Act, to:

- Develop and implement effective monitoring and enforcement strategies to secure compliance by persons with their obligations under the OPGGS Act and Regulations, and other applicable laws
- Investigate accidents, occurrences and circumstances relating to OHS, well integrity, and environmental management
- Promote the OHS of persons involved in offshore petroleum operations and offshore greenhouse gas storage operations
- Advise on matters relating to OHS, well integrity, and environment
- Make reports, including recommendations, to the Commonwealth Minister and each responsible State/Northern Territory Minister
- Cooperate with the NOPTA in matters relating to the administration and enforcement of the OPGGS Act and regulations
- Cooperate with other Commonwealth, state, and Northern Territory agencies or authorities having functions relating to regulated operations.

As part of our stakeholder consultation with industry, we identified a lack of understanding of NOPSEMA's role in the broader context of the offshore industry. For example, there is a misconception that NOPSEMA's role is a policy maker (which is the role of DISER's Offshore Resources Branch), with approximately 40% of respondents to our survey erroneously identifying NOPSEMA as responsible for developing and maintaining policy (see **Table 5.1**). A potential factor exacerbating misunderstanding is that NOPSEMA publish their own 'policies' on their website – the hallmark of regulatory transparency – but potentially confusing to stakeholders in their terminology (i.e. confusion between 'NOPSEMA policy' (operational policy) and 'Australian Government policy' (strategic policy)).

Our survey findings were reinforced through a number of interviews we held with stakeholders – where criticisms were made of NOPSEMA on matters that were outside the scope of their functions under the OPGGS Act. NOPSEMA confirmed challenges with stakeholder education of their role and function and our overall view is that NOPSEMA's role is not well understood. A key focus of NOPSEMA's *Communications Strategy* is building stakeholder understanding of the boundaries of NOPSEMA's remit.

¹⁰ NOPSEMA, 2020. See: <https://www.nopsema.gov.au/about/>

Table 5.1: Survey responses to NOPSEMA's functions under the OPGGS Act

NOPSEMA's functions specified in the OPGGS Act (section 646)	% of stakeholders who selected the item as a legislated role of NOPSEMA	NOPSEMA's functions as defined by the OPGGS Act?
Develop and implement effective monitoring activities for occupational health and safety of persons engaged in offshore petroleum operations	73.7%	Yes
Investigate all accidents and incidents relating to OHS, structural integrity of facilities and wells, and environmental management	68.4%	Yes
Develop and implement effective monitoring activities for greenhouse gas storage operations across the offshore petroleum industry	63.2%	Yes
Assess and make decisions in accordance with legislated criteria	63.2%	Yes
Provide recommendations to the responsible Commonwealth minister and each state and Northern Territory minister as appropriate	59.6%	Yes
Develop and maintain government-related policies on offshore safety and environmental management	43.9%	No
Developing and maintaining legislation and regulations relating to the offshore petroleum industry	28.1%	No

Source: Deloitte Stakeholder Survey, Deloitte analysis

Based on our examination, NOPSEMA has taken an active to ensure it is transparent and engages with industry in a proactive manner, we see there is work required to address a lack of understanding as to the role NOPSEMA actually plays (and just as important, it does not play) in the regulation of the offshore industry. It is important that these communication messages are consistent with and reinforce other communications by the administrative (NOPTA) and policy (DISER Offshore Resources) arms of the offshore legislative framework.

Based on our examination of information on the NOPSEMA, DISER, and NOPTA websites, there appears to be a lack of publicly available information to guide stakeholder understanding of NOPSEMA's role in the broader offshore legislative framework and how it intersects with the policy development, decision-making, and administrative arms of the regime. We note this finding is not isolated to NOPSEMA – we found a similar finding across all arms of the offshore legislative framework – and the Government should seek to address gaps in understanding across the regime to ensure clear and achievable expectations are set.

Recommendation #1

The Government should engage with industry and adjacent stakeholders to develop a clear and common understanding among these groups of the various roles, powers, and functions of the administrative, regulatory, policy, and decision-making facets of the offshore legislative framework.

Through implementing this recommendation, the Government could develop and disseminate information that clarifies what NOPSEMA does not do (e.g. development of policy), which is as important as what it does do. Some factors to consider include:

- The role NOPSEMA plays in policy decisions
- The role NOPSEMA plays in acreage release and titles administration
- How overlapping powers with the administrative and policy bodies (e.g. DISER and NOPTA) work and who is responsible for what
- How the various parties and stakeholders in industry work together to achieve desired and planned outcomes.

5.2 What is performance for a regulator?

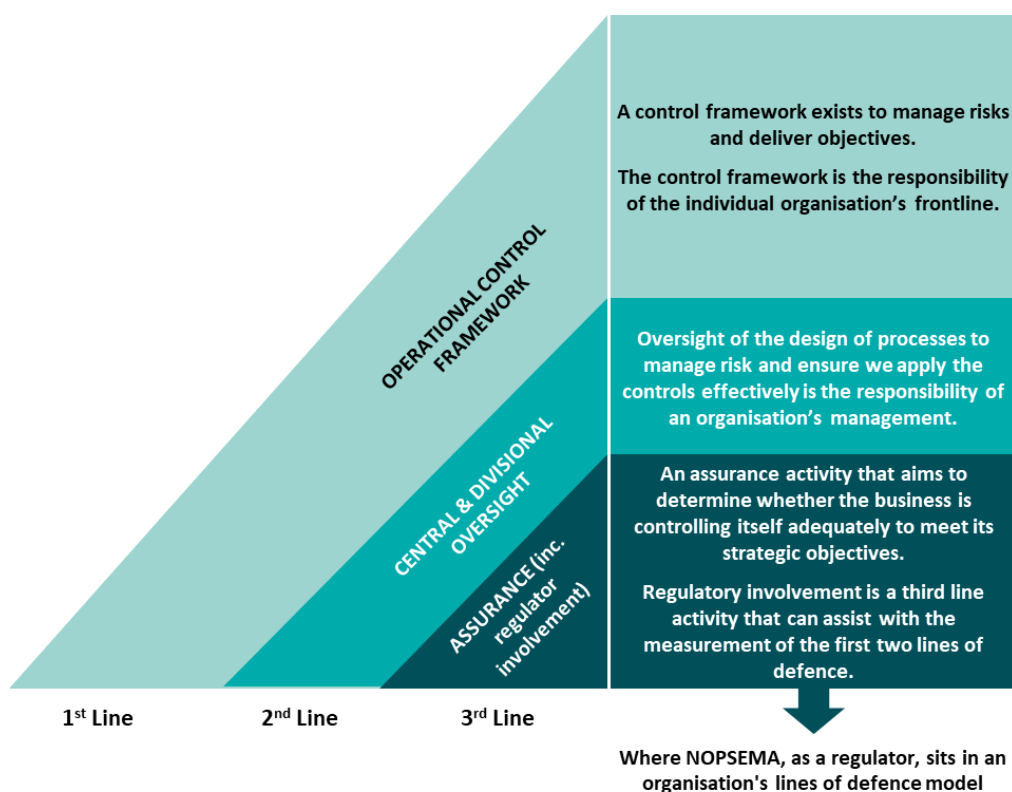
Performance for a regulator is arguably a simple one – has it successfully delivered the policy objectives and regulatory outcomes sought? While overly simplistic, it can be a good high-level measure, but it is hard to quantify.

For NOPSEMA, the above simplistic definition would mean a measure of “has NOPSEMA prevented harm to workers and the environment in the offshore petroleum industry in Commonwealth waters?” While NOPSEMA does have an important role and contribute to the overall health, safety and environment management, they cannot claim all the credit for industry performance since NOPSEMA is just one component of the risk framework that manages OHS, well integrity, and environment risk in the industry.

Figure 5.1 outlines the three lines of defence (3LOD) model that is commonly used in risk management and assurance activities. The model articulates 3LOD that prevent a risk event occurring as well as providing an organisation’s decision-makers with information to enable robust and well-considered action. The figure shows, through the size of the ‘wedge’, where the majority of effort should be applied by an organisation – with the third line being the smallest.

Conceptually, in a 3LOD model, regulator involvement, whether it is audits, supports education, or conducts inspections or investigations sit in the third line and help inform the first two lines.

Figure 5.1: Three lines of defence model

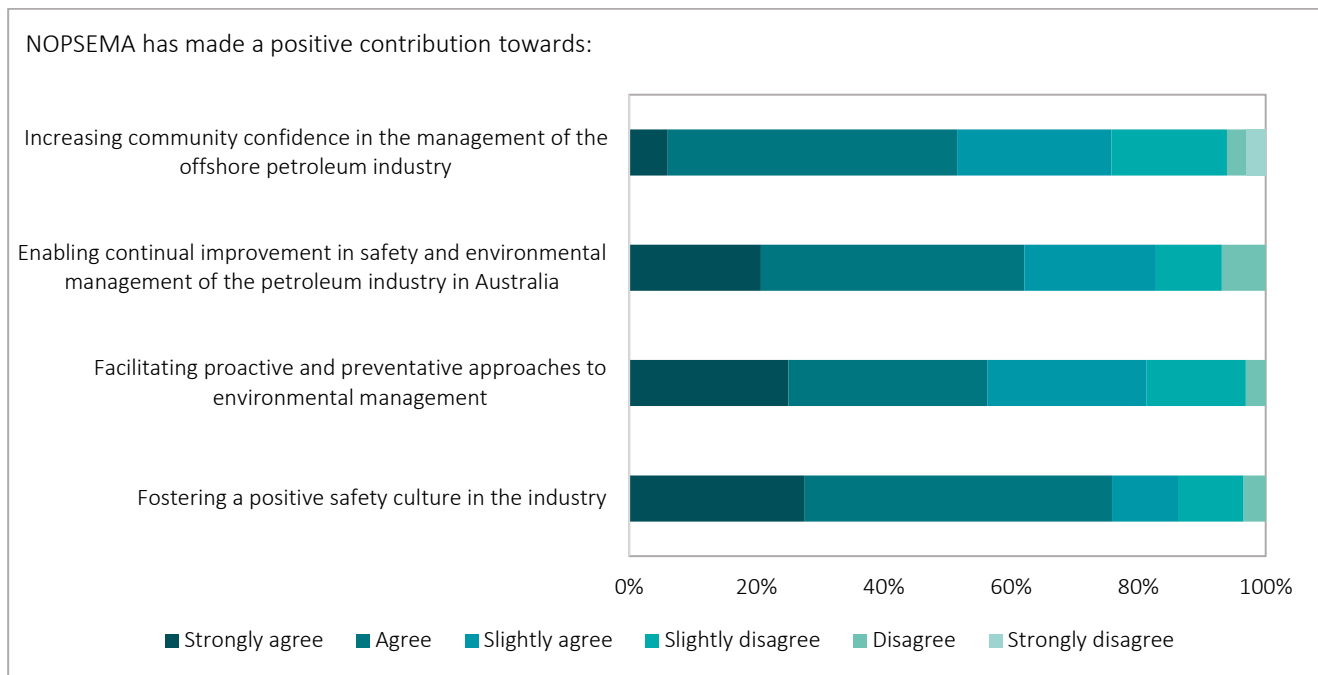


Source: Deloitte

It is primarily the responsibility of industry – and specifically those charged with the 1LOD of front-line operations responsibility to implement measures that reduce risk and the propensity for harm within its business. The 1LOD has a strategic control framework to promote safe systems of work and safe workplaces. NOPSEMA can provide guidance, influence decision-makers, enforce specific actions to be undertaken or prosecute those that they have reasonable cause to believe have failed to live up to their legislative duty and community expectations, but it can only be a third line of defence. Primary responsibility remains with organisational management.

Stakeholders tend to view NOPSEMA as making positive contribution to desired outcomes

On balance, stakeholder perception is that NOPSEMA has made a positive contribution to fostering a positive safety culture in the industry, facilitating proactive and preventative approaches to environmental management, and enabling continual improvement in safety and environmental management of the industry (see **Figure 5.2**, below). There were competing views, with some stakeholders claiming that a perceived ‘overly prescriptive approach’ by NOPSEMA to regulation has detracted focus from managing the risks that matter most. We address this perception in further detail in **Section 6**.

Figure 5.2: Survey responses to NOPSEMA’s contribution towards desired regulatory outcomes

Source: Deloitte Stakeholder Survey, Deloitte analysis

5.3 NOPSEMA’s strategic regulatory approach

NOPSEMA’s regulatory strategy is unclear

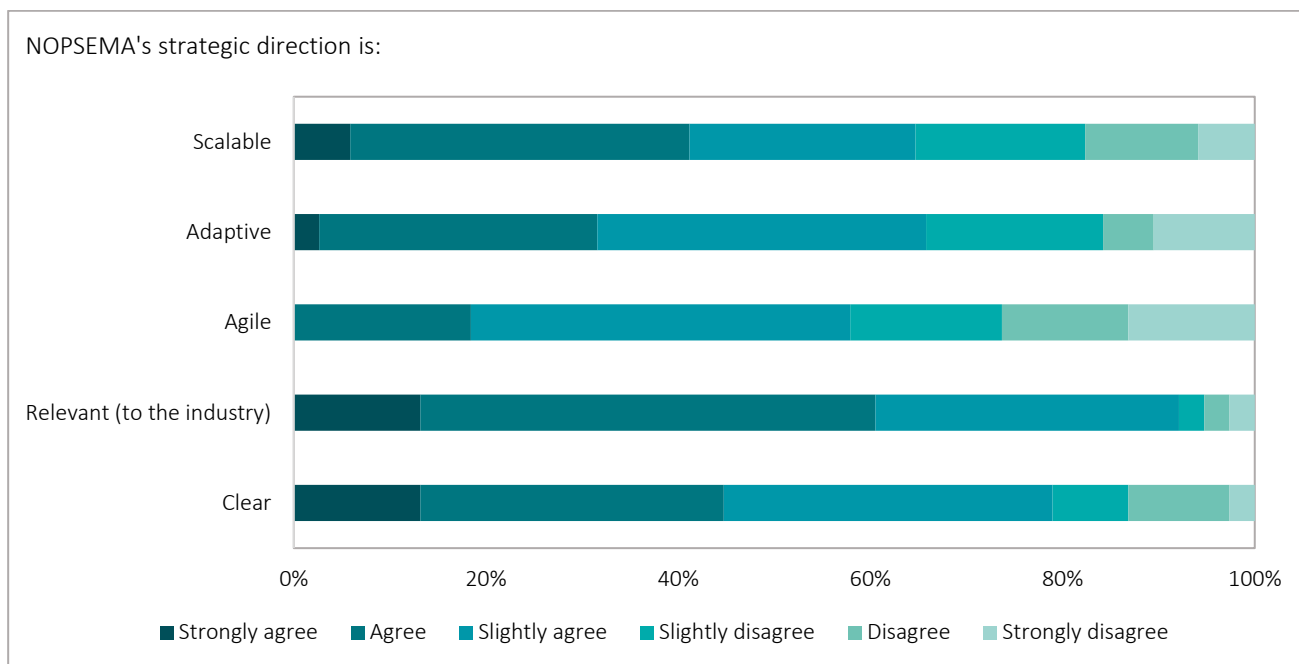
NOPSEMA has developed and published its *Corporate Plan 2020-2025 (Corporate Plan)*, which articulates its focus areas and goals for the period, tied to its *Regulatory Performance Framework (RPF)*. The Corporate Plan is underpinned by a vision of “a protected offshore workforce and environment” and a purpose “to assure the protection of lives and the environment”. The vision and purpose are delivered through an approach of influence, oversee, and enforce.

The key focus areas for the Corporate Plan include:

- Preventing Major Accident Events
- Preventing loss of well control
- Effective oil pollution emergency preparedness
- Responsible asset stewardship.

NOPSEMA does not have a published regulatory strategy, through which its activities are tied to the overarching requirements of the OPGGS Act; demonstrating its goals, focus areas and measures of success. Therefore, there is no established definition of success. There are Corporate Plans and reports demonstrating success of outputs (and not necessarily outcomes) and focused performance measures tied to RPF, however they do not tie to the principal question ‘why does NOPSEMA exist?’. We distinguish here between a regulatory strategy and an organisational strategy. The latter outlines how the organisation of NOPSEMA (its capabilities, processes, governance, and people) will position itself to successfully deliver the ‘external facing’ regulatory strategy (which outlines what target outcomes are sought with regards to safety, well integrity, and environment).

A set of questions were asked of stakeholders through our survey regarding NOPSEMA’s strategic direction (**Figure 5.3**). The overriding theme was that stakeholders (across all segments surveyed) generally perceived limited visibility and transparency of NOPSEMA’s strategic direction. Comments like “NOPSEMA’s strategic direction is very inwards-focused and doesn’t reflect emerging trends and the needs for a regulator to adapt” demonstrate the sentiment from industry. This was also echoed through our interviews with industry stakeholders.

Figure 5.3: Survey responses to NOPSEMA's strategic direction

Source: Deloitte Stakeholder Survey, Deloitte analysis

Although NOPSEMA does publish its Corporate Plan and provide a forward view of its strategic areas of focus to APPEA and through engagements with titleholder executive teams, stakeholder feedback would suggest NOPSEMA's strategic direction is not clearly or actively communicated enough. A transparent regulatory strategy is imperative for NOPSEMA in a cost recovered environment, as it provides a foundation through which NOPSEMA can communicate its intent and for industry to understand the regulator's focus. We suggest that greater clarity of intent to industry would remove some of the negative perceptions about the regulator.

Also, through our conversations with NOPSEMA leadership and stakeholder feedback received, there is more work that can be done to promote a risk-based intent and focus by the regulator. We acknowledge the considerable work done by NOPSEMA to internally understand the risks inherent in industry, and the work NOPSEMA does to promote and collaborate with industry. However, the next step of NOPSEMA's journey to increase transparency is to encourage greater industry collaboration for the identification of industry risks and trends (both opportunities and threats) to inform strategic direction but also drive a common ground across industry players. The Corporate Plan has very little risk-based information captured to demonstrate the regulatory intent and focus for the period – and the outcome achieved through which the regulator and the industry can hold themselves to account in the promotion and protection of workers and the environment in the offshore industry.

Recommendation #2

NOPSEMA, in consultation with the Minister and in alignment with the OPGGS Act, should develop a regulatory strategy (or update its current Corporate Plan document/approach) to reflect the broader risks and trends of the industry, how NOPSEMA is responding, and its role in influencing, overseeing, and enforcing expectations with industry.

Supporting performance measures for the above regulatory strategy should be SMART (Specific, Measurable, Achievable, Relevant, Time-bound) and aligned to the desired regulatory outcome(s), not the output(s). The regulatory strategy should also be developed in consultation with DISER, the NOPSEMA Advisory Board, and other industry stakeholders to promote greater collaboration. The final strategy should then be published on NOPSEMA's website, with performance tracked and reported annually.

6 How does NOPSEMA effectively regulate and use its powers?

Key points

Assessment

Permissioning processes require collaboration to improve

The approach (i.e. the frameworks and procedures) to permissioning is adequate for its purpose, but there are concerns with the usefulness of permissioning documents, perceived prescription in NOPSEMA's approach and level of effort by industry to engage with the process. NOPSEMA also expressed a sentiment that the regulator is being used by some titleholders to identify weaknesses in documents, provide a list of deficiencies, and to enable the titleholder to submit an acceptable document. Our engagement with stakeholders identified a strong theme of inconsistency across assessment processes for permissioning documents. There is potential for improved OHS and environmental outcomes from greater integration of the permissioning documents. The issues we have observed are not the responsibility of NOPSEMA alone to address. A joint industry-NOPSEMA approach will be required.

Inspections and investigations

NOPSEMA's approach to inspections and investigations evidence better practice but inspections would benefit from greater use of risk-based and cross-functional approaches

NOPSEMA's inspections processes and framework appear aligned to better practice but should make more extensive use of risk-based approaches. The philosophy of "find one, fix many" is a key tenant of NOPSEMA's inspection regime.

While there is some evidence of risk-based approaches to inspections, it is currently limited. Current risk-based processes rely on the best efforts of the inspector(s) and are manual. We are of the view that the ability to utilise data and analytics to drive risk identification is an important capability for NOPSEMA to develop.

Consistent with our observations regarding NOPSEMA's various permissioning documents, we see a similar siloed approach applied to inspections. The discrete OHS, environmental and well integrity specific inspection regimes, each governed by its own policy and operational procedures, results in a disparate inspection framework. NOPSEMA is piloting, in some circumstances, cross-functional inspections, but we are of the view that further collaboration and coordination across the inspectorate is required.

To support and improve effective investigations, NOPSEMA should also be provided with the power to electronically record answers to questions during an interview.

Enforcement

NOPSEMA's enforcement powers should be bolstered and enforcement actions more clearly communicated to stakeholders

NOPSEMA's suite of enforcement powers appear adequate for its purpose and enables a graduated enforcement approach. However, NOPSEMA would benefit from being given the equivalent power of a 'section 27 offence' (i.e. corporate officer due diligence) as provided for under the harmonised WHS laws.

The Government should update the OPGGS Act to provide an express power to enable NOPSEMA inspectors to electronically record answers to questions during an interview.

NOPSEMA should publish guidance for the benefit of stakeholders as to how, and in what circumstances, the law concerning self-incrimination is relevant when a NOPSEMA inspection exercises their powers requiring a person to answer questions or produce documents.

There was a perceived concern by some non-industry stakeholders of insufficient enforcement action by NOPSEMA. At face value NOPSEMA's rate of prosecutions are low. However, NOPSEMA has undertaken a range of other enforcement actions in response to incidents and non-compliance by titleholders. Accordingly, NOPSEMA should more actively communicate to stakeholders its enforcement approach and the full suite of enforcement actions it undertakes.

Recommendations: 3, 4, 5, 6, 7, 8

Opportunities: 1, 2, 3, 4, 5, 6

In this section we examine the effectiveness of NOPSEMA’s regulatory approach. NOPSEMA has been empowered with a range of tools to effectively regulate the industry and other stakeholders within the broader objective-based regime provided by the offshore legislative framework. The principle behind the approach to the regulation is that *‘those who create the risk must manage it’*. The approach of the responsible party¹¹ being responsible for the risk it creates is aligned to contemporary regulatory practice – putting the responsibility for the provision of (for example) a safe working environment on the owner and operator of the activity.

We begin with an examination of NOPSEMA’s approach and application of its permissioning document assessment processes (**subsection 6.1**). **Subsection 6.2** analyses NOPSEMA’s current approach to inspections and **subsection 6.3** examines its approach to investigations and potential gaps in NOPSEMA’s investigative powers. This section concludes with an examination of NOPSEMA’s enforcement powers, their application, and enforcement actions undertaken in conjunction with NOPTA (**subsection 6.4**).

6.1 Assessment of permissioning documents

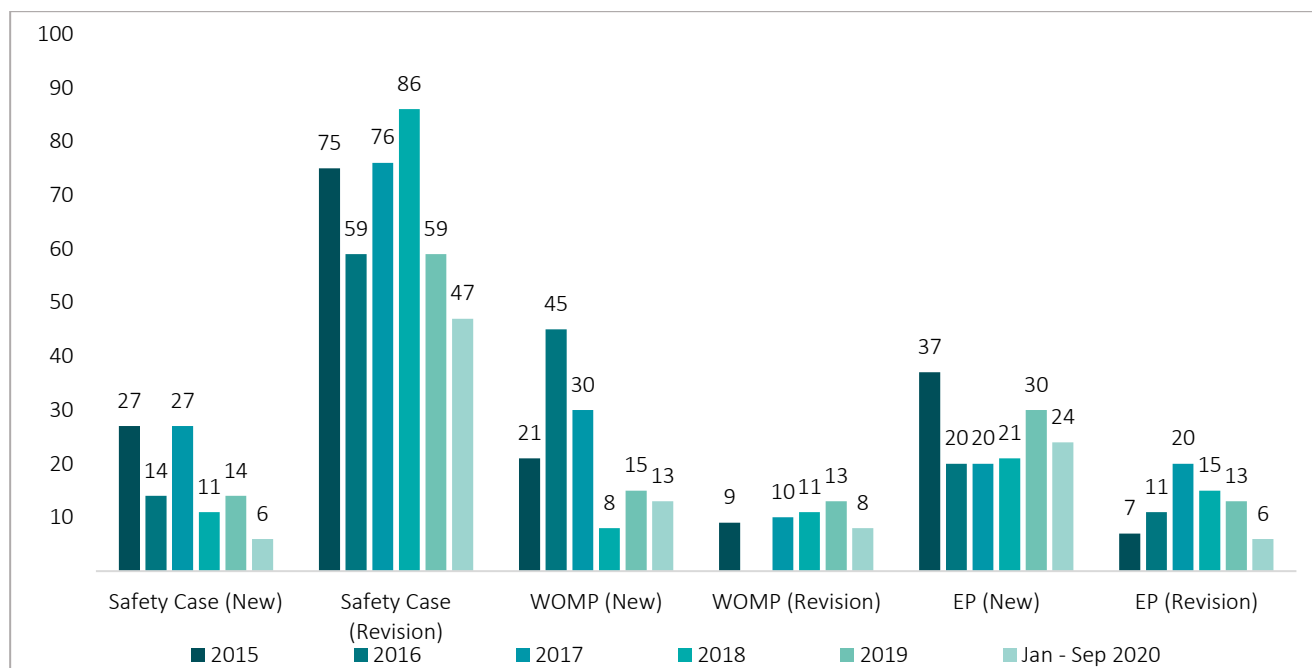
6.1.1 Purpose of permissioning

NOPSEMA receive and assess three forms of permissioning documents

Before the commencement of offshore activities, responsible parties are required to obtain a range of ‘permissions’ from NOPSEMA, which may include OHS, well integrity, and environment permissions. The permissions are obtained by developing and submitting a document to the regulator outlining the hazards and risks associated with the work and the approach the responsible party will take to reduce the hazards and risks to ALARP from a safety and well integrity perspective, and “Acceptable” from an environment perspective. It is also important to recognise that all permissioning documents are not the same. For example, one WOMP does not necessarily equate to one well – we have been advised a WOMPs could apply to multiple, even hundreds of wells.

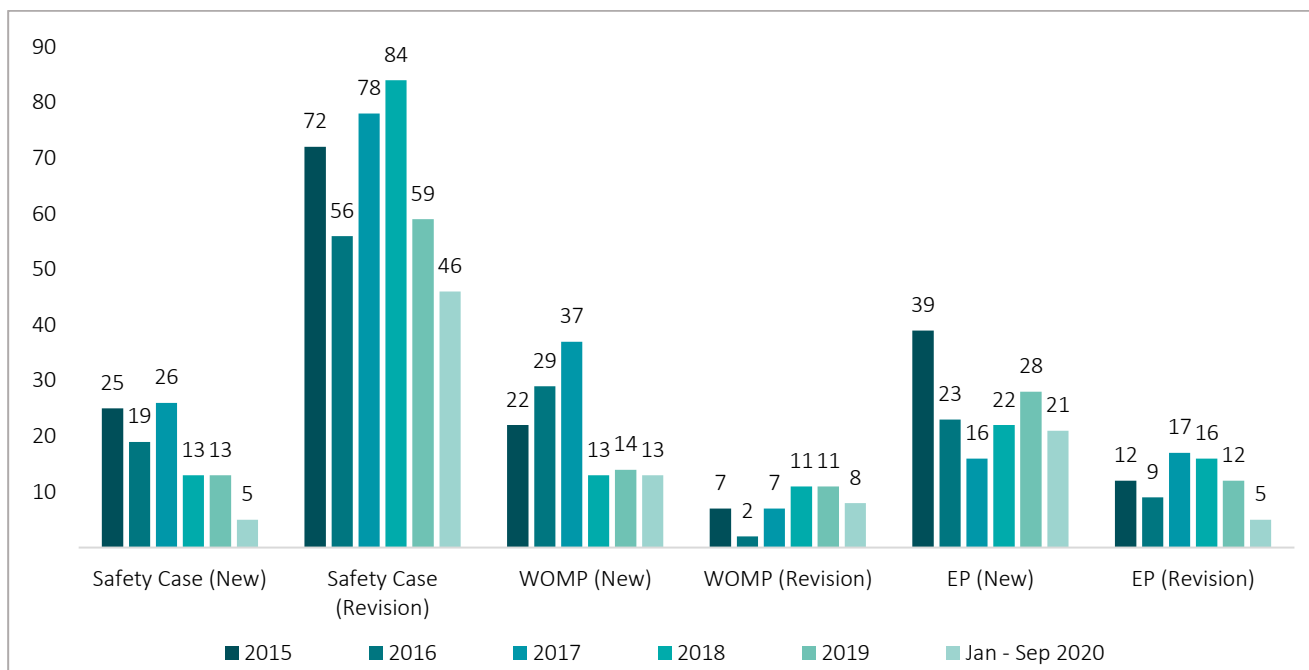
During the review period, NOPSEMA received 908 permissioning documents for assessment (see **Figure 6.1**), with 892 assessed (see **Figure 6.2**).

Figure 6.1: Volume of submitted permissioning assessments from 2015



Source: Deloitte analysis adapted from NOPSEMA data

¹¹ The responsible party may include the titleholder and/or operator and differs on a case by case basis. For example, the titleholder is not always the operator of the facility.

Figure 6.2: Volume of completed permissioning assessments from 2015

Source: Deloitte analysis adapted from NOPSEMA data

The three fundamental types of permissioning documents detailed in **Table 6.1** below¹².

Table 6.1: The three types of permissioning documents

Type	Description
Safety case	<ul style="list-style-type: none"> A safety case is a permissioning document developed by an operator of a facility, in consultation with its workers, which identifies the hazards and risks, describes how the risks are controlled, and describes the Safety Management System (SMS) in place to ensure the controls are effectively and consistently applied In the safety case regime, it is the operators' responsibility to assess its own processes, procedures, and systems to identify and evaluate risks and implement the appropriate controls – ensuring risk is reduced to ALARP The key focus of a safety case is on MAEs, which are the critical aspects of the facility that can cause a major accident. An operator's safety case must consider both technical and managerial risk factors that could increase the risk of harm Once the risks have been understood, the operator must define appropriate performance standards for safe operation in relation to its MAEs NOPSEMA assesses safety cases and 'accepts' the document if it is satisfied the arrangements demonstrate the risks will be reduced to ALARP Once 'accepted', NOPSEMA monitors compliance through inspections with the permissioning documents and listed NOPSEMA laws.
Well Operations Management Plan (WOMP)	<ul style="list-style-type: none"> The WOMP defines the titleholder's commitment of compliance to Part 5 of the RMA Regulations The WOMP sets out to describe the technical and managerial aspects of managing the risks to integrity of the well, and can be applicable to all or any part of the lifecycle of a well

¹² Due to similarities in observations and recommendations, we do not outline NOPSEMA's role in examining Offshore Project Proposals, which are required for all offshore projects. The Offshore Project Proposal was introduced, among other reasons, to allow for public scrutiny and comment on offshore petroleum developments early in the project lifecycle. This process aligns to that provided for through the Environmental Impact Statement/Public Environmental Review process under the EPBC Act.

Type	Description
	<ul style="list-style-type: none"> At any stage of the well's lifecycle a WOMP must be in force and active up until the accepted permanent abandonment of the well The WOMP also describes barrier management throughout the lifecycle of the well, the application and adherence to the Well Operations Management Plan defined Standards, an overview of the well activities throughout the lifecycle including construction, testing, monitoring, suspending and abandoning and the relevant performance outcomes. It includes a well specific source control plan and blow out modelling and discussion around worst case discharge NOPSEMA assesses WOMPs and 'accepts' the document if it is satisfied the arrangements demonstrate the risks will be reduced to ALARP Once 'accepted', NOPSEMA monitors compliance through inspections with the permissioning documents and listed NOPSEMA laws.
Environment Plan (EP)	<ul style="list-style-type: none"> The scope of an EP is determined with regard to the nature and scale of the proposed activity and the identified impacts on and risks to the receiving environment. The <i>Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009</i> (the Environment Regulations) also detail required content for an EP and includes (for example): <ul style="list-style-type: none"> A description of the activity, including location and proposed timetable A description of the environment that may be affected by the activity Details and an evaluation of the environmental impacts and risks Details of the control measures that will be in place to reduce the environmental impacts and risks of the activity to a level that is acceptable and ALARP Environmental performance standards and outcomes (and associated measurement criteria) An implementation strategy describing the titleholder's environmental management system, roles and responsibilities for implementing the EP and the monitoring, recording and auditing that will be undertaken to review environmental performance. The titleholder is also required to provide an Oil Pollution Emergency Plan that provides adequate arrangements for responding to and monitoring oil pollution, including financial assurance of funds to respond to the emergency NOPSEMA assesses EPs and 'accepts' the document if it is satisfied with the contents of the EP (e.g. the arrangements demonstrate the risks will be reduced to ALARP and are acceptable) Once 'accepted', NOPSEMA monitors compliance through inspections with the permissioning documents and listed NOPSEMA laws.

Source: NOPSEMA data, Deloitte analysis

6.1.2 The permissioning assessment framework and approach

The purpose of the Permissioning Assessment Framework is aligned to better practice

The *NOPSEMA Permissioning Assessment Framework* (the **Assessment Framework**) comprises an overarching *NOPSEMA Assessment Policy* that applies to all types of permissioning assessments. The policy is supported by a further suite of environmental, well integrity, and OHS assessment procedures/documents, which are given effect by content-specific procedures, guidelines, tools, forms and templates.

The assessment methodology and approach provided by the Assessment Framework is aligned with principles of the *NOPSEMA Enforcement Policy*. It is outcome focused, proportionate and responsive, informed, transparent, targeted and aligned with the principles of procedural fairness. The purpose of the Assessment Framework is aligned to better practice¹³, as well as being clear and

¹³ All references to 'better practice' within **Section 6** have been made in the context of NOPSEMA's operations and in comparison to its peers, comparable industries, and organisations with mature regulatory approaches to compliance, monitoring and enforcement.

appropriate. The Assessment Framework drives the development and implementation of effective monitoring and enforcement strategies to secure compliance with the OPGGS Act and regulations.

6.1.3 The permissioning assessment process

The permissioning assessment process is relatively straightforward in approach. The process relies on the operator submitting a safety case, or a titleholder submitting a WOMP or EP, to NOPSEMA for evaluation. When submitted, the documents are triaged, an assessment brief created, and review team assigned. The process is managed through RMS, the NOPSEMA regulatory process management system.

Upon receiving a permissioning document for assessment, NOPSEMA conducts a pre-assessment or a completeness check for completeness of information provided (i.e. that no critical information is missing). The pre-assessment or completeness check is a critical upfront component of the process, which is used to determine if there are any critical deficiencies in the documents submitted.

Once the responsible party has developed and formally submitted the permissioning document, the assessment process is conducted. If critical deficiencies are identified within the permissioning document, the assessment is aborted, findings captured, reviewed by the Lead Assessor and communicated to the relevant party. NOPSEMA aborts the assessment where critical deficiencies are identified to enable the efficient and effective use of NOPSEMA resources – so as to not invest time in permissioning documents that do not meet minimum expectations. NOPSEMA also has powers to request further information to support a permissioning document assessment – however, these are generally limited to two requests for new permissioning documents and once for revised documents.

In very rare circumstances, NOPSEMA can “conditionally accept” a permissioning document or apply limitations. If there is a decision to accept with conditions or limitations, the RON escalates the decision for discussion and agreement with the Head of Division or the CEO for approval.

Safeguards are built into the Assessment Framework to protect the integrity of assessments

Safeguards are built into the Assessment Framework to deliver consistency and quality by means of oversight and assurance at important decision points by the Team Manager/Representative of NOPSEMA (RON), including:

- Review and approval of the assessment brief (team, scope) within RMS, including the variation to an assessment scope
- Involvement in abandoning assessments based on early general assessment of material outlined in the permissioning documents
- Issuing of requests for further information or finalised assessment outcomes
- Review and approval of reports and involvement in onshore titleholder feedback meetings.

In summary, our analysis shows that NOPSEMA has established a robust and better practice approach to assessing permissioning documents submitted by industry. We discuss the application of the assessment approach and permissioning documents below.

6.1.4 Stakeholder perceptions of the assessment process

The approach to permissioning is better practice but there are concerns with the usefulness of permissioning documents, perceived prescription in NOPSEMA’s application of its approach, and level of effort in the process

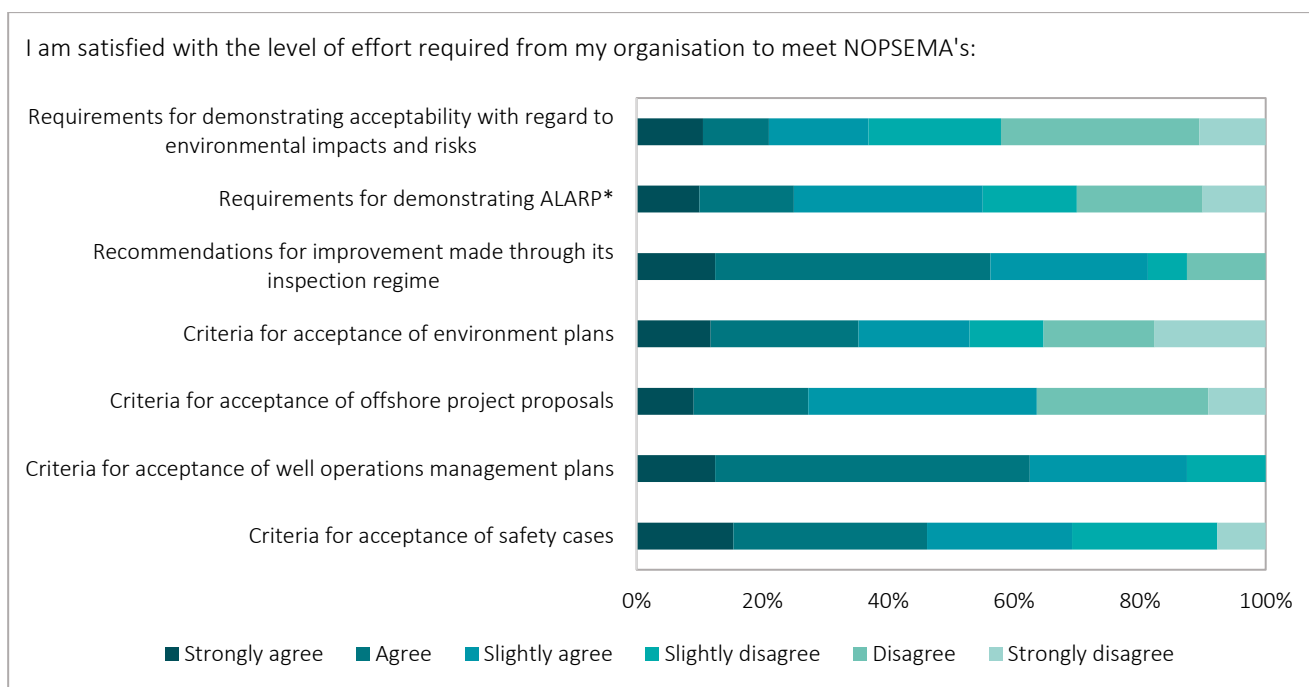
From our consultation with industry, we identified a number of negative perceptions regarding the permissioning process. Feedback from industry regarding the permissioning assessment process continues to demonstrate some issues with the underlying safety case regime (including WOMPs and EPs) and approach, and mis-aligned expectations. There also appears to be concerns there is an evolution toward prescriptive rather than risk-based assessments, as well as variability in the assessment process and outcomes.

Some relevant comments received to demonstrate the types of concerns raised include:

- Permissioning documents are seen by some stakeholders (including operators and titleholders) as a ‘tick the box’ document – not reflecting the true nature of the operation or activities. We received commentary, which highlighted permissioning documents are developed by “corporate teams” and then when approved, handed over to operational teams in industry
- The level of effort to demonstrate ALARP and acceptability is not always proportionate to the potential risks or impacts associated with the proposed activity (see **Figure 6.3**) and a perception that NOPSEMA’s requirements for EPs, WOMPs and safety cases are steadily increasing, particularly in demonstrating ALARP. NOPSEMA needs to take care that the effort required by titleholders is proportionate to the potential risks/impacts associated with the activity
- With the changes made to the transparency of EPs and their publication for public consumption, there is now additional effort required from industry to make these documents understandable for non-technical audiences

- Concern from some stakeholders (including titleholders and facility operators) that for safety cases the effort is not scalable, and the average size of the documents are not suitable for workforce engagement (e.g. the document is too cumbersome for a worker to meaningfully use)
- The documents are too manual – reflecting a need for better digitisation of the permissioning documents to drive consistency and structure, but also greater data availability for the regulator to conduct analysis
- Inconsistencies in the assessment and decision-making outcomes from assessments
- The documents are not designed to talk to each other, but invariably rely on content from one-another to present a clear picture on the underlying control environment of the responsible party
- The approvals process is seemingly growing more lengthy, costly and time consuming whilst being perceived by some of not adding any actual improvement in titleholder practices or changes to control measures that are implemented
- NOPSEMA usually has very specific responses they wish to see by titleholders submitting permission documents. It is often the case that NOPSEMA requests further information that is actually contained in the submissions, or extra details that are not providing any perceived added value or would add any further reduction to the risks or impacts
- There appears to be a significant amount of effort that goes into submissions for what some stakeholders perceive as little value. The three NOPSEMA divisions (OHS, well integrity, and environment) work independently with very different levels of rigour. Focus areas in NOPSEMA assessments are seen to depend on the individual assessor or inspector and what their individual areas of expertise, past experience or concerns may be
- Inconsistency in NOPSEMA's approach to permissioning documents across its divisions and a disconnect in the treatment of different permissioning documents (i.e. safety case, WOMP, or EP) for the same or similar activities
- The concept of 'acceptable' levels of impact/risk is so subjective that no-one really knows what it is.

Figure 6.3: Survey responses to the level of effort required to meet NOPSEMA's requirements



*NOTE: ALARP refers to 'as low as reasonably practicable'. Titleholders are required to demonstrate to NOPSEMA through evidence (e.g. controls and mitigation activities) that risks have been reduced to a level that is ALARP and acceptable.

Source: Deloitte Stakeholder Survey, Deloitte analysis

From our conversations with NOPSEMA, we understand there is also a sentiment amongst the NOPSEMA inspectors who conduct assessments of permissioning documents that the regulator is being used to identify weaknesses in documents, provide a list of deficiencies, to enable the operator to submit an acceptable document. It is felt that on occasion, some operators have not adequately attempted to address minimum permissioning document requirements or operators can seek to include 'all possible details' in

permissioning documents in an effort to ensure the document is approved, with little consideration given to only focusing on the most salient and important risks.

While the objective-based regime and its underlying principles (as applied to safety cases, WOMPs, and EPs) is effective, our analysis shows there are issues in the way permissioning documents are perceived by industry, which could lead to unintended consequences. There is a perception by industry that permissioning documents are seen as ‘document burden’, which have been created by NOPSEMA’s current regulatory approach to assessment and acceptance.

Recommendation #3

NOPSEMA should consider establishing an industry working group to understand issues with the safety case regime (including WOMPs and EPs), as currently regulated. The focus should be on the underlying principles associated with the regime, clarifying the requirements for permissioning documents and the role of guidance in their development, the accepted ways of working between parties in relation to assessment processes, and what better practice looks like to enable the regulator and industry to work together in a cooperative manner.

Areas to investigate in implementing this recommendation could include:

- Pre-submission for alignment between a responsible party and NOPSEMA on key issues associated with an activity, and/or the development of decision criteria¹⁴ to enable increased transparency in the decisions made by assessment officers as to the topic and greater certainty in the required level of detail in the assessment
- NOPSEMA develop decision criteria that supports and enables consistent decisions between assessment officers as to the topic and level of detail in the assessment and provide more certainty for industry.

In implementing this recommendation, cooperation and collaboration from the industry will be imperative.

A ‘One NOPSEMA’ approach is required to permissioning processes. This is a concept we return to at various points in our report – that NOPSEMA must apply an internally consistent and externally cohesive approach to regulating. NOPSEMA acknowledged that assessments of permissioning documents are not sufficiently joined up across its divisions. There is potential for improved safety and environmental outcomes from greater integration of the permissioning documents¹⁵.

6.2 NOPSEMA’s approach to inspections and proactive measures

NOPSEMA’s inspections processes and framework appear aligned to better practice but should make more extensive use of risk-based approaches

6.2.1 Purpose of inspections

NOPSEMA’s Inspection Policy outlines that “inspections are part of NOPSEMA’s function under the OPGGS Act to develop and implement effective monitoring and enforcement strategies to secure compliance by persons with their obligations under the OPGGS Act and supporting regulations”.

NOPSEMA’s processes recognise the need for adoption of a risk-based inspection regime. Inspections appear to be risk-based centred on the knowledge and research of the inspector, with a sampling approach to risk control measures and management system elements adopted, taking into account other relevant risk factors (such as, previous performance and compliance history of titleholders informed by inspections, investigations, incident history and other safety and environmental performance factors, industry incident trends and responses to recommendations from previous inspections). The philosophy of “find one, fix many” is a key tenant of the inspection regime.

NOPSEMA’s inspections do not physically inspect every element of a facility, offshore premise, pipeline or diving activity, rather they operate on a quality assurance basis. Inspections are a sample evaluation of the controls and management systems of the responsible party in managing impacts and risks to a level that is ALARP.

In summary, our analysis shows NOPSEMA’s inspections processes:

- Are sufficiently broad to capture the different types of inspections provided by schedule 2A (environmental management), schedule 2B (well integrity), and schedule 3 (OHS) of the OPGGS Act

¹⁴ The decision criteria is listed in relevant OPGGS Regulations and supported by extensive guidance.

¹⁵ Note that this may require amendment to legislation or regulation.

- Properly focus on titleholder’s compliance with risk management systems mandated by the OPGGS Act such as safety cases, WOMPs, diving safety management systems, and EPs.

6.2.2 The NOPSEMA Inspection Framework and underpinning principles

The NOPSEMA inspection framework (the **Inspection Framework**) comprises an overarching *NOPSEMA Inspection Policy* that applies to all types of inspections – environmental, well integrity, and OHS. The policy is supported by a further set of environmental, well integrity, and OHS inspection policies, which are given effect by content-specific procedures, guidelines, tools, forms and templates (the **regimes**).

From our analysis, the:

- Inspection framework is aligned with provisions of Schedule 2A (environmental management), Schedule 2B (well integrity) and Schedule 3 (OHS) of the OPGGS Act and procedures operationalise coercive investigative powers of entry and powers available upon entry conferred by those schedules to inspectors
- Inspection methodology and approach provided by the inspection framework is aligned with principles of the NOPSEMA Enforcement Policy – it is outcome-focused, proportionate and responsive, informed, transparent, consistent, targeted and aligned with the principles of procedural fairness
- Purpose of the inspection framework is aligned to better practice, as well as being clear and appropriate. The Inspection Framework drives the development and implementation of effective monitoring and enforcement strategies to secure compliance with the OPGGS Act and regulations.

6.2.3 The inspection process

Objectively viewed, each of the OHS, environmental management, and well integrity specific inspection regimes are suitably designed and internally cohesive with their various documents and are clear and understandable with accountability, responsibility, and authority clearly articulated and assigned. Each of the regimes provide a systematic, thorough, and consistent approach to the execution of inspections that removes reliance or dependency upon corporate knowledge vested within individual NOPSEMA Inspectors.

From our analysis, the current inspection methodology and approach is adequate for their purpose. In particular:

- Inspection schedules are developed in consultation with responsible parties
- A scope is developed by reference to risk-based factors
- An inspection brief is issued and, where appropriate, a meeting is convened with the responsible party’s onshore management
- Inspection planning activities are undertaken by the NOPSEMA Inspector(s)
- An offshore entry meeting with the responsible party and other personnel is convened
- Inspections are undertaken within boundaries of legislation and NOPSEMA policies and procedures
- Inspection findings are evidence based and documented (including within the NOPSEMA RMS)
- A closing meeting is convened with the responsible party and other personnel to discuss findings
- A report is provided to the responsible party detailing inspection findings, conclusion, recommendations and the reasons for conclusions and recommendations consistent with requirements of the OPGGS Act
- Proposed action to be taken by the responsible party in inspection report conclusions and recommendations may be required by NOPSEMA
- Recommendations are entered in RMS and tracked to closure within due date in RMS
- Significant inspection issues are referred to the NOPSEMA Compliance Committee¹⁶ for discussion and resolution. Regulatory non-compliance or opportunities for improvement are secured by recommendations or enforcement actions that are documented in RMS.

¹⁶ The NOPSEMA Compliance Committee is chaired by the CEO and has the divisional heads as standing attendees. Compliance issues are ‘presented’ by inspectors to the committee for discussion. The committee is intended to challenge compliance findings and identify cross-cutting or strategic compliance matters across all compliance matters. The committee, among other matters, will discuss the most appropriate compliance approach which could be applied and provide further support and insight to the inspector presenting. The decision for compliance activities ultimately rests with the respective inspectors empowered under the OPGGS Act and its regulations.

However, while we found the inspection process and approach adequate, its ability to be fully “risk-based” is limited. RMS is the in-house built corporate regulatory system used by NOPSEMA to manage its regulatory assessment, inspection, and enforcement processes. Based on a walkthrough of RMS, we note it is a highly useful workflow management tool, but its ability to provide insight is limited (note, this does not diminish the credibility of the system). We have noted the work done by NOPSEMA in its development, but our analysis demonstrates that now is the time to take it to the next level to direct effort in the right places. We acknowledge NOPSEMA is aware of RMS’s limitations and is still in the process of enhancing and digitising its approach to be increasingly insightful.

Inspection processes, while risk-based, rely on the best efforts of the Inspectors. While planning an inspection, inspectors are required to undertake a range of research activity to identify areas of regulatory interest and plan a scope of inspection accordingly. This requires the manual review of a safety case, WOMP, or EP, examination of previous history, as well as examining any compliance issues with titleholder. RMS houses incredible volumes of information, but at its core the system links to PDF or Word documents (e.g. the safety case, WOMP, EP). As such, the ability to identify MAEs and map against incident history and compliance issues is limited.

There can be a one-to-one relationship for the safety case, WOMP, and EP to the facility/well/operation. There can also be a one to many relationship (e.g. multiple safety cases for multiple sites). At present RMS can only pull information through based on workflow (e.g. the one safety case for the one asset). It is unable to aggregate information to represent a clear picture of OHS, well integrity, and environment for a titleholder, which can then be interrogated down to a facility-level.

Recommendation #4

NOPSEMA should continue to invest in the development of RMS, leveraging its data to provide meaningful, risk-based information of responsible parties and their facilities at an aggregate level, while also enabling interrogation at a facility level. This should also consider the ability for greater digitisation of information contained in safety cases, WOMPs, and EPs.

Importantly, the enhancement of RMS’ functionality would help address the finding of the Walker Review, which recommended NOPSEMA take a more strategic approach to interventions at a facility level by having greater *“consideration with regard to titleholders’ previous performance, the type and condition of facility, and company-related factors need to be identified in developing such plans¹⁷.”*

There is risk of a siloed and disparate inspection framework

The discrete OHS, environmental, and well integrity specific inspection regimes, each governed by its own policy and procedures supported by its own guidelines, tools, forms and templates, results in a siloed and disparate inspection framework with increased risk of duplication, inefficiency, inconsistency, and variability in standards across the inspectorate.

There appears no reasonable justification for this position in circumstances where, putting aside the different subject matter, the:

- Legislative inspection process (including powers of entry and powers upon entry) provided by Schedule 2A (environmental management), 2B (well integrity) and 3 (OHS) of the OPGGS Act are identical, each of the regimes operates under the same NOPSEMA Inspection Policy and Enforcement Policy
- Better practice inspection principles dictate that the same processes for inspection planning, approach, methodology, execution, recording, reporting, corrective action management, and tracking to closure apply regardless of the inspection subject matter.

A ‘One NOPSEMA’ approach is required for inspections. We recognise NOPSEMA understands this current issue and has commenced cross-disciplinary inspection processes, whereby OHS, well integrity, and environment inspections may form one inspection team and conduct a site visit at the same time. However, industry feedback, as categorised by the following quotes, demonstrate greater work is still required¹⁸:

- *“In the Safety and Integrity Division, we have experienced inconsistent behaviours and application of the regulations between inspectors”* (titleholder/operator)
- *“We have witnessed different [NOPSEMA] Inspectors issuing inconsistent responses to identical situations”* (other industry stakeholder)
- We have *“...concerns that there is an inconsistent approach to inspections and behaviours [by NOPSEMA]”* (titleholder/operator).

¹⁷ Walker, 2020. Pg. 6. See: <https://www.industry.gov.au/sites/default/files/2020-08/review-of-circumstances-that-led-to-the-administration-of-noga-executive-summary-and-recommendations.pdf>

¹⁸ Deloitte stakeholder consultation.

Recommendation #5

NOPSEMA should consider the feasibility of:

- Redesigning its inspection regime to be a single regime of inspection procedures and supporting guidelines, tools, forms and templates, drawing upon, leveraging and building upon the ‘top of class’ documents that currently exist across the (3) regimes with particular nuances of the (3) subject matters accommodated as required, to give effect to the NOPSEMA Inspection Policy and Enforcement Policy in the OHS, environmental management and well integrity context
- Driving the combined OHS, environmental and well integrity inspections performed at the same time by multi-disciplinary teams.

Safeguards are built into the Inspection Framework by means of oversight and assurance at important decision points by the Team Manager/RON, including:

- Review and approval of the inspection brief (inspection team, scope of inspection, inspection justification and formal requirement relying upon coercive power pursuant to legislation) within RMS, including the variation to an inspection scope
- Involvement in decisions concerning use of a monitoring warrant for the purpose of an inspection
- Issuing of notices and determination of corrective action
- Approval to compel answers to questions or production of documents or things by person not at the premises
- Review and approval of reports and involvement in onshore titleholder feedback meetings.

Based on our examination, these safeguards deliver consistency and quality to the overall Inspection Framework, ensuring appropriate oversight and input into key decisions.

6.3 NOPSEMA’s approach to investigations

6.3.1 The NOPSEMA Investigation Framework and underpinning principles

NOPSEMA’s investigative framework is aligned with better practice incident investigation frameworks

In response to a request by the NOPSEMA Compliance Committee, a review of its investigative practices was undertaken internally, including an analysis of other regulatory bodies approaches to investigations. The review led to the new NOPSEMA Investigation Framework 2019 (the **investigation framework**).

Based on our examination, the investigation framework is aligned with the provisions of *Division 1 Chapter 6.5 ‘Compliance and Enforcement’* of the OPGGS Act that expressly provides for the application (with suitable modifications) of *Part 2 (monitoring compliance) and Part 3 (investigation)* of the Regulatory Powers Act as well as Schedule 2A (environmental management), Schedule 2B (well integrity) and Schedule 3 (OHS) of the OPGGS Act. NOPSEMA’s investigative framework is aligned with better practice incident investigation frameworks. The purpose of the investigation framework is appropriate – to establish facts of an incident, identify immediate and underlying causes as well as lessons to be learnt, determine action to prevent a recurrence, detect breaches of legislation and establish whether to take further action including formal enforcement.

The investigation framework comprises an overarching *NOPSEMA Investigation Policy* that is given effect by detailed Notification Receipt and Processing, Level 1 Investigation, Level 2 Investigation, Level 3 Investigation, Level 4 Investigation, and Information & Complaint Handling procedures together with an Investigation Level Determination Tool (collectively, the **investigation procedures**).

Implementation of the investigation procedures is supported by further detailed procedures, work instructions, guidelines, forms and templates that translate or operationalise coercive investigative powers of entry and powers available upon entry that are conferred upon NOPSEMA Inspectors by legislation.

NOPSEMA’s Enforcement Management Model (the **EMM**) provides guidance to a NOPSEMA Inspector for specific enforcement considerations arising from level two to four investigations with other enforcement actions or strategic considerations, not covered by the EMM, available to be considered separately by the NOPSEMA Compliance Committee. There is also a process for the sharing of lessons learned with Industry, which helps underpin NOPSEMA’s philosophy of “find one, fix many”.

The investigation framework is built on the following underpinning principles:

- Four levels of investigation, replacing the (former) two categories of ‘major’ and ‘non-major’, each with its own methodology, outcomes, resourcing model, and expected timeframe
- Definition of roles & responsibilities and boundaries

- Triggers for escalation between investigation levels one to four
- A more collaborative and collegiate approach to investigations across NOPSEMA, including the role of the Compliance Committee
- Development of an *Information and complaint handling procedure* for specifically dealing with ‘information’ and ‘complaint’ notifications to introduce a consistent approach to their management.

Objectively viewed, the investigation framework is well designed and cohesive with its various documents properly aligned, interfacing, sufficiently detailed, clear and understandable with accountability, responsibility and authority clearly articulated and assigned to individuals or bodies (e.g. NOPSEMA Compliance Committee). The framework provides a systematic, thorough and consistent approach to the execution of NOPSEMA-wide investigations, removing reliance or dependency upon corporate knowledge vested within individual NOPSEMA Inspectors.

The NOPSEMA Investigation Framework does not include a Causal Investigation Policy or similar

However, the investigation framework does not include a *Causal Investigation Policy* or similar, governing investigations directed toward identifying the causal factors of incidents, the effectiveness of the controls being used and what factors may have contributed to the failure of the controls, as distinct from investigations directed toward obtaining evidence for a prosecution – whilst any compliance investigation with a potential for prosecution will need to consider causal factors contributing to a risk, in addition such a policy is adopted by mature regulators to provide a clear and transparent distinction between collaborative investigations involving regulators and titleholders to deliver fast and efficient lessons learnt for the benefit of industry, premised on trust that enforcement action will not be taken, and investigations directed toward prosecution (see *NSW Resources Regulator Causal Investigation Policy*).

Opportunity #1

NOPSEMA is encouraged to develop and implement a ‘Causal Investigation Policy’, considering the substance of the NSW Resources Regulator *Causal Investigation Policy* as a starting point.

6.3.2 Investigation categories

The incidents ‘in scope’ of NOPSEMA’s Investigation Framework are appropriately broad

The type of incidents falling within the ambit of the investigation framework are appropriately broad. We found the following are ‘in scope’:

- All notifiable OHS accidents and dangerous occurrences, well integrity incidents, and reportable environmental management incidents
- Complaints and information received in relation to a perceived shortfall of OHS, environmental management and/or well integrity performance of titleholders
- Where relevant, information is obtained by NOPSEMA by any other means suggesting there may be harm or non-compliance occurring within the industry.

There are four levels of incident investigation, as detailed in **Table 6.2**.

Table 6.2: NOPSEMA’s four levels of incident investigation

Level	Trigger
1	<p>A Level 1 Investigation will be conducted for all incidents.</p> <p>The inspector will review intelligence gathered by or information provided to NOPSEMA to determine the consequence (actual or potential) of the incident or circumstances and determine whether appropriate action in terms of a response is being taken by the titleholder.</p> <p>The investigation is coordinated by an inspector with support from a RON. If there is not enough information, it will automatically be escalated to a Level 2. No report is required.</p>

Level	Trigger
2	<p>A Level 2 Investigation will be initiated by a RON upon endorsement of a recommendation as an outcome of a Level 1 Investigation or as a direction from the NOPSEMA CEO (via the NOPSEMA Compliance Committee).</p> <p>The inspector is to collect first-hand information to quickly understand the consequence and immediate risks of the incident/circumstances and determine if appropriate actions are being taken to return titleholder to compliance and prevent reoccurrence based on the information available to the titleholder at that point in time.</p> <p>A scope for investigation is required, and typically requires up to five days of inspector effort. A one-page report is required, with recommendations made to escalate. Enforcement actions may be required.</p>
3	<p>A Level 3 Investigation will be initiated by a RON upon endorsement of a recommendation as an outcome from a Level 1 or Level 2 Investigation or as a direction from the CEO (via the Compliance Committee).</p> <p>The purpose is to understand, in detail, the factors leading to the incident/circumstances and response actions taken by a titleholder. The inspector is to determine if the actions undertaken by the titleholder in responding to the incident/circumstances (both immediate and to prevent reoccurrence) were appropriate and what lessons might be shared with industry more broadly.</p> <p>The inspector must gather sufficient evidence to establish whether or not an offence has been committed against relevant legislation.</p> <p>A scope for investigation is required and will require significant investigator effort. A report is required. Enforcement actions may be required.</p>
4	<p>A Level 4 Investigation will be conducted as a result of a recommendation from a Level 1, Level 2 or Level 3 Investigation being approved by the CEO or when initiated as a direction from the CEO (in both cases via the NOPSEMA Compliance Committee).</p> <p>The most detailed and significant form of investigation. The inspector, having determined the detailed facts of an incident/circumstances, including the impact on all parties and associated culpabilities (organisations and individuals), gather additional evidence (if required) to support and prove a breach of specific legislation has occurred and compile civil or criminal prosecution briefs (where applicable).</p>

Source: Deloitte analysis adapted from NOPSEMA data

NOPSEMA analysed its investigations against the new investigation model above for the 2019 calendar year and re-categorised the investigations. In total, 577 notifications were received by industry, with only one level four investigation triggered.

The four incident investigation levels, each with variable effort in terms of response, resource allocation, timeframes, and outcomes, delivers a practical 'real world' approach to the allocation of finite resources (i.e. NOPSEMA Inspectors) with decision-making informed by appropriate factors. The model is supported by the *NOPSEMA Investigation Level Determination Tool*, which adopts a risk-based approach, with both actual and potential consequence and likelihood of an incident considered (i.e. risk as well as outcome connected to an incident). There is also consideration of 'responsible party' factors regardless of an incident – enforcement and compliance history, relevant incident history, and level of co-operation in general with NOPSEMA by titleholders. All of these factors lead to the investigation determination.

It is observed, by way of context, that NOPSEMA has historically not undertaken many comprehensive investigations for breaches of the OHS, environmental or well integrity laws. For example, in 2019, NOPSEMA received 577 notifications, with six of those (plus two legacy in 2018) comprehensive investigations undertaken.

Based on our examination of the framework and the *Investigation Level Determination Tool*, it does not include discretion for exceptional circumstances based upon public interest factors to justifiably avoid, at an early point, a Level 3 or 4 investigation. Such exceptional circumstances ought to be consistent with the *Prosecution Policy of the Commonwealth*¹⁹ as published by the Office of the Commonwealth Director of Public Prosecutions (CDPP). It is important to provide clear criteria around exercise of the discretion and, in circumstances where such instances would be exceptional, escalate to the NOPSEMA Compliance Committee for determination to prevent misuse of it.

¹⁹ See: <https://www.cdpp.gov.au/prosecution-process/prosecution-policy>

Opportunity #2

NOPSEMA is encouraged to update its investigation framework and Investigation Level Determination Tool to provide criteria and discretion for inspectors in determining investigation requirements for exceptional or compassionate grounds with oversight or approval provided by the NOPSEMA Compliance Committee.

6.3.3 Visibility of supporting coercive investigative power procedures

Focusing on Level 4 investigations, the *Level 4 Investigation Procedure* is underpinned or supported by detailed procedures, work instructions, guidelines, forms and templates that translate or operationalise coercive investigative powers of entry and powers available upon entry that are conferred upon NOPSEMA Inspectors by the OPGGS Act and the Regulatory Powers Act.

However, we found there is no clear incorporation, by reference or linkage, in the *Level 2 Investigation Procedure* or *Level 3 Investigation Procedure* (as there is in the case of the *Level 4 Investigation Procedure*) to detailed NOPSEMA procedures, work instructions, guidelines, forms and templates that translate or operationalise coercive powers of entry and powers available upon entry that are conferred upon NOPSEMA Inspectors by the OPGGS Act and Regulatory Powers Act. This position exists despite the *Level 2 Investigation Procedure* and *Level 3 Investigation Procedure* contemplating the potential to exercise coercive powers of entry and coercive powers upon entry by NOPSEMA Inspectors during an investigation.

Opportunity #3

NOPSEMA is encouraged to consider amending Level 3 and Level 4 investigation procedures to incorporate by reference or provide linkage to detailed NOPSEMA procedures, work instructions, guidelines, forms and templates that translate or operationalise coercive powers of entry and powers available upon entry that are conferred upon NOPSEMA Inspectors by the OPGGS Act and Regulatory Powers Act.

6.3.4 Investigation planning and case management

In general, NOPSEMA investigation planning and case management are robust. The inclusion of investigation checklists, the inclusion of legal officer in case management meetings, and documentation through case management notes are improvements

6.3.4.1 Investigation planning

A robust process for investigation planning, a factor that in our experience is important to achieving quality investigation outcomes, in the case of Level 2, 3 and 4 investigations is largely provided – an initial briefing by the RON (Level 2 and 3 investigations) or Investigation Manager (Level 4 investigation) with the Lead Investigator about the scope and purpose of an investigation is provided as is the development of an *Investigation Plan* by the Lead Investigator populating a template, with the input of other NOPSEMA disciplines as required, after which an *Investigation Plan* and *Investigation Brief* are reviewed/approved by the RON (Level 2 and 3 investigations) or Investigation Manager (Level 4 investigation).

However, we found current investigation planning does not include an *Investigation Element Checklist* or similar, directed toward identifying elements of offences and potential defences together with counterpart evidence, to support the *Investigation Plan* for category 3 and 4 investigations (i.e. investigation levels justifying it) – the *Investigation Element Checklist* or similar would also facilitate the ‘detailed element analysis and evidence evaluation required to support breaches of legislation’ required by section 3.13 of the *Level 4 Investigation Procedure*.

Opportunity #4

NOPSEMA is encouraged to consider the design of an Investigation Checklist (or similar) directed toward identifying elements of offences and potential defences, together with counterpart evidence, to support the Investigation Plan for category 3 and 4 investigations (i.e. investigation levels justifying it) to be reviewed and approved by RON (Level 3) or Investigation Manager (Level 4).

In implementing this opportunity, NOPSEMA could consider the following:

- Legal entity (titleholders)
- Worker
- Incident causation and risk control
- Reasonably practicable

- Statements from witnesses and substance
- Plant involved
- Medical
- Investigation Notices issued
- The risk
- 1st response – incident scene management, environmental conditions, notices issued, and items seized
- Systems and safety culture
- Officers and due diligence
- Police material
- 1st response Inspector material
- Investigator Elements Checklist (attached)
- Expert/Technical support required

6.3.4.2 Case management

In our experience, investigation case management is important to achieving quality investigation outcomes, including the identification of potential responsible parties, potential breaches of the law, and counterpart evidence required to prove a breach, material lines of inquiry, evidence to rebut potential defence, and decision-making about the path of an investigation at key junctures.

Currently, NOPSEMA case management of Level 3 and 4 investigations includes weekly case management meetings involving the Lead Investigator and RON (Level 3 investigation) or Investigation Manager (Level 4 investigation) with details of outcomes and actions recorded in RMS. However, we found the current framework for Level 3 and 4 investigations does not include the following adopted by better practice frameworks:

- A mandate that a legal officer must be at the first case management meeting (soon after commencement of an investigation) and last case management meeting (immediately prior to finalisation of an investigation when critical decisions are made) and otherwise ‘as required’ in the case of level three and four investigations
- Recording case management outcomes in documented *Case Management Notes* annexed to the *Investigation Plan* that are continually updated as a live document throughout the life of the investigation (including decisions, reasons for decision, decision makers, actions, responsible persons and due dates) – the outcomes of case management are often too important for inclusion only in an investigation running sheet (as is the current position) where they may be lost with in the plethora of other detailed information concerning investigation activity and their implementation not subject of oversight or scrutiny.

Opportunity #5

NOPSEMA is encouraged to amend the *Level 3 Investigation Procedure* and *Level 4 Investigation Procedure* to:

- Mandate that a legal officer must be at the first case management meeting (soon after commencement of an investigation) and last case management meeting (immediately prior to finalisation of an investigation when critical decisions are made) and otherwise ‘as required’ in the case of Level 3 and Level 4 investigations
- Record case management outcomes in documented *Case Management Notes* annexed to the *Investigation Plan* that are continually updated as live documents throughout the life of the investigation (including decisions, reasons for decision, decision makers, actions, responsible persons and due dates)
- Consider clearly defining Case Management Notes as a ‘Critical Decision Record’²⁰ – ‘Critical Decision Records’ are currently referred to in the Level 3 Investigation Procedure as being required so treating Case Management Notes in this manner would deliver efficiencies and avoid duplication.

6.3.4.3 Safeguards to protect the integrity of investigations

There are appropriate safeguards in place to protect the integrity of investigations

Safeguards built into the framework, by means of oversight, briefing, scrutiny, and assurance at important decision points by the RON (Level 1 to 3 investigations), Investigations Manager (Level 4 investigation), NOPSEMA Compliance Committee and CEO via the NOPSEMA Compliance Committee, provide a means of driving consistency and integrity in application of the *Investigation Framework*. From our analysis, current safeguards are positive and aim to maintain integrity in the investigation process.

²⁰ Section 4.16 ‘Case Decision Record’ of the Level 3 Investigation Procedure provides that ‘critical decisions are recorded at key junctions of investigations and are an important record of decision making. The Lead Investigator is responsible for creating all critical decision records in RMS and forwarding to the RON for review and approval (with the Head of Division, as investigation sponsor, advised).

The NOPSEMA Investigation Policy establishes a general policy position that ‘the NOPSEMA Compliance Committee has oversight of investigations to ensure consistency of approach and strategic approach to enforcement’ which is given effect by the appropriate Investigation Procedure providing mechanisms for oversight, briefing, scrutiny and assurance at the points of commencement of an investigation, scope determination, investigation planning, case management, review of critical decisions throughout the life of an investigation, escalation to higher level investigation, investigation outcomes, enforcement actions and termination of an investigation.

We also found other safeguards built into the framework, including:

- Where insufficient information is available to apply the Investigation Level Determination Tool, the investigation is automatically escalated to a Level 2 Investigation so that the required information can be obtained
- The RON is required to review the NOPSEMA Inspectors recommendation regarding incident classification to verify its appropriateness and agree/approve the recommendation or disagree/refer the matter back to the NOPSEMA Inspector for alternative action
- For borderline, complex, contentious, or unusual incidents (or where ‘responsible party’ factors have a significant influence on investigation classification) the NOPSEMA Inspector is required to consult with a fellow Inspector and/or RON before making a recommendation. The RON shall also consider advising the Head of Division who may advise the Compliance Committee
- If the Investigation Level Determination Tool is misapplied or an investigation reveals further information suggesting a different investigation level, there is provision to escalate and de-escalate between levels.

6.3.5 Stakeholder perceptions of NOPSEMA’s investigations

Stakeholders had mixed views on NOPSEMA investigations

Based on our industry consultation activities, we identified that most respondents (60%) agreed in a positive manner that NOPSEMA has the right capability to conduct investigations of suspected breaches. Many industry stakeholders commented positively on NOPSEMA’s technical capabilities, particularly in relation to safety and well integrity functions. Stakeholders positively regarded the professionalism and experience of NOPSEMA inspectors.

However, there are some stakeholder perceptions that NOPSEMA should be aware of and attempt to address, including that:

- Some NOPSEMA safety inspectors do not have a sufficient process safety skillset
- Some investigations of breaches or suspected breaches do not always get to the root cause
- Enforcement activities are not always equally applied and/or reluctantly applied
- NOPSEMA has not been efficient and timely when conducting some health and safety incident investigations.

6.3.6 NOPSEMA’s investigative powers – Commonwealth legislative matters

There are potential improvements to NOPSEMA Inspector’s investigative powers

The following are potential improvements for consideration to support NOPSEMA Inspectors with respect to their investigative powers:

- **Express power to electronically record answers to questions:** Coercive powers provided to NOPSEMA Inspectors for the purpose of ‘investigation’ pursuant to Division 1 of Chapter 6.5 ‘Compliance and Enforcement’ of the OPGGS Act and Regulatory Powers Act do not extend to an express power for a NOPSEMA Inspector to record answers to questions using a sound recording device or an audio visual device. Whilst the Commonwealth *Work Health and Safety Act, 2011* does not provide this power, other harmonised state jurisdiction’s *Work Health and Safety Acts* do (see for example *section 185A of the Work Health and Safety Act, 2011 (NSW)*) NOPSEMA Inspectors not having access to this power, raises room for argument when they seek to record an interview (not simply to save time but also to corroborate what was said without challenge later in court) when lawyers acting for titleholders object to the use of a recording device
- **Clarity of the law governing privilege against self-incrimination:** The OPGGS Act applies the standard investigation powers in the *Regulatory Powers (Standard Provisions) Act 2014*, which do not abrogate privilege against self-incrimination. The privilege has however, been abrogated in other provisions under the OPGGS Act which relate to inspections, noting that the information obtained or answer given cannot be used as evidence against the person providing the information or answering the questions. We note abrogation of the privilege in these provisions acknowledges that it may be more important to establish the facts rather than be able to use the facts or information in a prosecution or legal actions against the person providing the information or responses. It is important all stakeholders understand when and how NOPSEMA Inspectors may use this power to require a person to answer questions in circumstances where they cannot claim privilege against self-incrimination.

Recommendation #6

The Government should consider updating the OPGGS Act with respect to the power of NOPSEMA Inspectors to electronically record answers when using their powers to question under the Act.

Recommendation #7

NOPSEMA should publish guidance for the benefit of all stakeholders as to how and in what circumstances the law concerning self-incrimination is relevant when a NOPSEMA Inspector exercises their powers to compel relevant parties to answer questions.

6.4 NOPSEMA's enforcement approach

6.4.1 NOPSEMA's graduated response to non-compliance

NOPSEMA's EMM appropriately identifies that there *"is no single correct approach to addressing non-compliance"*. As such, NOPSEMA has structured its response strategies to using a graduated approach, which are then chosen to be proportionate to the risks presented by health and safety, well integrity, or environment issues or other non-compliances.

The graduation levels, aligned to better practice, recognise informal compliance actions as (summarised and extracted from NOPSEMA's EMM):

- **Educating and increasing awareness** – which is where NOPSEMA encourages compliance through education and awareness programs designed to assist titleholders to improve or maintain compliance
- **Providing verbal advice or warnings** – which is where a potential area of improvement is identified by a NOPSEMA inspector (e.g. better practice in industry) and the issue does not warrant formal enforcement action, the NOPSEMA inspector may provide verbal advice regarding the better practice
- **Providing written advice or warnings** – which is where a non-compliance issue has been identified and the NOPSEMA inspector provides a written recommendation within a planned inspection report, or in the form of a letter. This type of action is usually taken when there is insufficient risk gap to warrant the issue of an improvement notice.

6.4.2 Enforcement powers

NOPSEMA's approach to enforcement is adequate for its purpose, but stakeholders do not perceive NOPSEMA as taking sufficient action

For the purposes of NOPSEMA's enforcement powers, the relevant sections of the OPGGS Act, include:

- **Environmental management (Schedule 2A)** – which provides coercive powers of entry and inspection powers and some enforcement options to NOPSEMA Inspectors in the offshore petroleum and greenhouse gas storage environmental management context
- **Well integrity (Schedule 2B)** – which provides coercive powers of entry and inspection powers and some enforcement options to NOPSEMA Inspectors in the well integrity context
- **Occupational Health and Safety (Schedule 3)** – that provides coercive powers of entry and inspection powers and some enforcement options to NOPSEMA Inspectors in the OHS context
- **Part 6.5 'Compliance and Enforcement'** – that expressly provides for the application (with suitable modifications) of some monitoring, investigation and enforcement powers and some enforcement options to NOPSEMA and its Inspectors under Parts 2 and 3 of the Regulatory Powers Act.

The *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* (the **OPGGS Safety Regulations**) make provision for specific OHS matters, including administrative matters (e.g. failure to report), safety cases, validation of design, construction and installation, significant modification or decommissioning of a facility, notifying and reporting accidents and dangerous occurrences, election of Health and Safety Representatives (**HSRs**) and hazard specific control measures.

The Regulatory Powers Act provides for monitoring, investigation and enforcement by Commonwealth regulatory agencies generally (including NOPSEMA) by creating a framework for monitoring compliance with an Act or legislative instrument, investigating or gathering evidence of a contravention of an offence or civil penalty provision and (relevantly) creating a framework for:

- The use of civil penalties to enforce civil penalty provisions by order of a court
- The use of infringement notices for the contravention of a provision
- The acceptance and enforcement of enforceable undertakings relating to compliance with provisions
- The use of injunctions to enforce provisions by order of a court
- The use of criminal penalties.

It is important to recognise that an Act or a legislative instrument (e.g. the OPGGS Act and the OPGGS Regulations) is not subject to monitoring, investigation, or enforcement under the Regulatory Powers Act unless the Regulatory Powers Act is triggered by another Act (e.g. the OPGGS Act). That is, provisions of the Regulatory Powers Act do not apply or operate in the context of NOPSEMA's regulatory function under the OPGGS Act and Regulation as a matter of course but, instead, the OPGGS Act must expressly provide that they do.

NOPSEMA has a broad range of varied enforcement options available under the OPGGS Act and Regulatory Powers Act. In addition to the listed NOPSEMA laws outlined in section 601 of the OPGGS Act, we have mapped the current enforcement powers as provided by the OPGGS Act for the purposes of OHS, well integrity and environment, in **Table 6.3** below.

Table 6.3: NOPSEMA's current enforcement powers for the purposes of OHS, well integrity and environment as provided by the OPGGS Act

Enforcement power	OHS	Well integrity	Environment
Non-disturbance notices	Option available if prescribed conditions satisfied during an OHS inspection of a facility (schedule 3 of the OPGGS Act).	Option available if prescribed conditions satisfied during well integrity inspection of a facility (schedule 2A of the OPGGS Act).	Option available if prescribed conditions satisfied during an environmental inspection of an offshore premises (schedule 2B of the OPGGS Act).
Prohibition notices	Option available if prescribed conditions satisfied during an OHS inspection of a facility (schedule 3 of the OPGGS Act).	Option available if prescribed conditions satisfied during well integrity inspection of a facility (schedule 2A of the OPGGS Act).	Option available if prescribed conditions satisfied during an environmental inspection of an offshore premises (schedule 2B of the OPGGS Act).
Improvement notices	Option available if prescribed conditions satisfied during an OHS inspection of a facility (schedule 3 of the OPGGS Act).	Option available if prescribed conditions satisfied during well integrity inspection of a facility (schedule 2A of the OPGGS Act).	Option available if prescribed conditions satisfied during an environmental inspection of an offshore premises (schedule 2B of the OPGGS Act).
Prosecution proceedings	All OHS offence creating provisions of the OPGGS Act and Regulations.	All well integrity offence creating provisions of the OPGGS Act and prescribed regulations made under the OPGGS Act.	All environmental management offence creating provisions of the OPGGS Act and only a regulation made of the purpose of section 571 of the OPGGS Act (financial assurance).
Adverse publicity order	All offences of the OPGGS Act or the Regulation via a court order.		

Source: Deloitte analysis adapted from NOPSEMA data

We have mapped the current OHS, well integrity and environment enforcement powers provided for by the OPGGS Act through adoption (with modification) of some of the provisions of the Regulatory Powers Act (see **Table 6.4**).

Table 6.4: NOPSEMA's current enforcement powers for the purposes of OHS, well integrity and environment provided by the OPGGS Act through adoption of some of the provisions of the Regulatory Powers Act

Enforcement power	OHS	Well integrity	Environment
Non-disturbance notices	Option available after entering premises by consent or under a monitoring warrant pursuant to Regulatory Powers Act.		
Infringement notices	Selected (prescribed) provisions of the OPGGS Act ²¹ .		
Injunctions	Selected (prescribed) provisions of the OPGGS Act (Schedule 3) ²² .	Selected (prescribed) provisions of the OPGGS Act (schedule 2B).	Selected (prescribed) provisions of the OPGGS Act (schedule 2A).
Enforceable undertakings	Selected (prescribed) provisions of the OPGGS Act (Schedule 3).	Selected (prescribed) provisions of the OPGGS Act (schedule 2B).	Selected (prescribed) provisions of the OPGGS Act (schedule 2A).
Civil penalties	All civil penalty provisions as outlined in the OPGGS Act ²³ .		
Criminal penalties	All criminal penalty provisions as outlined in the OPGGS Act under section 587B.		

Source: Deloitte analysis adapted from NOPSEMA data

In addition to Table 6.3 and Table 6.4 above, see Table 6.5 below for a full list of NOPSEMA's listed laws.

Table 6.5: Full list of NOPSEMA's listed laws under the OPGGS Act

Item	Provisions	Topic	Item	Provisions	Topic
1	Chapter 2	Regulation of activities related to petroleum	11	Division 4 of Part 6.10	Collection of fees and levies payable to the Titles Administrator
1A	Chapter 3	Regulation of activities related to injection and storage of greenhouse gas substances	12	Chapter 7	Information relating to petroleum
2	Chapter 4	Registration of transfers of, and dealings in, petroleum titles	12A	Chapter 8	Information relating to greenhouse gas
2A	Chapter 5	Registration of transfers of, and dealings in, greenhouse gas titles	13	Schedule 2A	Environmental management laws: additional NOPSEMA inspection powers
3	Part 6.1	Operations	13A	Schedule 2B	Well integrity laws: additional NOPSEMA inspection powers
4A	Part 6.1A	Polluter pays	14	Schedule 3	Occupational health and safety (applying to offshore petroleum)

²¹ Section 611D and 611E of Division 5 'Infringement notices' of Part 6.5 Compliance & Enforcement of the Act provides for infringement notices that can be issued and enforced in accordance with Part 5 of the RPSP Act for prescribed offences under the Act only (not the Regulation).

²² Section 611J of Division 6 'Injunctions' of Part 6.5 Compliance and Enforcement of the Act provides that court ordered injunctions can be used in accordance with Part 7 of the RPSP Act to enforce prescribed provisions under the Act only (not the Regulation) – the Table to section 611J identifies (variously) the responsible Commonwealth Minister, the Secretary, CEO of NOPSEMA or the Titles Administrator as 'authorised applicants' for injunctions.

²³ Section 611B of Division 4 'Civil penalties' of Part 6.5 Compliance & Enforcement of the Act provides that civil penalty provisions set out in the Act are enforceable under Part 4 of the RPSP Act.

Item	Provisions	Topic	Item	Provisions	Topic
					operations and offshore greenhouse gas storage operations)
5	Part 6.2	Directions relating to petroleum	15	Prescribed regulations, or a prescribed provision of regulations, made under this Act	Safety regulation (applying to offshore petroleum operations and offshore greenhouse gas storage operations)
5A	Part 6.3	Directions relation to greenhouse gas	16	Prescribed regulations, or a prescribed provision of regulations, made under this Act	Environment regulation
6	Part 6.4	Restoration of the environment	16A	Prescribed regulations, or a prescribed provision of regulations, made under this Act	Regulation of greenhouse gas injection and storage
7	Division 1 of Part 6.5	Compliance and enforcement – listed NOPSEMA laws	17	Prescribed regulations, or a prescribed provision of regulations, made under this Act	Structural integrity of wells and well operations
8	Part 6.6	Safety zones and the area to be avoided	18	Prescribed regulations made under this Act (apart from any prescribed provisions of those regulations) or a prescribed provision of regulations made under this Act	Resource management and administration
9	Part 6.7	Collection of fees and royalties payable to the Titles Administrator or the Commonwealth	19	A provision of a legislative instrument under this Act, if (and to the extent that) it is prescribed by regulation for the purposes of this section	As stated in the regulation
10	Division 8 of Part 6.9	Collection of fees and levies payable to the Titles Administrator			

Source: OPGGS Act

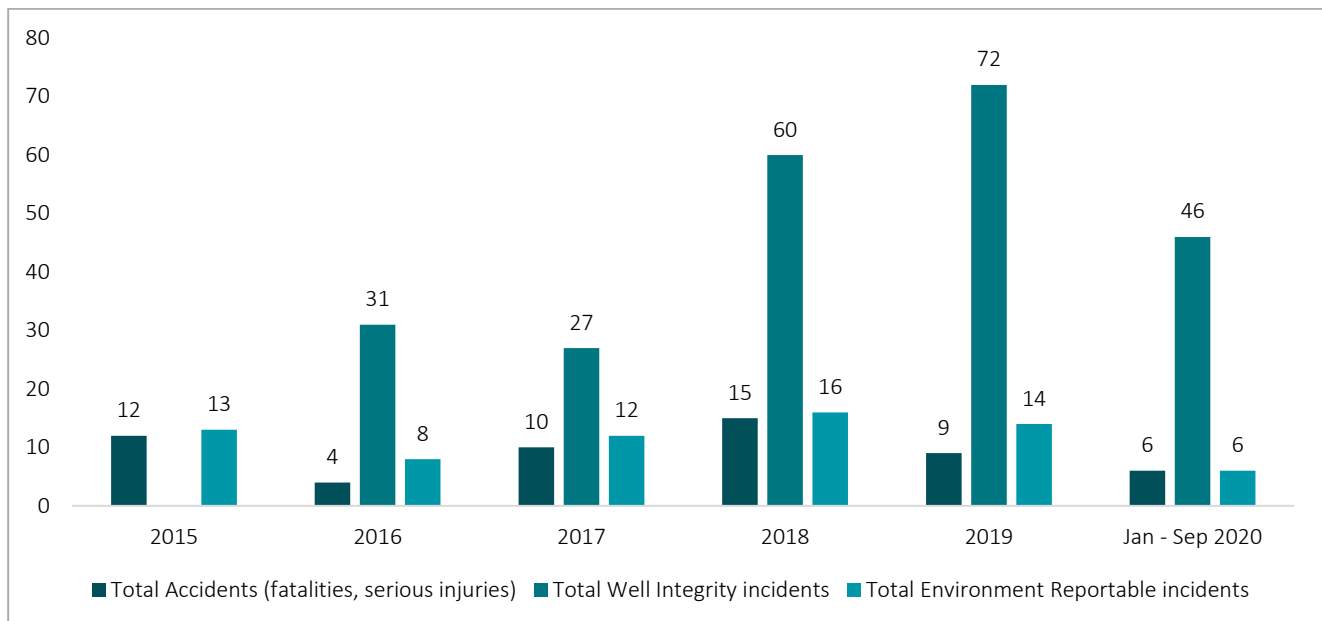
6.4.3 Undertaking a prosecution

The number of prosecutions is low – but aligns to the NOPSEMA philosophy of working with industry to help grow, maintain, and “find one, fix many”

NOPSEMA’s EMM states that “any incident which triggers a Level 4 Investigation may be expected to result in a recommendation for prosecution; these thresholds primarily focus major investigations to incidents where actual harm has occurred”.

If NOPSEMA determines that an entity should be prosecuted for failing to maintain (e.g.) safe systems of work, NOPSEMA engages with its own internal legal counsel through its Compliance Committee as well as the CDPP. NOPSEMA’s role in the prosecution of entities in the offshore industry is limited to the investigation of risk or incidents, with a brief of evidence prepared and provided to the CDPP for consideration.

When considered against the total number of reported accidents and incidents (as shown in **Figure 6.4**), the number of prosecutions is low – but does align to the NOPSEMA philosophy of working with industry to help grow, maintain, and “find one, fix many”. During the period, there have been 56 accidents (fatalities or serious injuries), 235 well integrity incidents, and 69 environmental incidents. NOPSEMA has, during this time, referred two prosecution briefs to the CDPP.

Figure 6.4: Total reported accidents and incidents 1 January 2015 to 30 September 2020

Source: Deloitte analysis adapted from NOPSEMA data

During the review, we consulted with a representative from the CDPP to understand its role and current perceptions of the briefs of evidence provided by NOPSEMA, as the independent regulator. We found:

- The CDPP is engaged to support NOPSEMA (as well as other Commonwealth regulators and departments) by undertaking criminal prosecutions only at the point in time where NOPSEMA may investigate for the purposes of a prosecution. Civil action is not within the scope of the CDPP
- NOPSEMA generally refers a small number of matters to the CDPP
- The CDPP based out of its Adelaide office is responsible for supporting NOPSEMA in its enforcement/prosecution efforts. We understand the teams that support are not safety or environment legal practitioners, they are specialist criminal lawyers, who rely on the expertise of NOPSEMA and independent experts, as required
- The CDPP maintains independence from the investigation by only engaging with NOPSEMA in a pre-brief advice conversation and providing support, upon request
- NOPSEMA provides a brief of evidence to the CDPP to enable an assessment of the evidence and determination of proceeding with a prosecution
- There is little activity in prosecuting for the existence of a risk, with the primary focus being on criminal offences where there has been a significant incident.

From our discussion with the CDPP representative (and acknowledging the small number of briefs provided), we understand there are currently no issues with the briefs of evidence developed by NOPSEMA.

6.4.4 Limitation to NOPSEMA's enforcement powers – Commonwealth legislative matters

A 'section 27 offence' is a standard of WHS laws but is missing from the OPGGS Act

The absence of an 'officer due diligence' duty and counterpart offence creating provision that impose personal liability upon individuals that are positioned to influence legal compliance should be addressed. For instance, such a duty has applied across most Australian states/territories since at least 2011 in the form of section 27 of harmonised WHS laws.

The high-water mark of the OPGGS Act is that the state of mind and/or conduct of a director may be imputed to a body corporate for the purpose of a proceeding against it for an offence against a listed OHS offence under the OPGGS Act unless, in the case of conduct, it is established that it 'took reasonable precautions and exercised due diligence' to avoid the conduct – refer section 90 of Schedule 3 OHS of the OPGGS Act. This falls well short of imposing personal liability upon a director or other officer that can be enforced under the OPGGS Act.

This omission deprives NOPSEMA, in its capacity as the regulator, from reliance upon the following that significantly enhance compliance with the OPGGS Act:

- A positive due diligence duty requiring officers (directors and others) to proactively discharge a continuous duty to ensure compliance by entities they control with WHS duties and obligations under the OPGGS Act
- Clear legislative guidance provided to officers by means of a non-exhaustive list of steps they must take to discharge their due diligence duties and ensure compliance by the entity they control with WHS laws – refer section 27(5) of harmonised WHS laws (NOTE: ‘due diligence’ referred to in section 90 of Schedule 3 OHS of the OPGGS Act is not defined by the Act and, accordingly, there is no legislative guidance similar to section 27 of WHS harmonised laws)
- Imposition of personal liability upon an officer by, ultimately, lifting of the corporate veil²⁴ and enabling enforcement action to be taken directly against individual ‘officers’ in the event of breaches of the OPGGS Act thereby increasing the likelihood of compliance with the OPGGS Act – unlike a corporation or other entity an officer ‘has soul that may be damned and a body to be kicked’
- Taking enforcement action against an officer for a breach of the OPGGS Act that has both a specific deterrent effect but, more significantly, a broader general deterrent effect across industry resulting in greater compliance with the OPGGS Act.

Recommendation #8

The Government should consider amending the OPGGS Act to include provisions similar to a ‘section 27 offence’ under the Australian Work Health and Safety harmonised laws (that is, for officers of the organisations to have a duty to demonstrate they have exercised due diligence to ensure the organisation has complied with its duty under the OPGGS Act).

6.4.5 NOPTA and NOPSEMA’s cooperation on enforcement matters

NOPSEMA should proactively assist with advising NOPTA on instances where NOPSEMA’s enforcement powers might be applied in support of desired titles administrator outcomes

In brief, NOPTA as an administrator has limited enforcement powers directly. NOPTA can advise on the use of enforcement action via NOPSEMA, as the offshore legislative framework’s regulator to help ensure compliance with activities such as work programs or data submissions by titleholders.

NOPTA may, under section 601 of the OPGGS Act (‘NOPSEMA Laws’), call on NOPSEMA’s enforcement powers as the single offshore regulator who is, among other things, responsible for the compliance and enforcement activities for Australia’s offshore regime under the OPGGS Act²⁵. By way of example only, specific laws (referring to **Table 6.5** above) that could be viewed as being beyond the scope of NOPSEMA’s current regulatory focus (i.e. safety, well integrity, or environment) include:

- 1: Chapter 2 of the OPGGS Act – regulation of activities related to petroleum
- 2: Chapter 4 of the OPGGS Act – registration of transfers of, and dealings in, petroleum titles
- 3: Sections 568 and 569 of the OPGGS Act – works and operations obligation of petroleum titleholders
- 4: Sections 571 and 572 of the OPGGS Act – insurance and property obligations of petroleum titleholders
- 9: Part 6.7 – collection of fees and royalties payable to the Titles Administrator or the Commonwealth
- 11: Division 4 of Part 6.10 – collection of fees and levies payable to the Titles Administrator.

Additionally, the NOPSEMA CEO may, under section 602(1)(b) of the OPGGS Act, appoint as a NOPSEMA inspector “an employee of the Commonwealth or of a Commonwealth authority” (of which NOPTA staff fall under).

NOPTA and NOPSEMA have established the Determination No. 2019/1 *Payments for NOPSEMA inspectors*, which outlines the amount to be paid by NOPTA to NOPSEMA if the services of NOPSEMA inspectors are required for the exercise of powers relating to the Titles Administrator, as described above. The document also details an understanding by both parties that the Titles Administrator may give

²⁴ The ability for NOPSEMA to ‘lift the corporate veil’ in order to also prosecute officers of a corporation (in addition to the corporation) should help improve confidence in NOPSEMA’s capacity to regulate and better address root causes of non-compliance.

²⁵ Section 602B has provisions for NOPTA to reimburse NOPSEMA if a NOPSEMA inspector exercises and/or prepares to exercise powers for a purpose that relates to the functions of NOPTA.

written directions to a NOPSEMA inspector to exercise powers of entry, monitoring and investigation for the purposes of the OPGGS Act²⁶.

NOPTA advised us that they had not been required to draw on the NOPSEMA enforcement powers during the review period as all compliance outcomes during the period were achieved and met without the need to rely upon NOPSEMA's powers. NOPSEMA advised us that they are prepared to assist NOPTA in this regard but were not asked to do so across the review period. NOPTA acknowledged they may need to rely upon the powers at some time in the future and are ready, willing, and able to do so. We encourage NOPTA and NOPSEMA to ensure opportunities are identified where the regulator could assist the administrator with applying a graduated enforcement approach. That is, ensuring consideration for NOPSEMA's involvement is not only limited to situations where a serious breach or prosecutable offence may have occurred.

In the event NOPTA is required to rely upon NOPSEMA's enforcement powers in the future, clarity would need to be provided to industry as a whole as to NOPSEMA's involvement and their role (on behalf of NOPTA) in taking enforcement actions for titles administration-related matters. We are of the view that many stakeholders in the industry are likely not aware that NOPSEMA inspectors may be requested to exercise their regulatory powers on behalf of the Titles Administrator for the purposes of the OPGGS Act. This matter could be addressed as part of our earlier recommendation on bringing additional clarity on the roles and responsibilities within the offshore legislative framework.

6.4.6 Industry perceptions of NOPSEMA's enforcement actions

Based on our industry consultation activities, we identified that only 35% of respondents positively agreed that NOPSEMA has the right technical capability to initiate enforcement activities. Stakeholders also provided specific items of feedback, including the below:

- Enforcement activities are not always equally applied and/or reluctantly applied, or enforcement is not always commensurate with the risk/breach (this sentiment was strongest from non-industry stakeholders)
- Recognition NOPSEMA has a broad range of enforcement powers, but does not use them sufficiently, in some cases contributing to an increasing level of public distrust with the industry (this sentiment was strongest from non-industry stakeholders)
- NOPSEMA being extremely risk averse, to the point there is a perception NOPSEMA endeavour to identify a technical reason to not exercise an enforcement power
- NOPSEMA could support the industry as a whole better if they focused some enforcement energy and powers on the poor performers in the industry. Perception that NOPSEMA has "inherent trust in the 'big boys' of the industry" (industry).

We understand that, to many stakeholders, evidence of NOPSEMA's use of sufficient enforcement is tied to the volume of prosecutions NOPSEMA, through the CDPP, pursues. The reality is that NOPSEMA's enforcement actions extend beyond the pursuit of prosecutions. There is value in NOPSEMA more actively providing visibility over its general approach to enforcement to stakeholders, to provide greater confidence in its oversight of the industry. NOPSEMA should consider publishing clearer rationale for how it applies its enforcement approach in support of improving compliance and regulatory outcomes.

Opportunity #6

NOPSEMA is encouraged to more visibly publish its approach to enforcement activities across its graduated set of enforcement options. Clarity should be provided to stakeholders on the rigour and rationale of NOPSEMA's approach to enforcement actions.

²⁶ Also see section 707A of the OPGGS Act – *Directions by Titles Administrator*.

7 How does NOPSEMA regulate and respond to industry through its capability and capacity?

Key points

NOPSEMA's capabilities and capacity will need to evolve to meet the demands of a maturing industry and its new renewables remit

NOPSEMA's structure has remained relatively static across the assessment period, with a marginal increase in Full-time Equivalent (FTE) employees.

NOPSEMA and its stakeholders view NOPSEMA's capacity as generally sufficient. One area of concern raised by NOPSEMA and industry stakeholders is the apparent under capacity of NOPSEMA's Well Integrity function. To enable NOPSEMA to undertake a balanced approach to assessments and inspections, this capacity constraint should be addressed – be it through process or job redesign, technology improvement, or sourcing of additional talent.

NOPSEMA's capabilities were, in the main, viewed as sufficient in their depth by stakeholders. Our analysis shows that NOPSEMA has developed strong skillsets across its OHS, well integrity, and environment functions. Stakeholders were generally complimentary of NOPSEMA's Safety Inspector skillsets. In contrast, NOPSEMA's technical capability in undertaking enforcement was less favourably perceived and stakeholders noted a perceived gap in the applied experience of NOPSEMA's Environment Division.

We found emerging capability gaps for NOPSEMA, from now, in financial assurance for decommissioning and digital literacy. Addressing these capability gaps will be a priority to help address the broader industry shift and subsequent increase in decommissioning activity. NOPSEMA told us it is aware of these emergent capability requirements.

To support its capability building, NOPSEMA has an adequate workforce planning approach. NOPSEMA also undertakes performance management and talent development activities, although managing underperformance and more explicit linking of performance management outcomes to personnel development plans remains an area of focus.

A transition to a 'One NOPSEMA' operating model is required

Since 2018-19, NOPSEMA leadership have sought to affect a shift in ways of working, with a focus on breaking down divisional silos to foster greater collaboration and coordination. In light of increasingly complex work, the use of cross-functional teams, and the bringing together of multi-disciplinary capabilities is essential. We have observed an improvement in cross-divisional ways of working since the 2015 Operational Review but note a strong theme of feedback from industry stakeholders around perceived inconsistencies in approaches and outcomes across NOPSEMA's divisions.

NOPSEMA has acknowledged further work is required to encourage greater collaboration and coordination. To achieve the consistency, further collaboration and coordination is required, NOPSEMA needs to effect change across its operating model to respond as 'One NOPSEMA.'

Recommendations: 9, 10, 11

Opportunities: 7, 8, 9, 10, 11, 12

In this section we assess whether NOPSEMA has the capability, capacity, and resource management practices to regulate effectively. Having the right capability and capacity underpins the effectiveness of NOPSEMA and confidence in its ability to regulate. In an objective-based framework, such as that set out in the OPGGS Act, the competence of the regulator is particularly critical given its role as ‘assessor and inspector’ of the industry’s ability to appropriately manage risk.

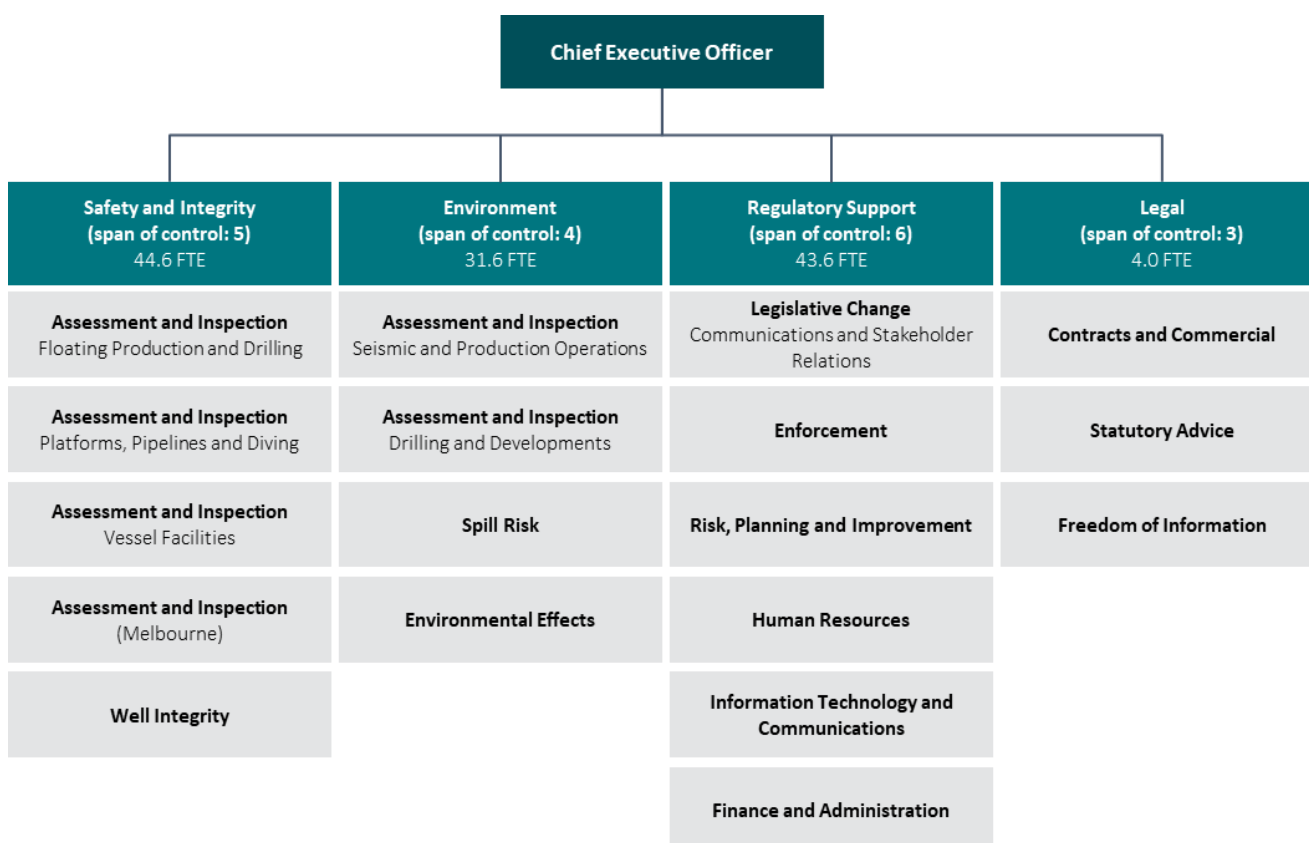
We begin with an assessment of NOPSEMA’s operating model (subsection 7.1) and capacity (subsection 7.2). We then examine NOPSEMA’s current and future capability requirements and its approach to workforce planning (subsection 7.3). Next, we discuss NOPSEMA’s current approach to performance management (subsection 7.4), its resourcing and career progression arrangements (subsection 7.5), and whether or not its people are seen to embody its organisational values (subsection 7.6).

7.1 NOPSEMA’s structure and ways of working

NOPSEMA’s structure has remained relatively static across the review period, with a marginal increase in headcount

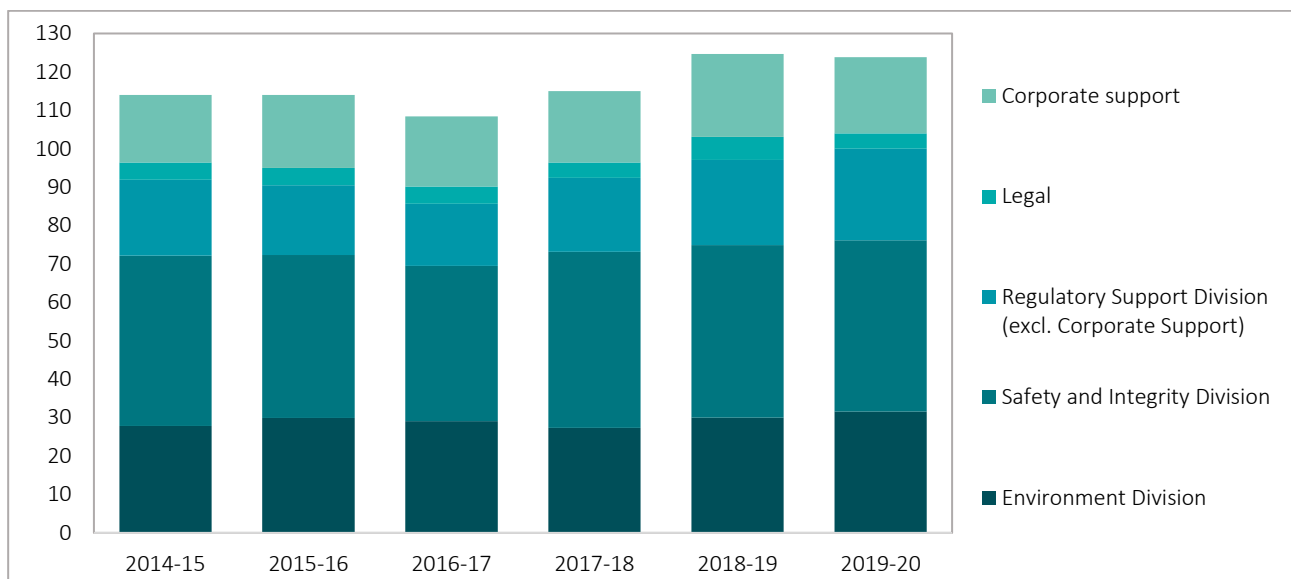
NOPSEMA has three Divisions (Safety and Integrity, Environment, and Regulatory Support) which are each led by a respective Head of Division (HOD), and a Legal Unit that is led by a General Counsel (GC). The HODs and GC report to the CEO, and they (CEO, HODs and GC) collectively form the NOPSEMA Leadership Team (NLT). Figure 7.1 outlines NOPSEMA’s organisational structure as at 30 June 2020.

Figure 7.1: NOPSEMA’s organisation chart (as at 30 June 2020)



Source: Adapted from NOPSEMA internal document

As of 30 June 2020, NOPSEMA had 123.8 FTEs, of which 20% were ‘non-ongoing personnel’ (a person engaged on a temporary basis for a specified term or the duration of a specified task under section 22(2)(b) of the *Public Service Act 1999*). Figure 7.2 shows NOPSEMA’s FTE profile by division across the review period. Since 2015-16 NOPSEMA’s structure has remained largely static. We have observed a gradual increase in Well Integrity FTE’s since 2016-17 (from 7.6 FTE in 2015 to 9.6 FTE in 2020), although this has stabilised since 2018-19. The increase in Well Integrity FTEs was due to increase in workload and need for additional capability (e.g. production technology capability) to support the outcomes of DISER’s review of the well integrity portion of the RMA Regulations.

Figure 7.2: NOPSEMA's FTE profile by division from 2014-15 to 2019-20

Source: Deloitte analysis adapted from NOPSEMA data

Over the review period, the NOPSEMA Leadership Team has reduced in size, with support functions (i.e. Information and Communications Technology (ICT), Human Resources, and Finance) now reporting to the Head of Regulatory Support Division. Feedback from the NOPSEMA Leadership Team is that this restructure has enabled more strategic discussions to occur at the executive level. In addition to structural changes, NOPSEMA has established several committees to enable strategic oversight and decision-making at a 'whole-of-organisation' level.

A 'One NOPSEMA' approach is required

Since 2018-19, NOPSEMA leadership have sought to affect a shift in ways of working, with a focus on breaking down divisional silos to foster greater collaboration and coordination. For example, the introduction of joint inspections with personnel from Safety, Integrity and Environment forming cross-functional 'project teams'. Improvements to cross-divisional collaboration has enabled a broader perspective of risk identification and management to be undertaken.

While there has been an improvement in cross-divisional ways of working, some stakeholders observed inconsistency in approaches and outcomes across NOPSEMA divisions. NOPSEMA has acknowledged further work is required to encourage greater collaboration and coordination. Furthermore, NOPSEMA senior leadership noted that recent steps towards more collaborative ways of working has been a positive cultural shift for the organisation.

Currently NOPSEMA is functionally structured relating to its regulatory activities. Recent trends in operating model design have tended to favour models which more closely align internal resources to external-facing activities. In NOPSEMA's case, this could be through the realignment of an operating model to be, by way of example only, 'basin orientated'. Under such a model NOPSEMA would assemble cross-functional teams aligned to particular geographies (i.e. basins). The rationale being the propensity for common issues or risks arising within geographies. In addition to improving collaboration, NOPSEMA inspectors and assessors would better be able to identify cross-cutting issues at a more strategic level.

Recommendation #9

NOPSEMA should develop an integrated plan for enabling a shift to a 'One NOPSEMA' operating model which considers cross-functional alignment of capabilities. This recommendation reflects that people change, process change, and technology change must occur in unison to achieve the desired outcome of a more coordinated, collaborative, and consistent delivery of regulatory functions.

Elements to consider in developing this transition plan to a new way of working include:

- The application of a basin-centric organisation of cross-functional teams (e.g. pods aligned to a basin with capabilities across safety, environment, well integrity, and regulatory support). Formal reporting lines could remain tied to functional leaders
- Mechanisms for delivering cultural change, including a clear and compelling vision of what 'One NOPSEMA' practically looks like for personnel across the organisation

- How organisational processes (both operational and support) can be redesigned to enable collaboration and coordination – particularly across inspection and assessment processes
- Cross-functional training requirements and knowledge sharing arrangements, to ensure a base level of understanding is established across the organisation of other functional subject matter areas. A base understanding of other roles will assist regulatory personnel to identify opportunities where collaboration is required or would be of benefit
- Clarity in governance and corporate performance reporting, which reinforce collaboration and coordination outcomes
- Design and agreement of ‘One NOPSEMA’ values and behaviours, which should then be integrated into talent management processes
- Systems and data that enable collaboration
- Facilities, working tools, and workspaces that enable collaboration and coordination.

7.2 NOPSEMA’s capacity

With the exception of Well Integrity, NOPSEMA’s capacity is sufficient

NOPSEMA leadership did not highlight major concerns with capacity and it was generally felt that the current staffing levels are appropriate for performing the required functions of NOPSEMA. NOPSEMA’s operating efficiency is analysed further in **Section 10.1.2**.

However, concerns were raised by NOPSEMA and by stakeholders that the Well Integrity team is resource constrained. It was noted that much of the team’s time is spent reviewing WOMPs, leaving limited time to perform inspections. Referring to **Table 7.1**, we highlight a gradual increase in the number of Well Integrity assessments and inspections from 2018 onwards²⁷. This trend could reasonably be expected to continue as the number of well abandonment activities increase in future as the industry matures.

Table 7.1: Well Integrity assessment and inspection activity from 2011 to Sep 2020

Well integrity assessments and inspections		2011	2012	2013	2014	2015	2016	2017	2018	2019	Jan - Sep 2020	Total
Subtype												
Well Integrity Inspection			4	5	5	12	6	8	11	10	21	82
Well Activity Application	Not Applicable	1	84	97	120	113	53	43				511
Well Operations Management Plan	New	25	27	24	22	22	1					121
	Variation	1	4	6	8	7	2					28
Well Operations Management Plan (2016)	New						28	37	13	14	13	105
	Revision							7	11	11	8	37
Final Abandonment Report	Abandonment						6	15	14	25	13	73
Request to Undertake a Well Activity in a Specified Manner	Not Applicable						1		1	1		3
Total activities		27	119	132	155	154	97	110	50	61	55	960

Source: Deloitte analysis adapted from NOPSEMA data

²⁷ This is an indicator of workload only. Care must be taken in interpreting these trends given that there is not a 1:1 relationship between a WOMP and the number of wells within that WOMP or the relative complexity of the WOMP in question.

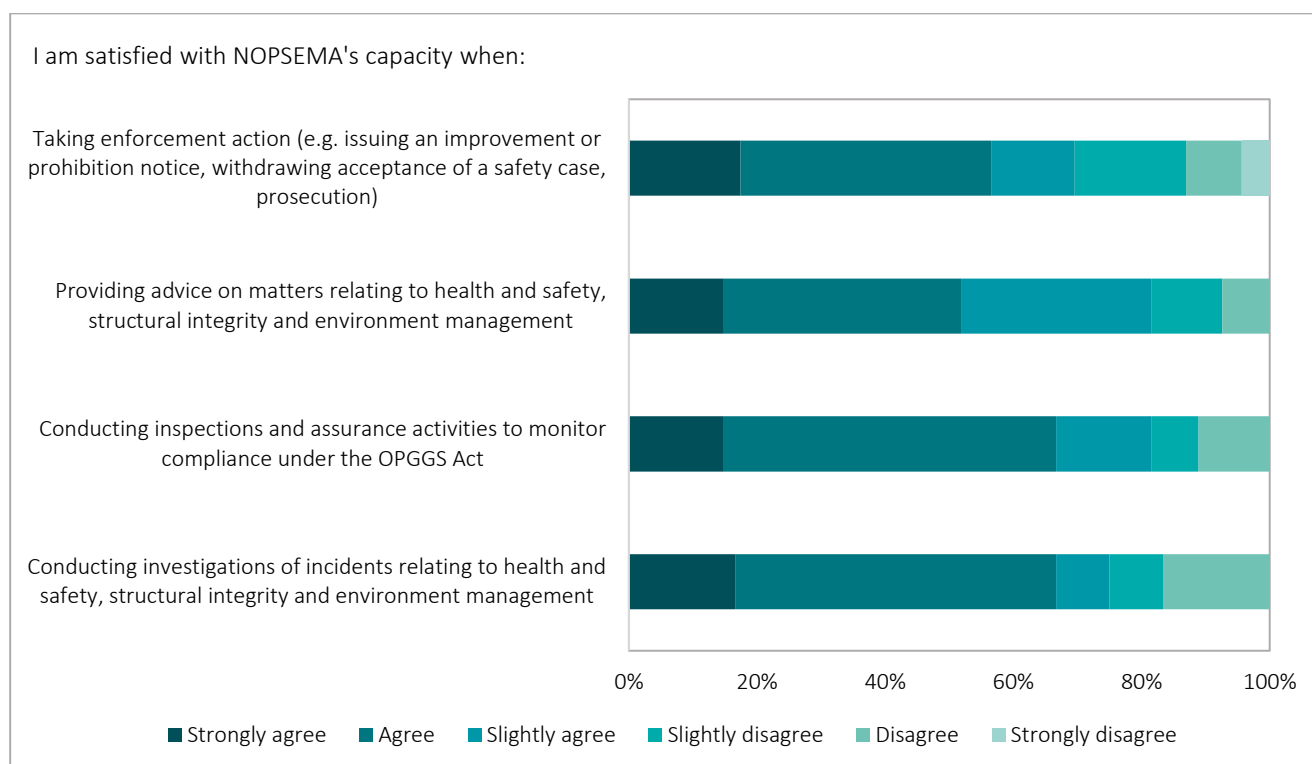
Recommendation #10

NOPSEMA should increase the capacity of the Well Integrity capability. At minimum, an increase in the capacity of the Well Integrity capability should consider:

- Likely industry activity moving forward (the forecast demand for the Well Integrity capability)
- The actual and desired allocation of the Well Integrity team's effort across inspection and assessment activities
- Identifying potential operational efficiencies through process redesign, technology improvement, job design and/or, where a gap remains, addressing capacity shortages through the sourcing of talent.

Feedback from stakeholders we consulted with as part of our review was consistent with our analysis above and NOPSEMA feedback. Stakeholders tended to view NOPSEMA's capacity as sufficient (see **Figure 7.3**). However, there was a perception raised by some titleholders that the Well Integrity function is under capacity, both in their ability to perform timely inspections as well as to receive and assess WOMPs.

Figure 7.3: Survey responses to NOPSEMA's capacity



Source: Deloitte Stakeholder Survey, Deloitte analysis

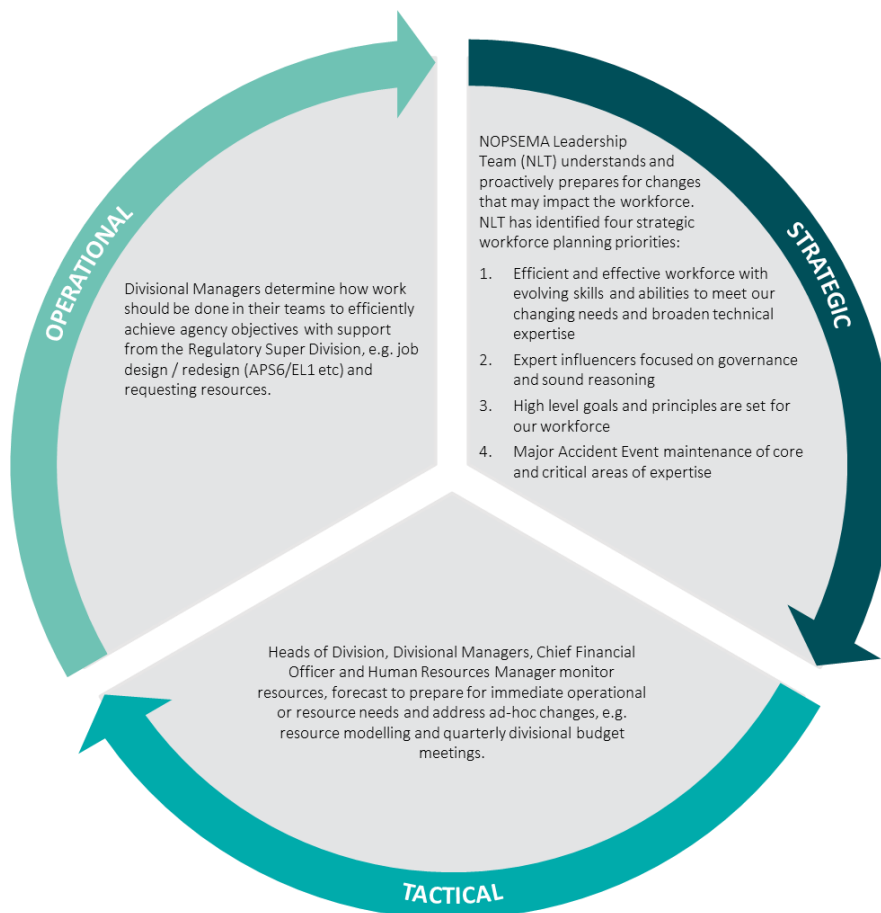
7.3 NOPSEMA's capability and workforce planning

7.3.1 NOPSEMA's practices for building capability

7.3.1.1 Capability needs identification

NOPSEMA has a structured process for identifying talent requirements

NOPSEMA undertake a three-step process for workforce planning (see **Figure 7.4**). NOPSEMA review existing capabilities as well as what may be required in the future on an annual basis and when personnel move on internally or externally. Across the review period there has not been a significant variation to capability requirements (although we note minor changes to the Well Integrity team's capability requirements following the review of the well integrity portions of the RMA Regulations) – the need for some of the emergent capability gaps we note in this section have been present since the 2015 Operational Review.

Figure 7.4: NOPSEMA's approach to workforce planning

Source: NOPSEMA Leadership Team Workforce Planning Presentation

The regulatory divisions track their current capabilities. The Safety and Integrity Division maintains a competency register which provides an aggregated summary of the competencies held across the Division (including experience, specialism, qualifications and training). The Environment Division maintains an *Academic Qualifications Register* as well as a *Technical Matrix*. The Technical Matrix lists technical topics and associated activities and identifies whether the required capability exists, to what extent it exists or whether it is needed.

Our analysis found that:

- The approach used by NOPSEMA to workforce planning is adequate for their purpose, with many of the future capability enhancements we identify below being identified by NOPSEMA through the application of this approach to workforce planning
- There may be further benefit in adopting a more consistent approach across divisions to capturing current capabilities and future capability requirements to help identify cross-cutting capability gaps across regulatory functions.

Opportunity #7

NOPSEMA is encouraged to apply a consistent approach to capturing current and future capability requirements across its divisions.

7.3.1.2 Sourcing of talent

NOPSEMA favour specialist skillsets and industry experience

NOPSEMA tend to source talent from the industry for Safety and Well Integrity functions. NOPSEMA seek to hire operational specialists who have been directly exposed to and managed the relevant risks they will assess and inspect in their role. In contrast, we observed that a higher proportion of employees in the Environment Division, while having industry experience, have strong academic backgrounds with advanced academic qualifications (i.e. Masters and PhD) in the Environment discipline.

NOPSEMA has low turnover. For instance, approximately 56% of NOPSEMA employees have a tenure of greater than 5 years²⁸. This indicates that a portion of personnel have spent a significant period of time out of operational roles. As such, NOPSEMA need to manage this risk by ensuring its personnel are exposed to the requisite level of training on better practice to ensure their knowledge and skillset remains current and relevant to the industry they regulate.

NOPSEMA has partial alignment to leading practice resourcing approaches through their alignment to the APS process. The *Bersin High Impact Talent Acquisition Framework* (see **Figure 7.5**) highlights key activities that could be considered to lift the level of impact of the current talent acquisition process, namely proactive sourcing, as outlined within this report, assessment of team fit, and alignment, to the required way of working and mindset, and onboarding. A stronger employer brand and definition of the employee value proposition (potentially linking to benefits of working within the APS) would support NOPSEMA in attracting key talent from industry for key roles, particularly where NOPSEMA is unable to compete with market salaries.

Figure 7.5: Bersin High Impact Talent Acquisition Framework



Source: Bersin by Deloitte

NOPSEMA indicated that they currently use their TechnologyOne Finance system to manage their employee data which does not appear to limit their ability to manage talent. A Human Resources Management System (HRMS) may support better management of human resources data over time, enabling trend analysis for activities such as strategic workforce planning and reducing human resources administration in maintaining manual and discrete records. The investment in a HRMS needs to be considered alongside the overall maturity of NOPSEMA's human resources function and services required by NOPSEMA. We do not consider this an opportunity for further exploration at this point in time, but the requirement for an HRMS should be monitored by NOPSEMA management.

7.3.2 Stakeholder perceptions

The technical capabilities of NOPSEMA's personnel are generally viewed positively by stakeholders

Stakeholders had generally favourable perceptions of NOPSEMA's technical capability. Through our consultations, many stakeholders noted the technical expertise of NOPSEMA was a key strength of the organisation, particularly when inspectors and assessors came from an industry background. Referring to **Figure 7.6** below:

- Reviews of WOMPs were perceived as a relative strength, with 75% of stakeholders surveyed responding that they 'strongly agreed' or 'agreed' with this question

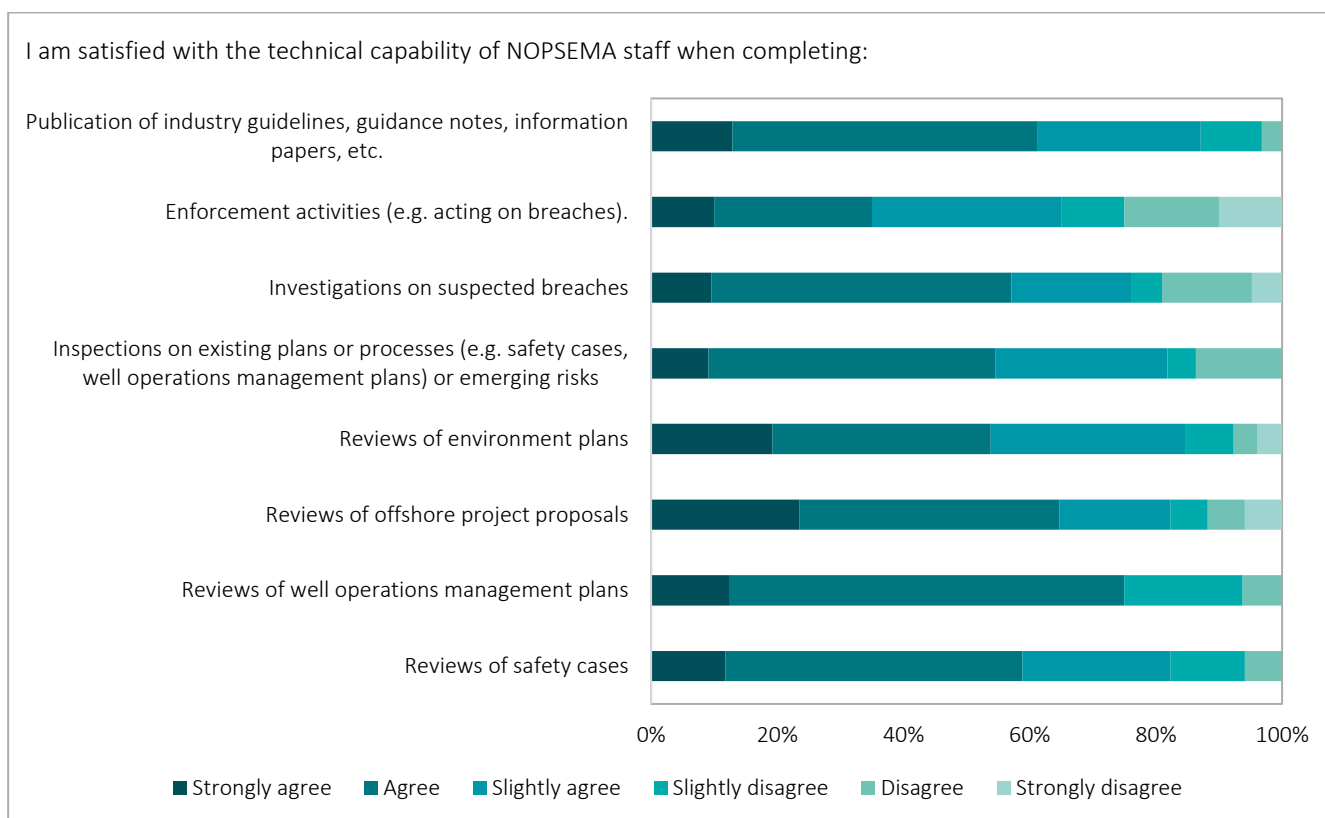
²⁸ NOPSEMA, 2020.

- Conversely, only 35% of stakeholders selected ‘strongly agreed’ or ‘agreed’ responses to satisfaction with NOPSEMA’s technical capabilities in relation to enforcement activities (e.g. acting on breaches)
- The remaining questions had generally favourable responses from stakeholders, with the proportion of ‘strongly agree’ and ‘agree’ responses ranging between 54% to 61% of all responses.

Stakeholders raised a concern regarding a perceived ‘shortage’ of personnel in the Environment Division with applied industry experience, with many having personnel noted to have instead come from an academic background. Given the subject matter of environment-related assessments, a balance must be achieved between applied and academic experience.

Furthermore, it was observed by some stakeholders that, while stakeholder engagement capabilities are strong at an executive level within NOPSEMA, there is an opportunity to improve the stakeholder engagement of managers, assessors, and inspectors.

Figure 7.6: Survey responses to NOPSEMA personnel technical capabilities



Source: Deloitte Stakeholder Survey, Deloitte analysis

7.3.3 Future capability requirements: NOPSEMA strategic workforce planning

There are a number of emerging capability gaps that NOPSEMA will need to address

The industry is at a critical juncture with a number of changes expected to materialise over the next decade. As such, NOPSEMA’s capabilities will need to adjust to respond to these changes. Positively, we have observed that NOPSEMA has identified several of these key industry shifts and are considering their associated impact on its requisite capability mix. For example, previous Strategic Workforce Planning Workshops have identified, among other matters, the following emerging issues:

- Management of late life assets and decommissioning
- A potential expansion of NOPSEMA’s regulatory remit to include offshore renewables pending formal agreement by the Government
- Opportunities to better utilise more advanced technologies.

We discuss the strategic implications of these in **Section 12** and limit the present discussion to examining capability implications of these issues.

There are challenges with anticipating likely capability needs due to the volatility of external influences on the industry and uncertainty over timeframes for emergent issues to materialise. To address short-term emergent capability gaps, NOPSEMA makes use of non-ongoing contracts and consultants to source capability. We find this aligns to better practice talent management approaches that encourage flexible methods to resourcing. There will be additional opportunities for NOPSEMA to make use of consultant resourcing for targeted scopes of work where there is scarcity in talent supply.

7.3.3.1 Commercial and financial capability

The OPGGS Act imposes a duty on all titleholders to maintain sufficient financial assurance when undertaking petroleum activities, this is a prior condition to acceptance of an EP. As the industry matures, compliance with this duty will come into focus for government, the regulator, industry, and the community more broadly.

Practically, this means NOPSEMA will need to continue to have enhanced capabilities in commercial and financial matters. Specifically, NOPSEMA will need to retain individual(s) with experience in:

- Capital asset finance experience in offshore petroleum, including capital asset project decommissioning (desirable to have a working knowledge of decommissioning and provisioning for decommissioning activities)
- Extensive experience developing complex financial models and scenario planning
- Experience assessing in financial capacity and project financing (e.g. debt and equity financing)
- General accountancy skills (CA or CFA equivalent)
- Transaction or due diligence experience (desirable but not essential).

7.3.3.2 Decommissioning capability

In addition to continuing to develop the commercial and financial capabilities noted above, NOPSEMA will need to develop further specialist capability in decommissioning (e.g. engineering, service company and supply chain management for the decommissioning phase, end-of-life environmental impacts). NOPSEMA has begun determining technical topics related to decommissioning and assessing the current level of capability within the organisation associated to these topics. For example, the Environment division have broadly assessed its capability and experience across the technical topics and have identified areas of less operational experience and capability gaps. To determine and validate the specific skillsets required, NOPSEMA should engage with its international peers, such as the UK's Offshore Petroleum Regulator for Environment and Decommissioning (OPRED).

We note that, given the domestic offshore petroleum industry's relatively limited experience with decommissioning, there will be challenges in sourcing these skillsets domestically and NOPSEMA is likely to need to recruit talent internationally. Furthermore, as the industry matures, demand for these scarce skillsets will increase, potentially driving up the salary costs for individuals with decommissioning experience.

Recommendation #11

NOPTA and NOPSEMA should, once the policy framework for offshore decommissioning has been developed and agreed by the Government, coordinate on the building of capability and capacity for decommissioning and aging asset management (including facilities engineering) and financial/commercial analysis (including transaction analysis and financial capacity). NOPTA and NOPSEMA may consider engaging with peers in more mature jurisdictions to identify the specific capability skillsets required. NOPTA and NOPSEMA should consider opportunities for building a shared capability that can be accessed by both parties to avoid duplication of capabilities and capacity.

In developing these capabilities, consideration should be given to the following:

- Seniority and experience of the individuals in question
- Ability to source talent locally (for decommissioning)
- Capacity requirements of the role(s) over time.

NOPSEMA could engage with its international peers to determine the specific skillsets required.

7.3.3.3 Digital readiness capability

The future of regulation, which we discuss further in **Section 12.4.2**, is becoming increasingly digital. NOPSEMA has identified a need to further embrace digital technologies. The ability for NOPSEMA to successfully utilise digital capabilities is contingent on the digital

readiness of NOPSEMA personnel. The fast-moving nature of COVID-19 meant that NOPSEMA and industry needed to rapidly change and scale how work was delivered using digital technologies. It is important that NOPSEMA continue build its digital readiness and capabilities to constantly improve how work is done today and be prepared for future uncertainties.

Opportunity #8

NOPSEMA is encouraged to:

- Identify digital capability requirements, with reference to industry and regulatory practice trends globally and aligned to the strategic direction of NOPSEMA
- Identify, plan, test scenarios and trial digital solutions to facilitate and support execution of regulatory activities.

7.3.3.4 Stakeholder engagement

Feedback received from industry was that NOPSEMA's stakeholder engagement capabilities are strong at an executive or senior management level. However, we observed feedback that further capabilities in stakeholder engagement could be developed at the middle management and inspector level.

Opportunity #9

NOPSEMA is encouraged to further develop stakeholder engagement capabilities at the middle management and inspector level.

7.3.3.5 Developing capability

Building the capabilities for the future will require a talent strategy that outlines how to 'buy, build and borrow' these skill sets over time. Specifically:

- **'Buying'** the capability relies upon an ability to secure a mix of talent through ongoing and non-ongoing contracts. This needs to be enabled by processes and governance arrangements that support more proactive sourcing in a competitive market
- **'Borrowing'** talent is the use of consultants and alliance partners for use on specific projects or activities, essentially acquiring these skillsets without them forming part of NOPSEMA's payroll. This borrowed talent could then support capability uplift activities for NOPSEMA personnel (e.g. working alongside NOPSEMA personnel and formally including the requirement for coaching and uplift as a part associated scopes of work)
- **'Building'** the required capabilities will align with the '70:20:10' approach to development that NOPSEMA encourage, with 70% of learning occurring on the job, 20% through exposure and 10% through formal learning. Targeted uplift programs for broad capabilities such as digital literacy would be required given the breadth of team members to be included. For more targeted capabilities such as commercial or financial acumen, specific programs that leverage expertise and experience from within NOPSEMA, coupled with externally sourced expertise, could be designed to deliver against these needs.

Opportunity #10

NOPSEMA is encouraged to develop a talent strategy that outlines the required approach to "buy, build and borrow" the capability required for the future.

7.4 Performance management and development

7.4.1 Performance management framework

NOPSEMA has an established performance management framework applied to all personnel

NOPSEMA's *Performance Management Process* is detailed in the *Employee Performance Management Standard Operating Procedure*. Performance objectives are set between personnel and their leaders at the beginning of each financial year (or upon commencement in a new role). Performance objectives for personnel are linked to NOPSEMA's *Competency Framework*, individual job descriptions, *NOPSEMA's Corporate Plan* and divisional *Annual Operating Plans (AOPs)*, helping link NOPSEMA's strategic objectives to personnel goals and performance.

Formal performance check-ins between personnel members and leadership are required on a quarterly basis with performance notes captured in an online form. At the end of the financial year, personnel receive an overall performance rating of either ‘exceeds position requirements’, ‘meets position requirements’, ‘improvement needed’ or ‘does not meet position requirements’.

In the 2019 Australian Public Service (APS) Census²⁹, a series of questions were asked of NOPSEMA personnel on the topic of Performance Management. Overall, there was a positive perception from personnel on their supervisor providing performance feedback. Specifically:

- 92% of NOPSEMA personnel answered ‘Yes’ to whether they have received regular and timely feedback from their supervisor in the past 12 months
- 88% of NOPSEMA personnel answered ‘Yes’ to whether they have received constructive feedback for their supervisor in the past 12 months.

A clearer link between performance management outcomes and learning and development is required

NOPSEMA has a comprehensive *Competency Framework* which can be utilised by personnel to identify ‘career development goals, conduct gap analysis and determine leadership pathways through reviewing competency descriptions and behaviours associate with different levels³⁰.’ Key inputs into the framework include content from the APS *Integrated Leadership System (ILS)* and *Work Level Standards (WLS)*, NOPSEMA position descriptions, the relevant *Corporate Plan*, and the *Human Resource Strategy*.

The competency framework is suitable for an organisation of NOPSEMA’s size and complexity; however, this review did not identify formal, structured technical competencies as a part of this broader framework (outside of the technical skills outlined in job descriptions). Instead, technical training is determined on an individual basis through discussions with managers. In order to align better with leading practice, NOPSEMA could expand its centralised competency framework to consider the breadth of leadership, professional and technical competencies required, and also include definition of the various levels of proficiency required for roles within their career architecture. This enables greater clarity for personnel in the expectations of their role as well as visibility on the competencies required for other roles across the organisation to support individual development planning activities.

Despite integrated processes and frameworks, in the 2019 APS Census, only 51% of NOPSEMA personnel responded favourably to the statement ‘My overall experience of performance management in my agency has been useful for my development’. This indicates that that an opportunity remains for NOPSEMA leaders to better link performance management outcomes to personnel learning and development needs and career goals.

Opportunity #11

NOPSEMA is encouraged to ensure performance management outcomes are more explicitly linked to personnel learning and development plans.

7.4.2 Managing underperformance

NOPSEMA has experienced challenges effectively managing underperformance

We observed that NOPSEMA has experienced challenges managing underperformance. For instance, only 22% of NOPSEMA respondents to the 2019 APS Census ‘strongly agreed’ or ‘agreed’ to the question ‘To what extent do you agree that your agency deals with underperformance effectively?’, which was comparatively lower to other regulators surveyed. NOPSEMA leadership acknowledge that management of underperformance is a leadership development area.

Some NOPSEMA personnel expressed reluctance in managing underperformance due to the performance management process being perceived as too difficult to implement. We also observed a concern from some managers of personal repercussion to managing underperformance, with concerns that underperforming personnel may make a complaint of bullying, harassment or discrimination in response to their performance being questioned. Results from the 2019 APS Census showed that 21% of NOPSEMA respondents felt that they had been subject to bullying and harassment. It was not clear the degree or severity of perceived instances of incidents

²⁹ The Australian Public Service census is an annual employee perception survey. The survey captures attitude and opinion data on important issues such as wellbeing, innovation, leadership, learning and development, and engagement of the APS workforce. It provides an opportunity for all APS employees to have their say about their workplace and help make the public sector a better place to work. 104 of 123 NOPSEMA staff participated in the survey in 2019, an 85% response rate. For further details see: <https://www.apsc.gov.au/aps-employee-census-2019>

³⁰ NOPSEMA Competency Framework.

occurring. We were not able to substantiate whether there have been instances of bullying or harassment, as NOPSEMA noted that no formal bullying or harassment complaints had been received by personnel over the past 12 months³¹.

NOPSEMA has an existing *Managing Underperformance Policy and Procedure*, and provide capability uplift in managing performance through their 'Management in Action' program and use of management rotations³² as a way to drive objectivity through performance reviews. Underperformance processes are sensitive and need to be treated confidentially. This may contribute to the perception from NOPSEMA personnel that underperformance is not well managed within the organisation.

Improving capability to manage underperformance also formed part of the NOPSEMA 2019 APS Census Action Plan. Actions set include:

- Distributing a new APS Performance Management Guide to the management team
- Develop a "Managing Probation" online training course for managers with new employees
- Review the *Performance Management Framework*.

Undertaking these actions will strengthen NOPSEMA's ability to manage underperformance.

NOPSEMA has a number of policies in place to promote respect and appropriate workplace behaviours including *Resolving Workplace Issues*, *Promoting Respect in the Workplace*, and the *Code of Conduct*. Personnel are encouraged to confidentially raise issues with their leader or the Human Resources team. Personnel also have access to Workplace Conflict Officers who are personnel members trained in assisting personnel with workplace issues.

Based on the information we have examined, NOPSEMA's processes and procedures for managing performance are suitable. Further opportunity exists for building the confidence and capability of personnel to manage performance and the creation of a safe environment, for both managers and followers, to discuss performance in an open and constructive manner.

Opportunity #12

NOPSEMA is encouraged to continue building capability in its leaders for managing underperformance through targeted leadership development training. This training should seek to build familiarity and confidence with leading practice techniques for managing underperformance in line with APS guidelines. Consideration should be given to building a culture where leaders and followers feel safe to provide open and constructive feedback to one another.

7.5 Resourcing and Career Progression

7.5.1 Resourcing

NOPSEMA seek to attract talent through competitive remuneration and use non-ongoing contracts as a means to manage resourcing levels

NOPSEMA applies a merit-based recruitment process in line with the APS requirements as described in NOPSEMA's *Recruitment, Selection and Engagement Policy* which is operationalised through the *Recruitment, Selection and Engagement Procedure*. Within the boundaries of the APS requirements, NOPSEMA utilise proactive talent sourcing through maintaining *Employment Registers* across the Safety and Integrity Division, Environment Division, and Regulatory Support Division to support with non-ongoing vacancies of 18 months or less. That is, NOPSEMA has the ability to scale capacity in some functions, should it require.

To enable NOPSEMA to attract the right capabilities from within the industry, NOPSEMA holds an exemption from APS for a Regulatory pay classification. This, in effect, allows NOPSEMA to remunerate regulatory personnel above their usual APS salary band. The rationale is to enable NOPSEMA to attract skilled industry applicants with competitive remuneration packages. This exemption is only applicable to personnel performing regulatory roles (i.e. support divisions are not covered). Feedback from NOPSEMA is that challenges persist. For example, the remuneration gap between APS 6 and EL1 level roles is substantial and does not allow for feasible progression. The remuneration gap with industry widens with increased tenure as salary progression within NOPSEMA becomes constrained. We do note that the APS has a number of additional, non-salary benefits offered as well.

The use of non-ongoing contracts at NOPSEMA has steadily increased over the review period with approximately 20% of employees on non-ongoing contracts, an increase of 10% over the past 4 years. Drivers for the use of non-ongoing contracts include:

³¹ As of 31 October 2020.

³² Some NOPSEMA managers are 'rotated' to different positions within the organisation.

- The flexibility they provide in helping manage NOPSEMA's cost structure, given that the majority of NOPSEMA expenses relate to staffing
- Improved ease in matching workforce 'supply' to somewhat volatile industry activity 'demand'
- Improved ability to source capability for discreet scopes of work (e.g. projects) or for highly technical, less frequent needs that do not warrant a permanent position.

While our observations support the strategic use of non-ongoing contracts, there are challenges from the inherent uncertainty of these contracts and perceptions of differences in treatment of personnel from those held on non-ongoing contracts. To help address uncertainty in contract continuation, NOPSEMA seek to provide non-ongoing contracted employees with three-months' notice on the extension (or not) of their contract.

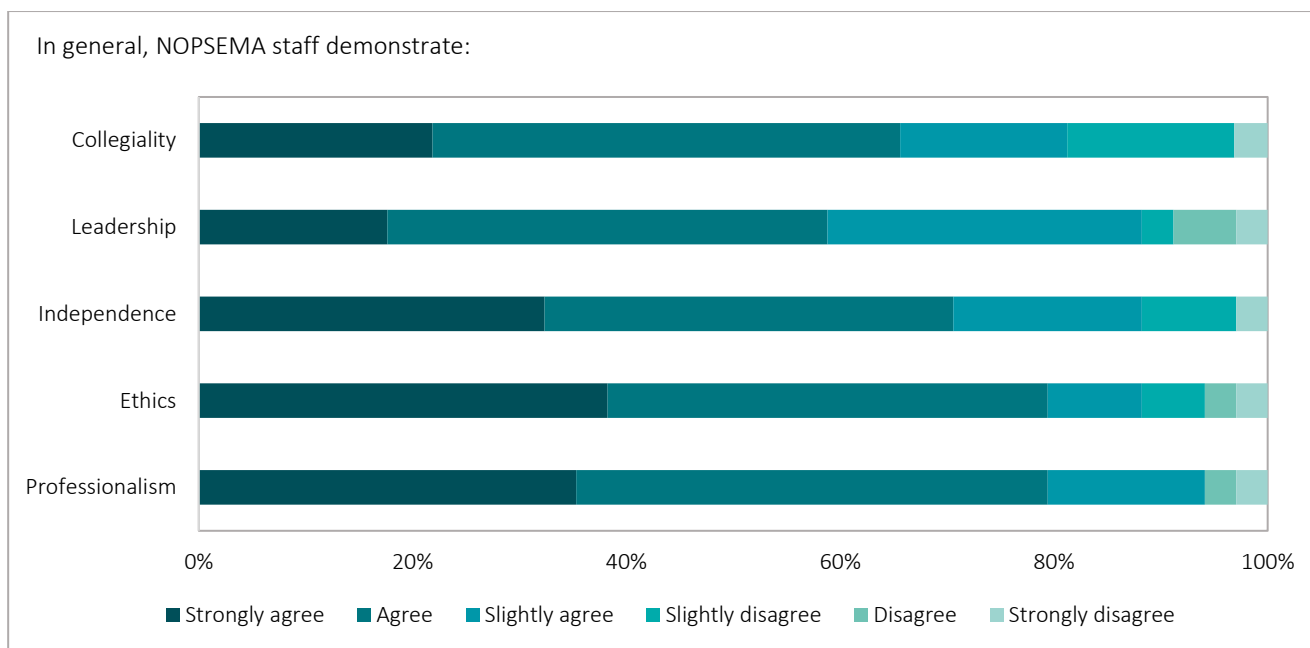
7.6 Stakeholder perceptions of embodiment of values

Stakeholders broadly agree NOPSEMA behaviours reflected NOPSEMA's values, particularly the professionalism of personnel

Referring to **Figure 7.7**, NOPSEMA personnel were generally seen to exhibit NOPSEMA's values. Specifically:

- Stakeholders surveyed tended to feel NOPSEMA's personnel behaviours reflected their values for independence (71%), ethics (79%), and professionalism (79%) (percentage of stakeholders who responded 'strongly agree' or 'agree')
- In contrast, NOPSEMA's leadership (59%) and collegiality (66%) were less favourably viewed.

Figure 7.7: Survey responses to NOPSEMA's adherence to its values



Source: Deloitte Stakeholder Survey, Deloitte analysis

8 How does the NOPSEMA Advisory Board enable NOPSEMA to carry out its functions?

Key points

NOPSEMA's advisory board is not a governance board

The Advisory Board is not a Board as defined by the Corporations Act. The Advisory Board's functions under the OPGGS Act include (in summary) the provision of advice and make recommendations to the NOPSEMA CEO about operational policies and strategies to be followed by NOPSEMA in the performance of its functions. In addition, the Advisory Board can provide advice and make recommendations to the responsible Commonwealth Minister, a State Petroleum Minister, the Northern Territory Petroleum Minister, and Ministers responsible for mineral and energy resources matters (including GHG storage).

The Advisory Board has not formally established and made public a Terms of Reference or Charter detailing its scope, role, function, and responsibilities.

The Advisory Board should take a more active role in helping set NOPSEMA's strategic direction

Through our conversations with members of the Advisory Board, we identified:

- The Advisory Board is not engaged to identify, analyse, and address risks and trends relevant to the industry. NOPSEMA conducts this in-house
- The Advisory Board is also not engaged or involved in the development of the Corporate Plan.

The above two critical points are opportunities missed to access and utilise the significant experience the Advisory Board offers. These are activities the Advisory Board should be involved in given its function of providing 'advice and making recommendations to the CEO about operational policies and strategies' (section 654 of the OPGGS Act).

Consideration of the Board's capabilities with reference to significant industry issues must be given

On examination of the current composition of the Advisory Board, it has a diverse range of skillsets and industry or academic experience to support NOPSEMA in its decision-making. The Board reflects the current thinking of NOPSEMA in so far as there is a significant focus on 'top-end' MAEs. Whilst our findings support that MAEs are an important focus area, there are other risk factors that ought to receive further attention to reflect the needs of the industry – factors such as mental health, decommissioning and financial assurance practices.

An examination of the merits of an Advisory versus Governing Board structure is warranted

Additional value will be obtained by the Advisory Board "stepping in" to provide greater levels of oversight and support to NOPSEMA. The Advisory Board, through its strength of composition, skill, and experience, has value to add to the strategic direction setting and ongoing management of the regulator. The Advisory Board taking a greater role in increasing transparency and demonstrating a level of oversight could help address issues relating to trust and confidence in NOPSEMA. With this increased role for the Board, there should be consideration as to whether an Advisory Board is the correct structure, or a Governing Board should be formed. A Governing Board could provide more structure with regard to the dual outcomes of compliance and performance. The exact remit of a NOPSEMA Governing Board would need to be thoughtfully considered, but the Board could take on some more formal, traditional Board responsibilities including coaching and supporting the CEO to achieve high levels of compliance and performance and also being involved in evaluating the CEO's performance.

Recommendations: 12, 13, 14, 15, 16

Opportunities: No opportunities were identified in this section

NOPSEMA's Advisory Board is a key element of NOPSEMA's overall model. Properly utilised, the Advisory Board provides a sounding board for NOPSEMA leadership, a source of strategic expertise, and a means to improve regulatory effectiveness.

We begin with a discussion of the role of the Advisory Board and its limitations (**subsection 8.1**). Next, we examine the role of the Advisory Board in helping establish the strategic direction of NOPSEMA (**subsection 8.2**). We then assess the current capabilities and expertise of the Advisory Board with reference to NOPSEMA's functions and the direction of the industry (**subsection 8.3**). We conclude in **subsection 8.4** with a discussion on the learnings from other reviews into boards and whether or not the Advisory Board should be reformed as a Governing Board.

8.1 The role and function of the NOPSEMA Advisory Board

The NOPSEMA Advisory Board is not a governing board

Section 653 of the OPGGS Act establishes the NOPSEMA Advisory Board. A board was initially established with the formation of NOPSA (and reformed with the expansion of NOPSA's powers in 2014). The Advisory Board's functions are outlined at section 654 of the OPGGS Act to include (in summary):

- To give advice and make recommendations to the CEO about operational policies and strategies to be followed by NOPSEMA in the performance of its functions
- To advise and made recommendations to the responsible Commonwealth Minister, a State Petroleum Minister, the Northern Territory Petroleum Minister, and Ministers responsible for mineral and energy resources matters (including Greenhouse Gas Storage). The Advisory Board's advice can relate to policy or strategic matters relating to OHS of persons engaged in offshore petroleum operations, structural integrity of facilities, wells or well-related equipment in NOPSEMA's waters, offshore petroleum environmental management, and the performance of NOPSEMA in delivering its functions.

Importantly, the Advisory Board is not a Board as defined by the Corporations Act. The Board was established as an Advisory Board, meaning it's remit is limited to the provision of advice either on request (by the CEO or other accepted party e.g. Commonwealth Minister) or proactively if the Advisory Board deems there is a risk, issue, or trend that the regulator needs to pay significant attention. The reason for being an Advisory Board now is not clear – with no specific requirement or expectation outlined in the OPGGS Act or by government. The Australian Institute of Company Directors states that *“good advisory boards can give fresh insights and thinking on emerging or unfamiliar issues, respond to ideas from management, play devil's advocate and supply high quality objective advice to support the main board's decision-making”*³³.

There is no Terms of Reference or Charter that defining the scope, role, functions, and responsibilities of the Advisory Board

NOPSEMA's Advisory Board members are not 'directors' for the purposes of relevant legislation or at general law and do not have a fiduciary duty. Their role should be defined by a term of reference or relevant charter that clearly outlines its scope, role, function, responsibilities. This terms of reference or charter should, just as importantly, define what the Advisory Board do not do or is not responsible for. We confirmed that the Advisory Board has not formally established and made public a Terms of Reference or Charter detailing its scope, role, function, and responsibilities – demonstrating how it adds value to NOPSEMA and the industry at large. We acknowledge the Advisory Board has established a 'Policy', which details some high-level information as to the Board's functioning, but largely refers back to the OPGGS Act, which is, in our opinion, not practical or tangible enough to demonstrate value to government. As a function that is cost recovered from industry, greater transparency is required.

Recommendation #12

The NOPSEMA Advisory Board, in consultation with the Minister and NOPSEMA, should develop a Terms of Reference or similar Charter that clearly details its scope, role, function, and responsibilities in the support of NOPSEMA and the industry. The Terms of Reference should clearly outline what it does, as well as what it does not do given its status as an Advisory Board. The Terms of Reference should be made public to continue to drive transparency in approach and direction.

During the review period, the CEO made four formal requests of the NOPSEMA Advisory Board to provide advice, including NOPSEMA's regulatory role for allegations of bullying and harassment and ways to improve stakeholder engagement and community confidence in the offshore petroleum environment regulator framework. There are a range of other initiatives, including working groups where

³³ AICD, 2016.

Advisory Board members get involved (e.g. performance reporting for process safety indicators), as well as providing direct coaching or support to the NOPSEMA Executive, as requested.

8.2 The role of the NOPSEMA Advisory Board in strategic decision-setting

There is an opportunity for the Advisory Board to take a greater role in helping establish NOPSEMA's strategic direction

NOPSEMA establishes five year rolling corporate plans (the current Corporate Plan is for the period 2020 to 2025), which are reported against publicly on an annual basis. Progress reports are also provided to the NOPSEMA Advisory Board.

Through our conversations with members of the Advisory Board, we identified the Advisory Board is not:

- Engaged to identify, analyse, and address risks and trends relevant to the industry. NOPSEMA conducts this in-house through workshops, which then feeds into broader decision-making (e.g. the development of the Corporate Plan)
- Engaged or involved in the development of the Corporate Plan. The Advisory Board are consumers of the Corporate Plan and periodic reporting provided by NOPSEMA.

While we acknowledge the role of the Advisory Board is to provide advice and it has no executive oversight in its current form the above two critical points are opportunities missed to access and utilise the significant experience of the Advisory Board in deciding NOPSEMA's future direction. Input from the Advisory Board in this manner may help challenge NOPSEMA management's thinking on strategic direction and any assumption held. We also believe these are activities the Advisory Board should be involved in given its delegated function of providing 'advice and making recommendations to the CEO about operational policies and strategies' (section 654 of the OPGGS Act).

Recommendation #13

NOPSEMA's Advisory Board should be:

- Involved in conducting industry-wide risk, issue, and trend analysis to identify areas for NOPSEMA focus or support to industry
- Formally consulted on the build and development of the NOPSEMA Corporate Plan.

8.3 Skills and make-up of the Advisory Board

Consideration of the Board's capabilities with reference to significant industry issues must be given

The Advisory Board consists of a Board Chair and at least five (but no more than seven) other members. Advisory Board members are appointed by the responsible Commonwealth minister and can hold the term for a maximum of three years (and can be re-appointed).

Given NOPSEMA's complex regulatory role, members are selected on the basis of their expertise rather than on a representational basis. Their membership is not designed to represent other interests, such as those of their employers or other organisations they may hold office in or are affiliated with. The objective being to enable the Advisory Board to independently oversee NOPSEMA's activities and provide appropriate advice to the CEO and the responsible Commonwealth Minister.

NOPSEMA's Advisory Board has defined the set of broad competencies members require, including:

- Executive/senior leadership experience in the offshore petroleum industry
- Knowledge of legislation, regulatory frameworks and the operations of regulatory organisations
- Broad knowledge of maritime matters relating to the petroleum industry
- Understanding of the safety case approach in regulating major hazard industries
- Understanding of environmental impact assessment and associated regulatory approaches
- Understanding of current best practice and leading research on causes and prevention of major safety and environmental incidents
- Understanding of international regulatory practices and trends regarding safety, integrity and environmental management
- Strong communication and stakeholder engagement capacities.

Appointed Board members are required to self-assess against the above criteria to demonstrate their experience and how they can contribute to the Advisory Board (outside of the process applied by the responsible Commonwealth Minister to determine their appointment).

On examination of the current skills matrix, the Advisory Board has a diverse range of skillsets and industry or academic experience to support NOPSEMA in its decision-making. However, the Board reflects the current thinking of NOPSEMA, in so far, there is a significant focus on top-end major accident events. Whilst our findings support that MAEs are an important area of focus, there are other risk factors that reflect a great priority and need of the industry – factors such as mental health, decommissioning and financial assurance practices of the industry.

Reading the biographies of the current Board members demonstrates an impressive group of individuals with backgrounds – both in executive operational roles and research – that can and do add value to NOPSEMA and industry. However, the current mix of Board members could be further enhanced by appointing experts in safety regulation outside of the offshore industry. Through various conversations with Board members and NOPSEMA, there appears to be a perception that regulation outside of the offshore industry is prescriptive in nature and application. In our experience, it is the opposite – the harmonised WHS laws in Australia are leading practice regulatory instruments, driving an outcomes focused approach to regulation. Based on our examination, we note NOPSEMA and the NOPSEMA Advisory Board could learn from its counterpart state regulators (e.g. WorkSafe Victoria or the NSW Resources Regulator).

Recommendation #14

DISER should, in consultation with the Advisory Board and NOPSEMA, determine the broader range of skills needed to reflect the current industry trends and issues faced by the industry. The Advisory Board mix should then be re-evaluated to determine if there is the right balance of skills as the industry changes (e.g. determine if there is a need for a psychology/mental health expertise, financial assurance, safety regulation to supplement the skillset of the current Board members).

8.4 Learning from other reviews into Boards and governance

Boards play a key role in the effective governance of an entity – regardless of public or private standing. The ANAO outlines that the interplay of the ‘hard’ attributes of governance (such as board composition, appointment processes and independence) and the ‘soft’ attributes of governance (such as the chair/CEO relationship, board behaviours and board culture) are critical to good governance and organisational performance.

The interplay of hard and soft attributes, and the overall importance of board and organisational culture to an entity’s performance, values, and conduct have been central themes in recent Australian reviews into organisational misconduct.

8.4.1 Learnings from the ANAO recommendations into Government Boards

The Advisory Board should play a more active role in providing oversight of NOPSEMA

The ANAO publishes insights as a summary of key messages from recent audits. In May 2019, the ANAO published an insights edition as a result of a range of audits focused on the effectiveness of governance boards in four corporate Commonwealth entities.

We examined each of the 12 insights relating to Board governance and applied to the context of NOPSEMA’s Advisory Board. There are lessons to be learned from the ANAO’s guidance, specifically relating to:

- The Board establishing and publishing a formal charter or terms of reference (recommended above) to provide greater levels of transparency as to the Board’s role and function
- The Board has no formal process to conduct periodic evaluations of its performance and communicate the results to industry
- The Board has no formal process or remit in determining current and future board skills and needs. DISER is responsible for the vetting and ultimate recommendations for appointment, with no formal connection to the current Board
- The Board has no formal role in the review of key strategic risks and setting risk appetite. Examination of current policy and discussion with the Board highlighted that, as an advisory Board, this is not their role. However, as recommended above, there is a role for the Board to play in strategic risk management and strategy setting given the Board’s diversity and experience
- The Advisory Board currently plays no role on NOPSEMA’s Audit Committee. On the basis the Public Governance, Performance and Accountability legislation allows for it, there would be a benefit in connecting the Advisory Board and NOPSEMA’s Audit Committee by a representative of the Board sitting on the Committee as per governing board structures. The Advisory Board can then provide expertise and support to the Audit Committee, as well as the representative being able to inform the Advisory Board of operational matters and performance (e.g. internal audit outcomes, financial performance, strategic risk management).

Please refer to **Appendix F** for a summary of the ANAO's insights and our assessment of the NOPSEMA Advisory Board against these.

Recommendation #15

The NOPSEMA Advisory Board should perform a self-evaluation against the ANAO insights to identify areas of improvement. We recommend NOPSEMA and the Advisory Board look to address the gaps we have identified in the ANAO board governance recommendations and analysis (**Appendix F**).

8.4.2 Learning from the Hayne Royal Commission

An examination of the merits of an Advisory versus Governing Board structure is warranted

The *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* undertaken by the Hon Kenneth Hayne AC QC (the **Hayne Royal Commission**) was concluded in February 2019, with the final report being tabled in Parliament. The central task of the Commission was to inquire into, and report on, whether any conduct of financial services entities might have amounted to misconduct and whether any conduct, practices, behaviour or business activities by those entities fell below community standards and expectations.

Hayne saw four things clearly³⁴, which play to the heart of what he thinks went wrong:

1. The connection between conduct and reward – since the drivers of nearly every case he considered was both the entity's pursuit of profit, and the individual's pursuit of gain. Advisers became sellers, and sellers became advisers
2. The asymmetry of power and information – between financial services entities and their customers – which enabled firms to act in the way that they did.
3. The effect of conflicts between duty and interest – the interests of the client, intermediary and product provider are not only different, they are opposed. Self-interest is too powerful a force in the end; in the face of self-interest, effective management of a conflict collapses. Intermediaries should act only on behalf of, and in the interests of, the party that pays them.
4. Holding entities to account – deterrence depends on entities actually believing that misconduct will be detected, denounced and justly punished. Communities expect someone to be held to account. Issuing a media release just doesn't cut it.

Given NOPSEMA's Advisory Board plays an advisory capacity, there can be arguments that the findings of the Hayne Royal Commission may not be relevant. However, there are relevant lessons to be learned. Lessons that focus on a Board stepping forward and driving the strategic direction and supporting or providing oversight to operational matters. Whilst the Hayne Royal Commission focused on financial services, the findings are industry agnostic, requiring entities being held to account and meeting community expectations – which we see to be the foundation of NOPSEMA's role as the independent statutory authority regulating the offshore sector.

The NOPSEMA Board should "step in" more to provide greater levels of oversight and support to NOPSEMA and its people. The Board, through its strength of composition, skill, and experience, has value to add to the strategic direction setting and ongoing management of the regulator. NOPSEMA as a regulator continues to have industry perception issues relating to trust and confidence in its approach and decisions. The Board taking a greater role in increasing transparency and demonstrating a level of oversight may help address concerns of trust and confidence of NOPSEMA. With this increased role, there should be consideration as to whether an Advisory Board is the correct structure, or a Governing Board be formed.

However, the Advisory Board over the review period was used by NOPSEMA to address specific issues as requested by the Chief Executive Officer (**CEO**), and the Board is likely being underutilised relative to the advice and guidance they could provide. Specifically, the Advisory Board could have been more active in helping set NOPSEMA's strategic direction and in providing greater input into non-Major Accident Event (**MAE**) risk factors pertinent to the industry – factors such as mental health, decommissioning and financial assurance practices. Input from the Advisory Board in this manner may help challenge NOPSEMA management's thinking on strategic direction and any assumptions or cognitive bias.

Recommendation #16

DISER, in consultation with the NOPSEMA Advisory Board and the CEO of NOPSEMA, should consider whether the Advisory Board should be retained, or whether it should be restructured to become a Governing Board.

³⁴ For further information, please see: <https://www2.deloitte.com/au/en/pages/financial-services/articles/royal-commission.html>

A move to become a Governing Board could provide more structure with regard to the dual outcomes of compliance and performance. The exact remit of a NOPSEMA Governing Board would need to be thoughtfully considered, but the Board could take on some more formal, traditional Board responsibilities including supporting the CEO to achieve high levels of compliance and performance and also being involved in evaluating the CEO's performance.

We also observe that, should the Government ultimately pursue the integration of the administrative arm (NOPTA) into the regulatory arm (NOPSEMA) of the offshore regime, the expanded remit of the resultant entity would likely require the degree of oversight offered by a Governing Board structure. The exploration of an integrated administrator and regulator is discussed further in **Section 12**.

9 How does NOPSEMA effectively engage with external parties to improve regulatory outcomes and build community confidence?

Key points

NOPSEMA has transformed its level of stakeholder engagement but must further build trust and confidence

NOPSEMA has made considerable improvement to its stakeholder engagement since the 2015 Operational Review. This improvement was, in the main, acknowledged across stakeholder segments. NOPSEMA is to be commended for this.

We found further work is required in demonstrating how the regulator listens to its stakeholders and processes feedback it receives. NOPSEMA should provide greater clarity on how it responds to stakeholder feedback, utilise engagement activities that seek to elicit anonymous feedback about NOPSEMA, and increase visibility over the stakeholder activities it undertakes.

Trust and confidence in NOPSEMA remain particularly low with other users of the marine estate. We observed frustration and sometimes anger felt by this segment towards NOPSEMA over its perceived lack of willingness to intercede on potential impacts of seismic surveys on fishing activities. Stakeholder engagement fatigue was also noted by many in the fishing industry. NOPSEMA must more transparently communicate its decision-making process and rationale to stakeholders, although we acknowledge NOPSEMA has made positive advances in this regard.

More broadly, NOPSEMA should undertake a more strategic approach to stakeholder engagements. NOPSEMA reported limited historical success with predicting where specifically stakeholder issues may arise. This can often place NOPSEMA in a 'reactive' position. The application of scenario-based communication and engagement planning may assist NOPSEMA management in more proactively and rapidly identifying and responding to 'at risk' situations before they escalate.

Specifically, to address issues with other users of the marine estate, agreement could be sought from involved parties on areas of contention, where possible, ahead of assessment processes and establishment of mutually agreed remediation protocols.

A 'One Government' approach is required

NOPSEMA's relationships with Commonwealth and state/territory departments are appropriate and collaboration has tended to improve across the review period.

Specifically, there have been improvements to NOPSEMA's and NOPSEMA's collaboration and coordination across the review period. Example steps undertaken by NOPSEMA and NOPSEMA include joint meetings with titleholders on areas of activity overlap, co-locating of personnel, leveraging one another's capabilities, and seconding staff where appropriate. NOPSEMA and NOPSEMA could work together more effectively to share knowledge, coordinate on strategic matters of industry significance, and break down information silos.

A key question is whether the degree of collaboration and coordination required to support a maturing industry is possible under the current offshore model – this is examined further in **Section 12**.

All components of the offshore legislative framework (administrative, policy, regulatory, and decision-making) must work in unison to address the challenges ahead. We have observed a degree of deviation between the various components over clarity in roles and responsibilities and, in some instances, interpretations of the OPGGS Act. Furthermore, data and information sharing – a key pillar of a cohesive delivery of the legislation and regulations – must be improved and barriers to this outcome addressed.

Recommendations: [17](#), [18](#), [19](#), [20](#), [21](#), [22](#)

Opportunities: [13](#), [14](#), [15](#), [16](#), [17](#), [18](#)

A vital component of NOPSEMA's effective regulation of the offshore petroleum industry is engaging with stakeholders. This is an evolving and complex landscape as stakeholder priorities, needs and focuses vary substantially and change over time. Having a strong and robust approach to stakeholder engagement is important to increase confidence in NOPSEMA's execution of its regulatory duties and, more broadly, the offshore petroleum industry.

We begin with an overview of NOPSEMA's stakeholder environment and approach to stakeholder engagement (**subsection 9.1**). Next, we assess at a general level the effectiveness of NOPSEMA's current stakeholder engagement and communications (**subsection 9.2**) before examining the quality of NOPSEMA's relationships with industry and other stakeholders (**subsection 9.3**), international peer regulators (**subsection 9.4**), and other Commonwealth and state/territory peers (**subsection 9.5**). We conclude this section with a discussion on a 'One Government' approach – to ensure a cohesive approach to the delivery of the offshore legislative framework is achieved (**subsection 9.6**).

9.1 Overview of NOPSEMA's approach to stakeholder engagement

9.1.1 NOPSEMA's stakeholder ecosystem

NOPSEMA engages with five key stakeholder segments. These segments are outlined with stakeholder organisation examples listed in **Figure 9.1**.

Figure 9.1: NOPSEMA stakeholder ecosystem

SEGMENT	TITLEHOLDER/OPERATOR	OTHER INDUSTRY, TRADE ASSOCIATIONS, AND UNION STAKEHOLDERS	OTHER STAKEHOLDERS (INCL. ENGOS AND COMMUNITY)	INTERNATIONAL BODIES	STATE, TERRITORY, AND FEDERAL GOVERNMENT
EXAMPLE STAKEHOLDERS	Stakeholders who own and operate offshore petroleum assets in Australia	Oilfield services (e.g. engineering and construction), industry peak bodies, unions	Community groups, environment and conservation, education/research	International peer regulators and global trade associations	Australian Commonwealth, State, and Territory entities (including policy and other Australian HSE regulators)
	<ul style="list-style-type: none"> Santos Ltd INPEX Australia Pty Ltd Esso Australia Pty Ltd (ExxonMobil) Chevron Australia Pty Ltd Woodside Energy Ltd 	<ul style="list-style-type: none"> Monadelphous CGG Australian Council of Trade Unions (ACTU) Electrical Trades Union (ETU) Australian Petroleum Production and Exploration Association (APPEA) 	<ul style="list-style-type: none"> Cape Conservation Group Wilderness Society of South Australia Australian Marine Conservation Society Western Australian Fishing Industry Council (WAFIC) South East Trawl Fishing Industry Association (SETFIA) 	<ul style="list-style-type: none"> UK Oil and Gas Authority International Regulators Forum International Offshore Petroleum Environment Regulators (IOPER) Offshore Petroleum Regulator for Environment and Decommissioning (OPRED) 	<ul style="list-style-type: none"> National Offshore Petroleum Titles Administrator Department of Industry, Science, Energy and Resources Department of Agriculture, Water and the Environment Australian Maritime Safety Authority Australian Fisheries Management Authority

Source: Deloitte analysis and adaptation from NOPSEMA documents and website

9.1.2 NOPSEMA's engagement approach

NOPSEMA has an established stakeholder engagement approach

The Minister's Statement of Expectations outlines the expectation of NOPSEMA in stakeholder engagement, consultation, and transparency (among other matters). In summary, NOPSEMA is expected to encourage continuous and systematic cooperation across stakeholders, work collaboratively with other state/territory and Commonwealth agencies and regulators in discharging its duties (and in particular work collaborative with AMSA and NOPTA), continue to seek opportunities to improve stakeholder engagement mechanisms, and increase transparency over decision-making processes.

NOPSEMA has put in place strategies, plans and procedures to support its stakeholder engagement activities in alignment with the Minister's Statement of Expectations. NOPSEMA includes stakeholder engagement as a key priority as part of its Corporate Plan, which is prepared under the OPGGS Act and paragraph 35(1)(b) of the *Public Governance Performance and Accountability Act 2013 (PGPA Act)*, in accordance with the *Public Governance, Performance and Accountability Rules 2014*. We examined NOPSEMA's *Communications Strategy 2019 – 2020* (the **Communications Strategy**), which cascades NOPSEMA's stakeholder engagement priorities and key messages from the Corporate Plan into a functional plan for delivery. We also examined NOPSEMA's procedure for *Managing Stakeholder*

Complaints and Feedback. In addition, there are other procedures in place such as a *Grievance and Code of Conduct*, which support stakeholder engagement.

The Communications Strategy provides the framework for NOPSEMA's engagement with external stakeholders and articulates the objectives, approach, key messages, target audiences, engagement channels, and engagement tools used to undertake stakeholder engagement activities.

NOPSEMA captures stakeholder engagement resource requirements in the divisional AOPs to allow for the planning and allocation of adequate resources to support the various stakeholder engagement related activities. Teams and individuals involved in stakeholder engagement then capture the required work in team strategies, project plans and/or personal performance management plans. NOPSEMA also capture specific stakeholder engagements in a Microsoft Excel-based register, which provides a comprehensive list of engagements undertaken across time and enables NOPSEMA to run analyses of stakeholder engagement trends.

9.1.3 NOPSEMA's stakeholder engagements across stakeholder segments

NOPSEMA undertakes a variety of stakeholder engagement activities outside of engagements with stakeholders relating to a specific regulatory process, such as EP assessments. We have provided a brief, non-exhaustive summary of example engagement activities undertaken by NOPSEMA across the review period in **Table 9.1**. Many of these activities are currently ongoing.

Table 9.1: Summary of NOPSEMA's stakeholder engagement activities across the review period

Stakeholder	Summary of engagement activities
Titleholder	<ul style="list-style-type: none"> Held annual bilateral meetings with active operators and titleholders, including annual meetings between the NOPSEMA CEO and respective titleholder CEO (or equivalent) to discuss performance and matters of strategic importance Held ad-hoc meetings with active operators relating to proposed projects, pending submissions, and regulatory expectations Hosted various forums and workshops to address a range of technical matters, including a Health and Safety Representatives Forum (2019), an Operational Risk Assessment (ORA) Workshop (2019), and a workshop with industry to share well failure data and best practices in well integrity management (2018) Participated in industry-led forums, including facilitating a panel session at ProSafe Conference, and involvement in at least one operator's Annual Contractor Safety Forum.
Other industry, trade associations, and unions	<ul style="list-style-type: none"> Held various engagements with APPEA, including involvement in working groups, discussion paper development, Better Practice Forums, and, more recently, COVID-19 weekly meetings (noting the latter is outside of the review period).
Other stakeholders (incl. environmental advocacy and community)	<ul style="list-style-type: none"> Engaged with a range of research organisations, such as Australian Institute of Marine Science (AIMS), Commonwealth Scientific and Industrial Research Organisation (CSIRO), Centre for Marine Science & Technology (CMST), and University of Tasmania (UTAS). Specific examples include, presenting papers at conferences, participating in various workshops, and NOPSEMA's representation on the NESP Marine Biodiversity Hub end user committee Engaged with fisheries organisations, including Australian Southern Bluefin Tuna Industry Association (ABSTIA), Seafood Industry Victoria (SIV), Seafood Industry Australia (SIA), South East Trawl Fishing Industry Association (SETFIA), WA Fishing Industry Council (WAFIC) Established the Transparency Taskforce in 2017 (completed) Established the Community Environmental Reference Group (CERG) in 2018 Established a Community Information page on the NOPSEMA website.
State, territory, and Commonwealth government	<ul style="list-style-type: none"> Engaged with various state/territory departments, including quarterly meetings with Western Australia's Department of Mines, Industry Regulation and Safety (WA DMIRS), Worksafe Victoria, Energy Safe Victoria, and the Northern Territory's Department of Primary Industry and Resources (NT DPIR) Participated as an observer at the Major Hazard Facilities Forum

Stakeholder	Summary of engagement activities
	<ul style="list-style-type: none"> Engaged regularly with AMSA, with a memorandum of understanding (MOU) in place Engaged regularly with Parks Australia³⁵ Participated in the EPBC Streamlining Performance Report and engagement with the DAWE in support of the EPBC Program and participated as an observer in the Marine Pest Sectoral Committee Established contracting arrangements with the Australian Antarctic Division for access to subject matter expertise and marine mammal advice on issues as required Liaised with other agencies, including the Fisheries Research and Development Corporation (FRDC), the Australian Fisheries Management Authority and the National Plan Strategic Industry Advisory Forum (NPSIAF).
International engagement	<ul style="list-style-type: none"> Participated in the International Regulators Forum³⁶ (IRF) as a member and as part of the management committee. Hosted the International Regulators Offshore Safety Conference in 2013 Participated in the International Offshore Petroleum Environment Regulators (IOPER) Forum as a member³⁷ Interacted/Engaged with a number of international regulators, including the Bureau of Safety and Environmental Enforcement (United States), the Health & Safety Executive (United Kingdom), and signed an MOU with the Autoridade Nacional do Petróleo e Minerais (ANPM) in Timor-Leste Represented the Australian Government at the inaugural meeting of the Global Offshore Wind Regulators Forum (2019) Interacted/Engaged with a number of international industry associations, including monthly meetings with the International Association of Drilling Contractors (IADC), International Marine Contractor's Association (IMCA), International Association for Geophysical Contractors (IAGC), International Petroleum Industry Environmental Conservation Association (IPIECA), International Association of Impact Assessment (IAIA), and International Association of Oil and Gas Producers (IOGP).

Source: NOPSEMA stakeholder register

9.2 Effectiveness of stakeholder engagement and communications

9.2.1 Stakeholder engagement activities

NOPSEMA has transformed its approach and level of stakeholder engagement over the review period

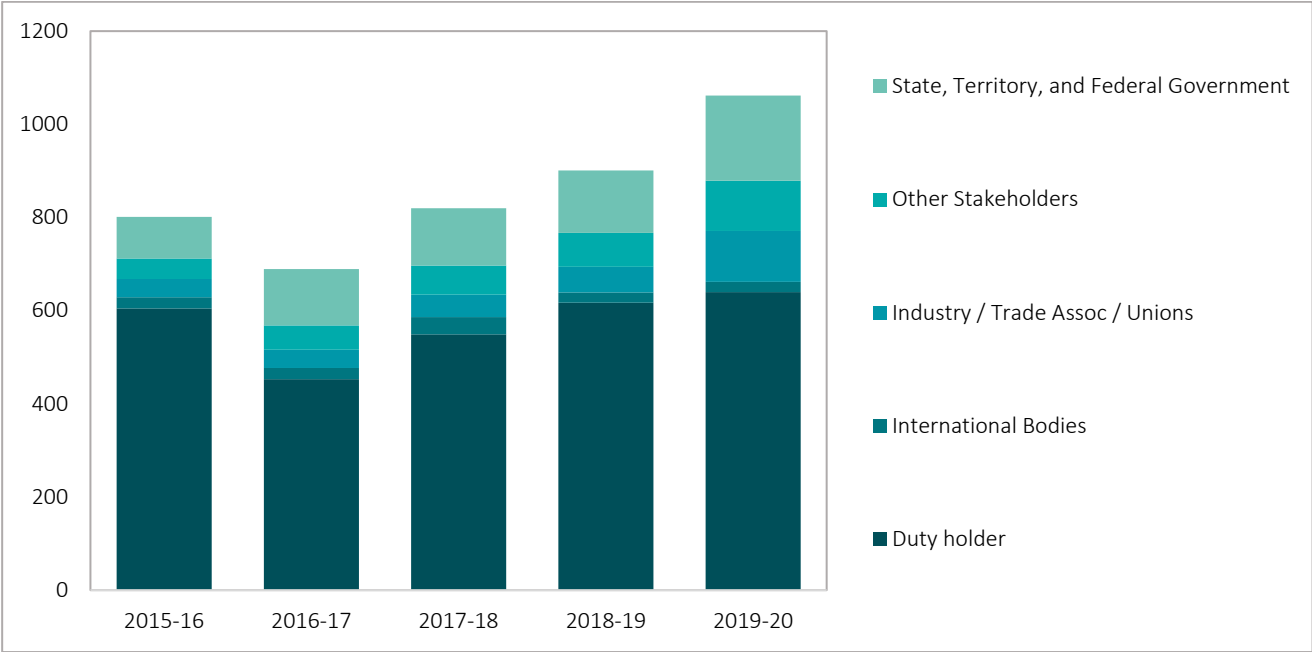
NOPSEMA has significantly increased its engagement across industry, trade associations, other stakeholders, and government (state, territory, and Commonwealth) segments across the review period and this is reflected in the trend of activity observable in **Figure 9.2**. Just over 50% of engagements are classified by NOPSEMA as being 'advice and promotion' with a further 21% of engagements relating to 'regulatory assessment' activities (see **Figure 9.3**). As a proportion of NOPSEMA's total engagements undertaken since 2015, those by the Environment Division accounted for 36% the Safety and Integrity Division accounted for just under 44%. NOPSEMA has also significantly increased engagement with non-regulated stakeholders (referring to **Table 9.1**).

³⁵ We note that, although outside of the formal review period, NOPSEMA and Parks Australia have developed and implemented an MOU during our review process.

³⁶ International Regulators Forum, 2020. See: <https://irfshoresafety.com>

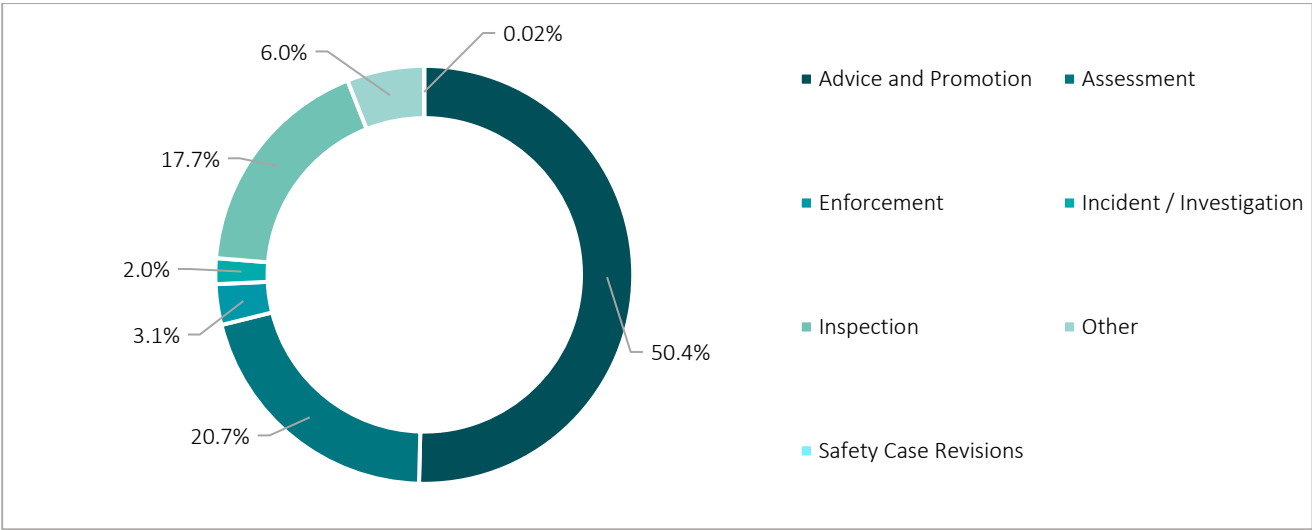
³⁷ International Offshore Petroleum Environment Regulators Forum, 2020. See: <http://www.ioper.org/about-us>

Figure 9.2: NOPSEMA stakeholder engagement activities by stakeholder segment from 2015-16 to 2019-20



Source: Deloitte analysis adapted from NOPSEMA data

Figure 9.3: NOPSEMA stakeholder engagement activities from 2015-16 to 2019-20 by engagement type



Source: Deloitte analysis adapted from NOPSEMA data

9.2.2 Stakeholder perceptions of engagement

NOPSEMA is open and approachable but does not clearly articulate how it listens to stakeholders

Most stakeholders tended to view NOPSEMA as responsive (see Figure 9.4). However, there was a general sentiment that while NOPSEMA were approachable and accessible, the outcomes of engagements felt to stakeholders as ‘predetermined’ and that ‘NOPSEMA do not always action feedback given’ (see Table 9.2). This translates into a perception among some stakeholders that NOPSEMA is not always truly cooperative or collaborative in its approach. An example given by a number of stakeholders was that NOPSEMA’s draft guidance is issued and feedback by industry appears not to be reflected in the final version, with limited follow-up on how feedback was treated. While NOPSEMA may have provided feedback formally through, for example, an appendix on stakeholder feedback and NOPSEMA’s consideration of that feedback in the instance of ORA guidance, the disconnect between stakeholder expectations should be carefully managed.

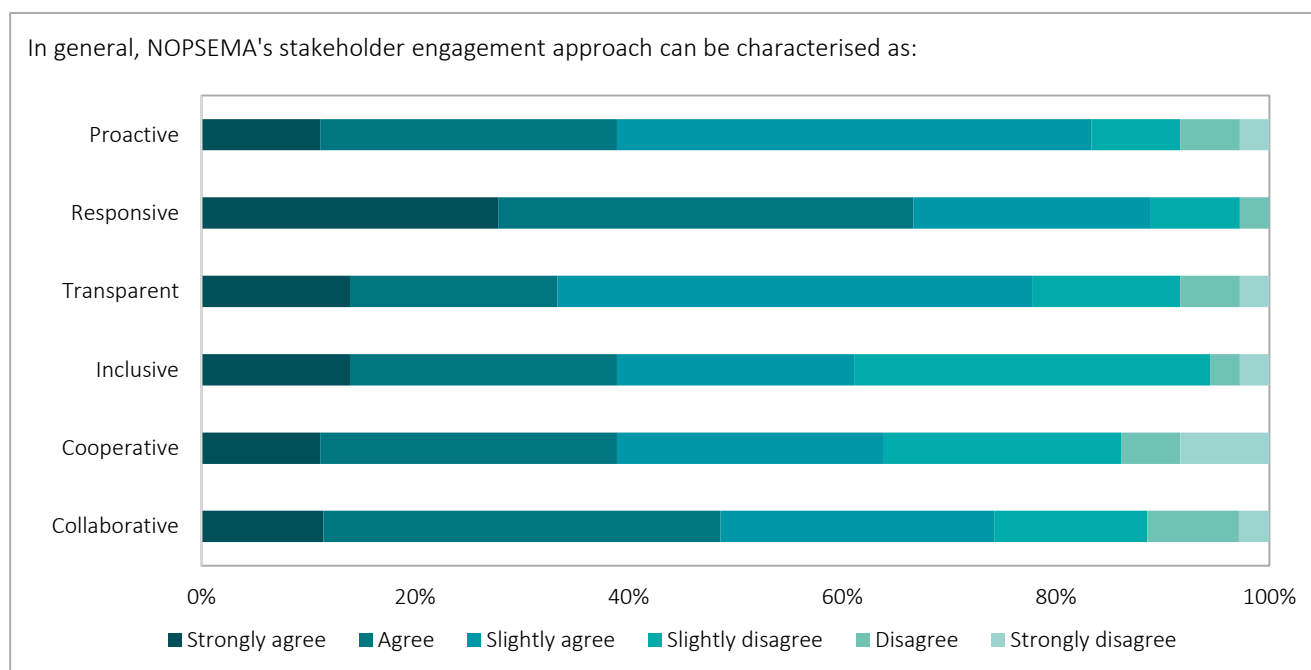
A regulator must balance the need to be independent and the need to actively consult stakeholders. Consultation will not always result in the adoption of stakeholder feedback (either in whole or in part). Nevertheless, acknowledgement of how the feedback has been considered is essential. NOPSEMA could do more to provide clarity in this respect. Additionally, to visibly demonstrate that it listens to stakeholders, NOPSEMA may consider conducting an anonymous survey delivered through a third party, in a similar manner to that undertaken by NOPTA. There is often an understandable reluctance, given a regulator's role, for stakeholders to provide free and frank feedback (especially if it is constructive criticism) directly to the regulator. We have observed several instances of deviations between NOPSEMA's perceptions of stakeholder perceptions on an issue and feedback we have heard as part of our review (e.g. in relation to the fairness and equity of the levy and fee scheme, which is discussed further in **Section 10.2.7**).

Recommendation #17

NOPSEMA should place focus on demonstrating how it 'listens' to stakeholders through stakeholder engagement activities. Where feasible, NOPSEMA should ensure it provides clearer feedback to stakeholders on how their inputs have (or have not) been reflected in outputs from engagement activities and why. NOPSEMA may also wish to consider additional means of gathering candid stakeholder feedback, utilising mechanisms such as anonymous third-party delivered stakeholder engagement surveys.

There is evidence that NOPSEMA has improved transparency since 2015, and this sentiment has been echoed by other reviews (e.g. the *Independent Audit of NOPSEMA's Consideration of Exploration in the Great Australian Bight* (the **Independent Audit into NOPSEMA**)). For example, NOPSEMA outline various efforts to increase transparency in its 2017 report on *Stakeholder engagement and transparency work program*³⁸. The work program was started in August 2015, with the key focus being improving community confidence in the offshore petroleum framework. The majority of initiatives have been completed by NOPSEMA, including the establishment of the Transparency Taskforce.

Figure 9.4: Survey responses to NOPSEMA's approach to stakeholder engagement



Source: Deloitte Stakeholder Survey, Deloitte analysis

9.2.3 NOPSEMA's communication to stakeholders

NOPSEMA's Communications Strategy appropriately sets out communications priorities and messages and adopts a flexible, issues-based approach to communications and engagement

Based on our examination, the Communications Strategy:

³⁸ NOPSEMA, 2017. See: <https://www.nopsema.gov.au/assets/Environment-resources/A562339.pdf>

- Appears adequate for its intended purpose and appropriately outlines a set of communications priorities and messages, with the aim of building consistency in external communications and engagements
- Appropriately adopts a flexible ‘framework’ for NOPSEMA’s stakeholder engagement activities, with issues-based, tailored Communications Plans being developed where required, reflecting that communications needs are often situationally dependent to the issue at hand
- Could consider further analysis of the efficacy of stakeholder engagement activities to help NOPSEMA select the most effective stakeholder engagement methods.

We understand the difficulty in anticipating where particular stakeholder areas of contention may arise – given the broad scope of stakeholder concerns and the large volume in offshore activity that may result in stakeholder concerns. The volume and effort of engagements are not always correlated to the nature and scale of the actual risk of the related proposed offshore activity. This creates difficulty for NOPSEMA in planning for stakeholder engagement and communications. To help prepare for this, NOPSEMA may consider utilising scenario-based planning for different types of stakeholder engagement challenges. NOPSEMA could, for example, develop a set of scenarios relating to frequently seen or high-impact issues. Applying lessons learned from previous engagement case studies would be of benefit as well. Such an approach, while not addressing the nuances of a given scenario, may help NOPSEMA identify early warning indicators of where an activity proposed may be ‘higher risk’ from a stakeholder engagement perspective.

Recommendation #18

NOPSEMA should take a more strategic and proactive approach to stakeholder engagement. This may be achieved through the application of scenario-based planning to common ‘high risk’ stakeholder engagement issues. Emphasis should be placed on identifying the ‘early warning indicators’ of at-risk situations to enable NOPSEMA to more proactively address emergent stakeholder engagement issues.

NOPSEMA’s stakeholders, both industry and non-industry, are concerned with what they perceive as a relatively high proportion of stakeholder engagement effort with other stakeholder segments, and vice versa. That is, there is concern from some stakeholders that NOPSEMA is not sufficiently balanced in the effort it applies to its engagements across stakeholder segments by focusing on ‘the loudest voices, rather than the biggest issues’. The effect is a perception that NOPSEMA’s engagements are disproportionate by segment.

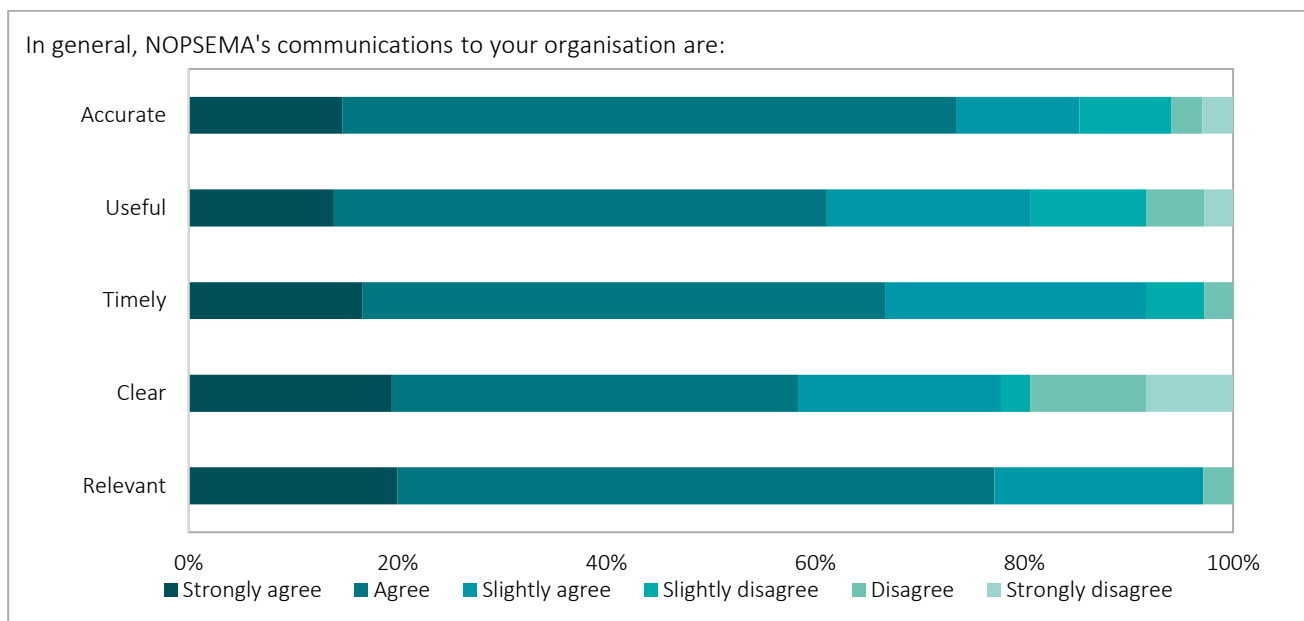
Clearer communication of NOPSEMA’s engagement activities, as we have presented them here, would be helpful for clarifying where and how NOPSEMA engages with its ecosystem – and provide confidence that NOPSEMA is listening to the full ambit of stakeholders. A quarterly snapshot of stakeholder engagement activities undertaken or reporting on stakeholder consultation activities through the website and outside of its annual report may be helpful. NOPSEMA needs to be purposeful in its engagements to ensure a balanced application of its finite resourcing. This also helps improve trust and confidence in NOPSEMA. Furthermore, NOPSEMA could consider engaging with stakeholders on what stakeholder engagement mechanisms best work for them.

Recommendation #19

NOPSEMA should more actively promote the stakeholder engagement activities it undertakes and investigate the publication of reporting (for instance through its website, *The Regulator* magazine, or other means) of stakeholder engagement activities it has undertaken and how stakeholders can engage with them. This may take the form of a quarterly snapshot of stakeholder engagement activities undertaken.

Stakeholders tend to be satisfied with NOPSEMA’s communications

NOPSEMA communications are generally positively viewed by stakeholders (see **Figure 9.5**), although clarity of communications is seen as an area of potential improvement by stakeholders (only 58% of our survey’s participants selected ‘agree’ or ‘strongly agree’ to this item).

Figure 9.5: Survey response to NOPSEMA's communications

Source: Deloitte Stakeholder Survey, Deloitte analysis

9.2.4 Improving trust and confidence in NOPSEMA

Stakeholder trust in NOPSEMA is low with some stakeholders

During our external stakeholder consultations, we heard from a number of stakeholders that trust in NOPSEMA, its independence, and transparency is low – in spite of NOPSEMA's efforts to increase trust and confidence in them as a regulator. Trust and confidence in NOPSEMA is a critical element sustaining its licence to regulate. **Table 9.2** outlines a number of potential barriers to building trust we have identified. In addition to the factors noted below, it is worth highlighting that the diverse and often starkly competing needs of NOPSEMA's stakeholders can mean that NOPSEMA's decision-making can adversely impact the interests of one or more stakeholders.

Table 9.2: Potential barriers to trust and confidence in NOPSEMA

Potential barrier	Discussion
NOPSEMA's decision-making process	<p>Consistency, transparency and justifiability of decisions are a foundation of building trust in NOPSEMA. Only 41% of respondents to our survey 'agreed' or 'strongly agreed' that NOPSEMA's decision-making is transparent and justifiable.</p> <p>Furthermore, the consistency of NOPSEMA's decisions was raised by stakeholders as an area of concern.</p> <p>NOPSEMA has undertaken considerable efforts to build trust in its decision-making. For instance, and in reference to EPs, NOPSEMA:</p> <ul style="list-style-type: none"> Is required to publish a Statements of Reason alongside EP decisions Has recently adopted the practice of publishing a <i>Key Matters Report</i> for particularly sensitive environmental assessments. The <i>Key Matters Report</i> explains how the titleholder and NOPSEMA assessment process has factored in stakeholder feedback Has various mechanisms on its website to engage with stakeholders (e.g. the "Have Your Say" section of the NOPSEMA website). <p>The measures undertaken by NOPSEMA is consistent with those of a transparent regulator. An improvement area is actively providing visibility over decision-making rationale to stakeholders – this needs to be communicated more clearly.</p>

Potential barrier	Discussion
Perceived prioritisation of petroleum activities by NOPSEMA	<p>Several stakeholders commented there is the appearance of NOPSEMA prioritising petroleum activities over competing users of the marine estate, contributing to a lack of trust in NOPSEMA by these groups.</p> <p>We observed NOPSEMA communications with titleholders during an assessment process can have the appearance (to other affected stakeholders) of a compromise to NOPSEMA's independence, regardless of whether there is an actual independence issue. Based on the information we have examined, we found nothing to support any specific issues re NOPSEMA's independence. We encourage NOPSEMA to further communicate its independence controls for assessment processes to stakeholders.</p> <p>There is also a role for government to clarify how competing needs for multiple users of the marine estate are considered (see recommendation #20 below).</p>
Misunderstanding of NOPSEMA's role	<p>As discussed in Section 5, data from our stakeholder survey supports our observation that NOPSEMA's role as the independent regulator for the offshore legislative framework is not well understood by many stakeholders. The consequence of having a misunderstood role is that NOPSEMA is expected to act in a manner by these stakeholders that are contrary to its legislative functions. The NOPSEMA Communications Strategy has clear messages around NOPSEMA's role as a regulator, however, it is clear that further stakeholder education is required (see recommendation #1).</p>
NOPSEMA's engagement constraints due to maintaining procedural fairness	<p>The following discussion primarily relates to EP assessment processes.</p> <p>NOPSEMA is, in many cases, constrained from early engagement with 'relevant persons' (i.e. affected stakeholder groups) on regulatory matters to ensure procedural fairness over permissioning assessment processes is observed. That is, it is important for NOPSEMA not to be seen as being 'biased' for or against a particular application before a titleholder has submitted the application.</p> <p>In practice, this means stakeholders may approach NOPSEMA about an EP being developed by a titleholder and NOPSEMA, to maintain independence, is limited to the extent of engagement they can have with the stakeholder at this time. NOPSEMA would, in this instance, direct the stakeholder to engage with the titleholder in question to address the risk as part of its risk mitigation strategies and controls to be captured in the EP. NOPSEMA would then, upon receipt of the EP, ensure the stakeholder who had approached them, had been consulted by the titleholder and that an appropriate risk mitigation was in proposed to address the risks raised. The result is a perception from the stakeholder that NOPSEMA has not considered their input or is dismissive and passive in its regulatory approach.</p> <p>NOPSEMA should continue to ensure procedural fairness for titleholders and should communicate to stakeholders where it is constrained in its ability to engage or provide comment in these circumstances.</p>

Source: Deloitte analysis

Recommendation #20

NOPSEMA should identify further mechanisms for transparently communicating its decision-making rationale, including:

- Greater use of proactive communication by NOPSEMA of decision-making documents to impacted stakeholders who have raised concerns, beyond communication through the NOPSEMA website
- Establishing clarity and transparency for stakeholders over the process and methodologies used to arrive at the decisions, ensuring such explanations are accessible to non-technical audiences
- Reinforcing the independence of NOPSEMA and its assessment processes.

NOPSEMA may wish to engage with stakeholders on how it could further build trust and confidence in its role as the regulator.

9.2.5 Managing increasing transparency and engagement demands

Strategic and informed stakeholder engagement will be needed to manage increasing demands of NOPSEMA

The step change seen in NOPSEMA's stakeholder engagement (see **Figure 9.6**) has demanded significant resourcing from NOPSEMA and will continue to do so. Globally, regulators are facing renewed demands from stakeholders to improve transparency and increase levels of engagement. This is particularly pronounced for the regulation of contentious matters such as petroleum activities.

NOPSEMA's current system capabilities for managing stakeholder engagement are not sufficient for meeting these demands. For instance, the use of a shared Excel register is not suitable for managing in excess of 1,000 engagement activities per annum. A technology enabled and insight-driven approach to stakeholder engagement is needed.

An appropriately scaled CRM capability would allow NOPSEMA to:






- Use data to help identify emerging issues (where possible)
- Identify and track the needs of a large number of stakeholders
- Monitor the efficacy of specific engagement methods employed (e.g. through running of stakeholder surveys or implementing other feedback mechanisms) to ensure resources are focused on the most effective initiatives
- Integrate, with time, regulatory processing information captured in RMS with stakeholder management information.

Given 'there is always more' that could be done with regards to stakeholder engagement, NOPSEMA needs to ensure that its stakeholder engagement approach is organisationally 'sustainable', given the levels of resourcing such activities can require. The application of tools, such as a CRM, may help address some operational challenges in this respect.

Opportunity #13

NOPSEMA is encouraged to conduct an evaluation of and develop a business case for implementing an appropriately scaled CRM tool to support its growing stakeholder engagement requirements.

Figure 9.6: NOPSEMA stakeholder engagement summary by segment

SEGMENT	TOTAL NUMBER OF ENGAGEMENTS	
 TITLEHOLDER	2015-16 605	2019-20 640 ▲ +6%
 OTHER INDUSTRY, TRADE ASSOCIATIONS, AND UNION STAKEHOLDERS	2015-16 39	2019-20 109 ▲ +179%
 OTHER STAKEHOLDERS (INCL. ENGOS AND COMMUNITY)	2015-16 44	2019-20 108 ▲ +145%
 INTERNATIONAL BODIES	2015-16 24	2019-20 22 ▼ -8%
 STATE, TERRITORY, AND FEDERAL GOVERNMENT	2015-16 89	2019-20 183 ▲ +106%

Source: Deloitte analysis adapted from NOPSEMA data

9.3 Quality of relationships with industry and other stakeholders

9.3.1 NOPSEMA's relationship with industry

NOPSEMA's stakeholder engagement with titleholders was viewed favourably but NOPSEMA's collaboration could be improved

Based on interactions with stakeholders consulted, there has been an improvement in NOPSEMA's interactions with industry over the review period. Outside of NOPSEMA's interactions with regard to regulatory processes, titleholders and operators were largely positive about NOPSEMA's approach to stakeholder engagement³⁹. For example, many stakeholders described NOPSEMA as proactive. Furthermore, NOPSEMA were seen as approachable, open to engagement, and being 'present' in the industry.

There were improvement opportunities identified. A number of titleholders stated that NOPSEMA did not always appear to take on board and action industry feedback provided (this point is discussed further above). Titleholders noted instances of inconsistencies in engagement across NOPSEMA's functions and across organisational levels. While NOPSEMA's executive leadership were seen to be highly effective at engagement, perception was that engagement is often less effective below the executive level. Further development of stakeholder engagement capabilities below the executive level may be required and this is addressed in **Section 7**.

A key concern raised by industry was an apparent disconnect between NOPSEMA's Safety and Integrity and Environment Divisions. For instance, titleholders noted inconsistencies in the outcomes of engagement between divisions and, in some cases, between teams within a division. By way of example, feedback given on a WOMP may be inconsistent with the NOPSEMA position on an EP for an activity. As we have outlined in **Sections 6 and 7**, a 'One NOPSEMA' approach to engagement, as well as to regulatory activities, is essential.

A finding of the previous review was that NOPSEMA should share better practice methods with industry through its stakeholder engagements. We observed a number of examples where NOPSEMA is seeking to communicate better practice methods to industry. For example, referring to **Table 9.1**, NOPSEMA hosted various forums and workshops to address a range of technical matters, including a Health and Safety Representatives Forum (2019), an ORA Workshop (2019), and a workshop with industry to share well failure data and best practices in well integrity management (2018). Industry perception is that NOPSEMA is more effectively sharing better practice but must be careful to avoid using better practice to mandate specific risk mitigation actions (thereby taking a prescriptive approach).

As highlighted in **Table 9.1**, **Figure 9.2** and **Figure 9.6**, NOPSEMA undertakes a significant volume of engagements with other industry stakeholders.

NOPSEMA engages with industry peak bodies, such as APPEA. This relationship has improved over the review period. For example, APPEA and NOPSEMA engage formally and informally through a number of regular and ad hoc engagements.

Other industry stakeholders highlighted to us that NOPSEMA's stakeholder environment is becoming increasingly complex and, as a result, NOPSEMA is subjected to significant pressures on decision-making from stakeholders outside the industry, such as other users of the marine estate, environment advocates, and community groups. It was put to the review team that such pressure has made NOPSEMA more risk-averse (i.e. in respect to being conservative in decision-making), which may be placing additional regulatory burden on industry as the bar for acceptance is raised by NOPSEMA in response. We discuss potential challenges in the efficiency of permissioning processes in **Section 6** and do not duplicate that discussion here.

NOPSEMA also engage on an as required basis with other members of the offshore petroleum industry, including oil field services companies.

Through our examination, we noted NOPSEMA sought to address a gap in HSR engagement with non-operator HSRs (e.g. those belonging to service providers). NOPSEMA has put in place, among other measures, the HSR Forum (in collaboration with industry and other stakeholders) to help address the gap⁴⁰. The forum provides the opportunity for HSRs to connect and share with peers, industry and regulatory bodies. However, while progress has been made, a number of industry stakeholders mentioned that some HSRs from service providers are still not engaged to a sufficient degree.

³⁹ We limit our comments and observations here to the underlying quality of the relationship between NOPSEMA and its stakeholders in relation to engagement and communication of shared issues. We limit, where possible, discussions on satisfaction with regulatory processes, which are the subject of other sections of the review.

⁴⁰ NOPSEMA annual report 2018-19.

Opportunity #14

NOPSEMA is encouraged to identify, with broad industry input, any potential gaps in engagement with non-operator Health and Safety Representatives (HSRs).

9.3.1.1 COVID-19: a case study of effective stakeholder engagement**Recent tripartite approaches employed during the COVID-19 pandemic have been viewed positively by stakeholders and momentum should be maintained**

NOPSEMA convened a forum between industry, regulators, and unions to guide engagement with offshore HSRs, which was pivoted in early 2020 to address the challenges from COVID-19. This was widely viewed by industry, unions, and NOPSEMA as a watershed moment for effective tripartite engagement and an effective mechanism for discussing and resolving issues arising from the pandemic in a pragmatic and collaborative manner.

There is benefit in tripartite engagements being applied more broadly to proactively and rapidly address emerging health and safety issues and risks. Tripartite forums between regulators, industry, and unions are the norm globally. Forming ongoing, productive, and open tripartite forums will require the cooperation from all parties and engagements should be aligned to a set of mutually agreed engagement principles.

Opportunity #15

NOPSEMA, in collaboration with industry and unions, is encouraged to establish tripartite forum(s) (beyond its current applications) to facilitate proactive engagement on health and safety matters. This could consider the establishment of a mutually agreed set of engagement principles and a clear terms of reference for the forum(s).

Although outside the formal scope of our review period, we have included this case study given the near unanimous and strong positive feedback from stakeholders we consulted with and the perceived importance for NOPSEMA's engagement model moving forward.

9.3.2 NOPSEMA's engagement with other stakeholders**9.3.2.1 NOPSEMA's relationship with unions****NOPSEMA's relationship with unions has improved but further work is required**

Unions generally perceive that NOPSEMA does not sufficiently engage them and is not sufficiently transparent or consistent in their engagement approach. Unions stated that NOPSEMA's levels of engagement with them was not comparable to engagement unions have with other safety regulators.

Specific issues raised by unions in relation to engagement activities included a:

- Need for more frequent and regular engagements, outside of ad-hoc union-driven engagements
- Lack of visibility over NOPSEMA decision-making, in particular as to how union feedback has been incorporated into decision-making
- Lack of sufficient consultation by NOPSEMA with the offshore workforce during inspections.

This feedback is consistent with the 2015 Operational Review and NOPSEMA is encouraged to continue to build its relationships with unions. The aforementioned establishment of tripartite forums will be a useful first step. In addition, NOPSEMA's accessibility for unions should be a focus. NOPSEMA should engage further with unions on mutually agreeable channels for communication that blends regular and ad hoc engagement mechanisms. However, there was acknowledgement from unions that engagement with NOPSEMA has generally improved over the review period – just not to the level desired.

9.3.2.2 NOPSEMA's relationship with other users of the marine estate**NOPSEMA's relationship with other users of the marine estate is strained**

Stakeholder feedback during the review process highlighted the frustration and anger felt by the fishing industry with regards to the potential impacts of the petroleum industry on fishing activities – which stakeholders noted to be a long-held issue. Fisheries near universally noted NOPSEMA's professionalism and openness to engaging with them. This reflects a strength in NOPSEMA's stakeholder engagement approach.

However, despite the openness, professionalism of staff, and demonstrated willingness by NOPSEMA, the relationship between NOPSEMA and other users of the marine estate (e.g. commercial fishing, pearling) has eroded across the review period. This is based on feedback from our stakeholder survey, stakeholder interviews, and discussions with NOPSEMA. We observed low trust and confidence in NOPSEMA as the regulator for offshore petroleum activities with this group. Potential drivers and exacerbating factors that may have contributed to this erosion include:

- Greater transparency over proposed offshore petroleum activities with the introduction of the transparency enhancements for the EP assessment process (i.e. a public comment period for EPs related to exploration activities and mandatory publication of EPs on the NOPSEMA website), which served to highlight potential issues and risks of titleholder activities to affected stakeholders
- Fundamental disagreement between the fishing industry, titleholders, and NOPSEMA over the definition of ALARP and ‘acceptability’ in the context of EPs, risk impacts to commercial fishing activities, and restorative measures. The Chief Scientist’s Independent Audit into NOPSEMA identified a relevant opportunity for improving clarity in this area, which we agree with in principal:
 - *“NOPSEMA could provide clearer guidance to the public [and, by extension, the fishing industry] on what it considers when it assesses environmental impact and risk to be ALARP and acceptable⁴¹.”*
- Confusion over NOPSEMA’s role in regulating offshore petroleum activities, particularly with regard to perceptions by many fisheries that NOPSEMA should preside over disputes between fisheries and titleholders and that NOPSEMA has a policy role, when neither of these are legislated roles of NOPSEMA
- Poor clarity on guidance relating to ‘relevant persons’ as set out in the Environment Regulations. While some members of industry felt there had been improvement in guidance from NOPSEMA in helping define relevant persons, several stakeholders expressed a persisting lack of clarity over this definition. Consistent with the 2015 Operational Review, other industry stakeholders provided feedback that they are not sufficiently consulted on the development of risk mitigations or remediation plans for activities potentially impacting their operations. Although it is the responsibility of the titleholder undertaking the activity to specify the risk mitigation proposed (in consultation with relevant persons), further work is needed to engage impacted adjacent industries. The Independent Audit of NOPSEMA identified two opportunities for improving clarity in this area, which we agree with:
 - *“Opportunity: NOPSEMA could provide further clarification to the public [and, by extension, the fishing industry] of what it considers when it assesses whether titleholders have appropriately identified and consulted with relevant persons*
 - *Opportunity: Titleholders could consider ongoing community engagement opportunities for stakeholders not meeting the regulatory definition of relevant persons⁴².”*

NOPSEMA has undertaken a number of actions in response to the opportunities raised by the Independent Audit into NOPSEMA, which we do not replicate or examine in detail here.

The impacts of stakeholder fatigue, reported by a number of stakeholders who are required to provide multiple submissions into multiple EP assessment processes for the same or similar geography, could become an issue for NOPSEMA. By way of example, a single fisheries organisation may have multiple EPs to provide feedback on in rapid succession, resulting in significant cost and effort for the fishery in question. Many of these organisations are resource constrained due to their relatively small size. We do not consider this as being an intended outcome of the current arrangements and consider a more pragmatic solution be sought.

Opportunity #16

NOPSEMA, in collaboration with DISER, is encouraged to explore mechanisms for reducing engagement burden on adjacent industry stakeholders where there are identified overlaps in permissioning documents covering a single geography.

In a complex, multi-regulator environment, it appears greater work is needed to ensure that the Commonwealth and state/territory governments are clear in their approach to managing issues where there are numerous interested parties with overlapping and potentially (or perceived) conflicting marine property rights being issued. Feedback from our consultation indicated a perception that NOPSEMA is a “passive, fence sitter” leaving the fishing industry to engage with offshore petroleum operators.

⁴¹ Chief Scientist, 2019. See: <https://www.industry.gov.au/sites/default/files/2019-09/independent-audit-of-nopsemas-consideration-of-exploration-in-the-great-australian-bight.pdf>

⁴² Please refer to the following NOPSEMA Bulletin. NOPSEMA, 2019. See: <https://www.nopsema.gov.au/assets/Bulletins/A696998.pdf>

Our examinations showed there would be benefit in agreement being sought on areas of contention, where possible, ahead of assessment processes (where parties are often under significant time constraints to address issues) and standard, predictable approaches to loss-adjustment being developed, where feasible. NOPSEMA and other relevant parties are encouraged to explore mechanisms applied internationally for managing the interactions between petroleum and fishing activities, such as in the United Kingdom and in Norway. One aim should be to provide a consistent Government perspective to the various users of the marine estate, outlining actions taken and the role of the different regulators in the industry. Consideration should be given, where appropriate, to the reinforcement of NOPSEMA's role within the offshore legislative framework.

From our analysis, we understand such a concept is being pursued by relevant parties currently and, therefore, we do not offer a recommendation or identify an opportunity to this effect.

9.3.2.3 NOPSEMA's relationship with environmental advocacy groups and community

NOPSEMA's engagement with ENGOS and community groups has improved since 2015 although disagreements over acceptability of activities and definition of relevant persons are focus areas

Across the review period there has been significant and growing interest by community groups and Environmental advocacy groups/non-government organisations (ENGOS) in offshore petroleum activities (e.g. as underscored through the events surrounding the consideration of exploration in the Great Australian Bight). NOPSEMA plays a critical role in the offshore legislative framework by maintaining the confidence of these groups in the ability to regulate offshore petroleum activities effectively. Nevertheless, these groups are often in opposition to petroleum activities being undertaken – a policy consideration and outside of NOPSEMA's remit. NOPSEMA's role is facilitating effective engagement between the ENGOS, the community, and titleholders in support of the EP permissioning process.

ENGOS we consulted with felt NOPSEMA had made a concerted effort to improve engagement with them over the review period and that NOPSEMA is generally approachable and open to engagement. This is an improvement since the 2015 Operational Review. There has been a marked increase in NOPSEMA's levels of engagement with these groups across the review period. Stakeholders commented that NOPSEMA were open to discussing their concerns, even if the outcome from that engagement was not their desired outcome.

Three key concerns were raised by ENGOS:

- As with other marine estate users, ENGOS often disagree with NOPSEMA and titleholders on definitions of ALARP, the acceptability of offshore petroleum activities, and the risk mitigations proposed by titleholders
- The definition of relevant persons remains unclear and may not be seen to be inclusive enough
- Transparency over NOPSEMA's decision-making remained an area for improvement.

We have discussed NOPSEMA's efforts to improve decision-making transparency made associated recommendations above.

NOPSEMA has defined processes and channels for capturing, managing, and responding to feedback or complaints

Based on our examination of NOPSEMA's processes and procedures relating to stakeholder engagement, we found that NOPSEMA has in place appropriate mechanisms for capturing and managing complaints and feedback (including anonymously) either about NOPSEMA or its regulatory decisions. For example, NOPSEMA has a procedure for *Managing Stakeholder Complaints and Feedback*, has suitable channels on its website for complainants to lodge a complaint, and publishes its *Regulatory Services Charter*, which specifies (among other items) how stakeholders can contact NOPSEMA about complaints.

9.4 NOPSEMA's relationships with international stakeholders

NOPSEMA's engagement with international stakeholders is appropriate as there are clear and demonstrated instances where NOPSEMA has applied global learnings locally – a critical element of being a regulator that learns

NOPSEMA regulates an industry that, in many cases, is globally connected. Therefore, it is essential that NOPSEMA continue to engage with international peers to identify and apply learnings to the Australian context. Based on the information provided by NOPSEMA, their engagements with international regulators have resulted in tangible changes with the objective of improving health, safety, and environmental outcomes.

Case studies provided to us by NOPSEMA include:

- **Safer automated positioning systems:** NOPSEMA identified weak risk signals locally regarding a specific risk with automated positioning systems. Through international engagement, NOPSEMA were able to establish that the trend was present globally. The issue was presented at the October 2017 IRF meeting, which resulted in IRF member countries agreeing to take action within their respective jurisdictions and to engage collectively with the manufacturer of dynamic positioning systems to address the issue.

A safety alert was issued, a publication was contained in *The Regulator*, and a presentation was given at the Dynamic Positioning Asia Conference in 2017

- **IOPER marine sound working group:** Engagements with the working group have resulted in a joint conference paper with the Bureau of Ocean Energy Management (BOEM), influence over the research agenda to support environmental impact assessments, and international support for the development of a ‘good practice standard’ for managing the interaction between seismic surveys and whales
- **IOPER Oil Spill Working Group:** NOPSEMA engaged with the working group to raise the profile of critical areas for further development for oil spill response preparedness.

NOPSEMA should continue engaging with its international counterparts.

9.5 NOPSEMA’s cooperation, coordination and consultation with other government authorities and agencies to deliver its functions

9.5.1 NOPSEMA’s engagement with Commonwealth Government

9.5.1.1 NOPSEMA’s relationship with DISER

NOPSEMA has an effective and open relationship with DISER, although sharing of information of issues of mutual importance could be improved

We observed that the relationship between NOPSEMA and DISER has strengthened since NOPSEMA’s inception. In general, DISER and NOPSEMA have open communication channels and engage frequently and regularly on items of mutual interest and areas of regulatory and policy enhancement. There are examples of NOPSEMA collaborating on policy matters across multiple areas within DISER. For example, NOPSEMA is working with DISER in the development of the regulatory framework to enable offshore wind and other clean technologies in Commonwealth waters. NOPSEMA considers that the relationship with DISER is generally effective through regular their interactions on policy and regulatory improvement matters.

It was noted by some stakeholders that NOPSEMA could be more open to discussing and engaging on matters in a collaborative and cooperative fashion where NOPSEMA may have divergent views from DISER. Furthermore, it was noted that there were instances where policy formation and regulation activities would benefit from greater collaboration and sharing of relevant industry intelligence between DISER and NOPSEMA.

9.5.1.2 NOPSEMA’s relationship with the Australian Maritime Safety Authority

NOPSEMA has an effective and open relationship with AMSA

NOPSEMA’s relationship with AMSA was noted as being positive and collaborative. There is an MOU in place between the two parties and there are frequent and regular meetings held at both a strategic and operational level⁴³. Furthermore, NOPSEMA continues to engage with AMSA on the National Plan for Maritime Environmental Emergencies (**National Plan**). The National Plan establishes responsibilities for each agency during oil spill response efforts.

Based on our experience, we agree there is value in having an MOU with a clear set of engagement principles and protocols (including with regards to information sharing), agreements on joint funding or joint approaches to issues, established meeting cadences, and a clear signal to other external stakeholders of a close relationship.

From the information we examined, there is evidence of NOPSEMA and AMSA identifying and addressing areas of regulatory overlap. Notwithstanding NOPSEMA and AMSA’s efforts to address areas of regulatory interface, stakeholders we consulted noted areas of overlaps between NOPSEMA and AMSA’s functions that require clarification. This is in line with findings from the 2015 Operational Review. We encourage NOPSEMA and AMSA to continue to identify areas of regulatory interface and provide clarity on their respective roles and responsibilities to industry (e.g. through publishing of joint guidance notes, information in the Regulator’s newsletter or a joint news article through APPEA, for example). A planned, methodical approach to identifying areas of unresolved regulatory interface between the OPGGS Act and the *Navigation Act 2012* (**Navigation Act**) is required.

⁴³ MOU between AMSA and NOPSEMA available at <https://www.nopsema.gov.au/assets/Corporate/A667383.pdf>

Opportunity #17

The Australian Government is encouraged to identify opportunities for NOPSEMA and AMSA in building and delivering joint guidance, briefings, or information packages for industry on issues of strategic importance or regulatory overlap, such as decommissioning.

9.5.1.3 NOPSEMA's relationship with DAWE, including Parks Australia and the Australian Antarctic Division**Collaboration with DAWE is positive, with opportunities to work together to improve key resources**

NOPSEMA's engagement with DAWE and portfolio agencies Parks Australia and the Australian Antarctic Division is generally positive, regular and proactive.

In February 2014, the environmental management authorisation process for petroleum and greenhouse gas activities administered by the NOPSEMA under the OPGGS Act and associated regulations was endorsed by the Commonwealth Minister for the Environment under Part 10 of the EPBC Act, subject to a number of exclusions. The Minister's approval meant titleholders seeking to undertake offshore petroleum or GHG storage activities in Commonwealth waters in accordance with the Endorsed Program no longer needed to refer those actions for assessment under the EPBC Act⁴⁴.

NOPSEMA must engage closely with two Commonwealth government departments on environmental policy issues (DISER for offshore resources environment matters and DAWE for select environment-related matters). DAWE continue to hold relevant policy responsibility for environmental protection matters, which NOPSEMA must comply with in its assessments. *An Administrative Arrangement* was agreed by NOPSEMA and DAWE following the establishment of the Endorsed Program and subsequently updated in 2017. Among other matters, the Administrative Arrangements set out the information sharing and consultation arrangements between the parties.

As part of the Administrative Arrangement, DAWE and NOPSEMA hold monthly meetings to discuss the pipeline of work and approvals under consideration as well as relevant guidelines or statutory instruments. The parties also hold frequent ad hoc meetings on specific approval matters as required.

NOPSEMA can only accept an EP if it meets the acceptance criteria outlined in the Environment Regulations and is not inconsistent with a relevant recovery plan or threat abatement plan for a listed species or ecological community (referred to as Recovery Plans). Recovery Plans are made or adopted under the EPBC Act and remain in force until the species is removed from the list. These plans are binding on the Australian government – once a plan is in place, all relevant Australian government agencies must act in accordance with the Recovery Plan. Therefore, it is essential that NOPSEMA has a clear view of upcoming Recovery Plans for endorsement to ensure they remain compliant. DAWE provides a weekly update to NOPSEMA on new Recovery Plans or updates to existing Recovery Plans. NOPSEMA has a dedicated resource monitoring notifications and ensuring they are effectively disseminated across NOPSEMA. This has process improved since its establishment in 2015 and is functioning well.

Recovery Plans are listed on the Species Profile and Threats (SPRAT) database, hosted by DAWE. NOPSEMA utilises the SPRAT database, and the National Conservation Values Atlas (NVCA) amongst other information to inform assessments and provided advice to titleholders. The NVCA is an interactive mapping tool developed to support implementation of Marine Bioregional Plans. It incorporates a range of data on Australia's marine environment as well as specific information on the location and area of important marine habitats, ecological features, known breeding and feeding areas for protected species and other conservation values in the marine regions. As discussed in our *2020 Endorsed Program Assessment*, which is attached at **Appendix B**, there is an opportunity for improvement of the NVCA via enhancement of the functionality and timeliness of updates. This could be an opportunity for further collaboration between NOPSEMA and DAWE. There may also be additional opportunity for NOPSEMA to provide input to new or updated threatened marine species Recovery Plans, to better ensure that they are constructed in a way that allows industry to understand and interpret its responsibilities in submitting the relevant EP to NOPSEMA.

NOPSEMA cooperates effectively with Parks Australia and the Australian Antarctic Division

We heard from stakeholders that NOPSEMA and Parks Australia work collaboratively on issues of overlap and mutual interest.

Parks Australia are considered a 'relevant person' under the OPGGS Act, so will be notified directly when an EP has been assessed. Titleholders will also contact Parks Australia when they are entering a Marine Park to conduct specified activities, and NOPSEMA has a role in facilitating 'relevant persons' correspondence.

There is evidence of a collaborative relationship between NOPSEMA and Parks Australia. For example, NOPSEMA worked with Parks Australia to revise NOPSEMA's guidance note on petroleum activities within Commonwealth Marine Reserves to reflect contemporary

⁴⁴ ERM, 2015. See: <https://www.nopsema.gov.au/assets/Corporate/EPBC-Streamlining-review-report-August-2015.pdf>

expectations for titleholder consultation with the Director of National Parks⁴⁵. NOPSEMA has also conducted a number of workshops for Parks Australia outlining the offshore petroleum environment regulation framework.

Although outside the review period, we note that an MOU between Parks Australia and NOPSEMA was executed on 28 August 2020⁴⁶. The MOU with Parks Australia is intended to outline arrangements for cooperation and collaboration between the parties in performing statutory functions regarding environmental management of offshore petroleum and GHG storage activities that may impact Australian Marine Parks.

The Australian Antarctic Division (AAD) is contracted by NOPSEMA to provide specialist advice on cetacean related matters. For instance, NOPSEMA and AAD also worked together to bring a proposal to the Australian Government Business Research and Innovation Initiative, to improve the detection and identification of whales during marine seismic surveys⁴⁷. We understand up to \$2.4 million may be available to support industry to conduct feasibility studies and build automated and integrated whale detection systems for vessels while conducting seismic surveys. We consider NOPSEMA's and AAD's relationship to be effective and highlight the innovative approach adopted by the parties to supporting desired regulatory outcomes.

9.5.1.4 NOPSEMA's relationship with NOPTA

NOPSEMA and NOPTA are working closer together but improvements to collaboration and coordination will be required

A legislated function for both NOPTA (see section 695B(e)) and NOPSEMA (see section 646(gr)) is to cooperate with one another in relation to the administration and enforcement of the OPGGS Act and its regulations. We have assessed the effectiveness and efficiency of NOPTA and NOPSEMA's relationship through an examination of examples of collaboration and whether:

- Effective communication and consultation mechanisms have been established
- Cross border coordination and collaboration mechanisms are in place
- Formal mechanisms are in place to share learnings and promote a collegiate approach to regulating the industry.

The 2015 Operational Review recommended that NOPSEMA and NOPTA *"develop an appropriate mechanism (for example an MOU or charter of engagement) to identify the interfacing points and areas of cooperation between the agencies and their respective responsibilities"*.

We heard from NOPTA and NOPSEMA that generally over the review period, cooperation and coordination has improved. Examples cited by NOPTA and NOPSEMA as evidence of improved cooperation and coordination include personnel secondments in the environment, communications, legal and human resources areas within both organisations. Furthermore, NOPTA and NOPSEMA have co-located offices in Perth and Melbourne, which has been beneficial to formal and informal resolution of issues and knowledge sharing between the entities. We understand that there is now a good level of interaction at all levels of the organisations, with regular meetings between the NOPSEMA CEO and the Titles Administrator, members of the senior leadership teams, and operational personnel. Positively, we also heard from industry stakeholders that the adoption of joint meetings by NOPTA and NOPSEMA where there may be areas of overlap was positively received. This is an area we encourage NOPTA and NOPSEMA to continue to pursue. There may also be an opportunity to conduct more strategic, joint training or presentations to industry on emerging issues of overlap into the future.

Opportunity #18

NOPTA and NOPSEMA are encouraged to identify further opportunities for building and delivering joint guidance, briefings, or information packages for industry on issues of strategic importance or regulatory overlap, such as decommissioning.

While we have not performed a re-review the events that the Walker Review examined, we refer to this event to demonstrate how the NOPSEMA – NOPTA relationship may continue to be improved. Stakeholder feedback from the Government and industry indicated that collaboration between NOPTA and NOPSEMA is still, in their view, siloed. Feedback was that NOPSEMA and NOPTA could work together more effectively, to continue to share knowledge and break down information silos. The Walker Review demonstrated that both agencies need to have a clear and consistent interpretation of the OPGGS Act and hold the ability to compel information to ensure the financial capability of titleholders. It is not enough to hold a regulatory power; it must be exercised where necessary and in a timely manner. NOPSEMA and NOPTA must be willing to coordinate and collaborate where such powers may be exercised, engage on difficult

⁴⁵ NOPSEMA, 2020. See: <https://www.nopsema.gov.au/assets/Guidance-notes/A620236.pdf>

⁴⁶ Available: <https://www.nopsema.gov.au/assets/Corporate/A745685.pdf>

⁴⁷ Innovation grants available to help better protect whales - <https://www.nopsema.gov.au/news-and-publications/latest-news/news-announcement/2020/08/18/innovation-grants-available-to-help-better-protect-whales/>

cases or issues, and be proactive in doing so. The reports of increased interaction between NOPTA and NOPSEMA are positive but must be extended further to help manage the significant risks from the maturing of the industry.

We have made three relevant recommendations: the first is to investigate greater functionality, as part of NOPTA's planned development of the 'NOPSEMA NEATS portal' to digitally transact on items of shared interest – the *2020 Statutory review of the National Offshore Petroleum Titles Administrator* contains the recommendations to this effect. The second is for the various arms of the offshore legislative framework to align on roles and responsibilities. The third is the requirement to break down information and data sharing barriers. These latter two points are discussed further below.

A key and unresolved question is whether the degree of collaboration and coordination required to support a maturing industry is possible under the current offshore model where administrative and regulatory arms of the framework remain separate. We discuss this further in **Section 12**.

9.5.2 NOPSEMA's relationship with state and territory agencies

Interactions with state/territory Government agencies have improved but information sharing barriers remain

NOPSEMA and state/territory government agencies have increased their level of interactions over the review period. State/territory government agencies engaged through our review process were largely complimentary of the relationship between NOPSEMA and their department. We also heard from NOPSEMA that they engage in joint fora (in some cases as an observer) with state/territory counterparts, such as health and safety matters. NOPSEMA and their state/territory counterpart departments seek to coordinate on matters where there is a shared regulatory interest, such as with pipelines. For example, NOPSEMA has frequent (up to weekly) meetings with WA DMIRS.

Our examination of information/stakeholder consultations showed streamlining of regulatory processes, for example with regards to safety cases for the same structure (e.g. pipeline that covers Commonwealth and state/territory waters). NOPSEMA noted that there are a number of legislative and regulatory challenges with such an approach, as NOPSEMA and its state/territory counterparts have to adhere to different legislation and regulatory instruments.

Importantly, NOPSEMA's relationship with other state, territory and Commonwealth Government stakeholders is inhibited by information sharing barriers. We discuss a more pragmatic and open approach to sharing data and information below.

9.6 A 'One Government' approach to the delivery of the offshore legislative framework

Alignment between the administrative, policy, and regulatory arms of the offshore legislative framework should be improved

We have observed that the delivery model of the offshore legislative framework is complex, with multiple parties responsible for respective elements across the administration (NOPTA), decision-making (the Joint Authorities), policy development (DISER Offshore Resources Branch), and regulation (NOPSEMA). The delivery complexity is compounded by the length and structure of the legislation itself, which spans three volumes and associated regulations. The outcome sought should be a cohesive and consistent 'One Government' approach to the industry and its risks in the delivery of legislative and regulatory instruments. The criticality of a 'One Government' approach (be it across state, territory, or Commonwealth Government) has been starkly highlighted by the events surrounding the Northern Endeavour Floating Production and Storage Offtake facility and the broader Laminaria-Corallina fields.

As outlined in the discussion above, there are positive indications of a more cohesive approach being taken in some cases, particularly during the latter part of the review period. Nevertheless, further work needs to be done to properly connect processes across the parties.

At the core of a coordinated and collaborative approach is gaining further alignment between the expectations, roles, and responsibilities of the administrative, policy, and regulatory facets of the offshore legislative framework. We have observed, through our interactions between NOPTA, NOPSEMA, and the DISER Offshore Resources Branch, deviations in the understanding of roles and responsibilities of each party and, in some cases, interpretations of the OPGGS Act. This fact and the general complexity of the offshore legislative framework itself may further contribute to a misunderstanding of the various roles and responsibilities by external stakeholders. We see benefit in closer alignment on these areas while also respecting the independence of each arm.

Recommendation #21

The administrative (NOPTA), regulatory (NOPSEMA), and policy development (DISER Offshore Resources Branch) arms of the offshore legislative framework should seek to improve their alignment, coordination and collaboration on matters such as policy development, interpretations of the OPGGS Act, exchange of data and information, and shared priorities to deliver a more cohesive 'One Government' approach.

Effective and efficient relationships across the regulatory landscape will be essential to managing a maturing industry

While a significant focus has been placed on the effectiveness NOPTA's and NOPSEMA's interactions, of importance will also be NOPTA's and NOPSEMA's interactions with various state and territory policy developers and regulators who oversee assets within state and territory waters. A number of assets, particularly pipelines, traverse Commonwealth and state/territory waters. Therefore, collaboration on the decommissioning and managing of risk for these assets will be essential. Should conferral of state/territory powers not be pursued, significant improvements to the ability for collaboration and coordination between parties will be required.

The ability to exchange data and information in a secure, seamless, and prudent manner will underpin the ability for NOPTA and NOPSEMA, and their state and territory counterparts to coordinate and collaborate effectively. Through our consultation with stakeholders, it was outlined to us that a number of legislative and/or regulatory barriers currently inhibit the seamless sharing of data and information between NOPTA, NOPSEMA and their state/territory counterparts outside of titles-specific Joint Authority interactions. This needs to be addressed and will help improve the effectiveness of interactions beyond the decommissioning of assets.

Recommendation #22

DISER, NOPSEMA, NOPTA, and relevant state/territory government departments should examine and address barriers inhibiting the secure, seamless, and sensible exchange of information and data between parties to deliver a more cohesive 'One Government' approach.

In implementing the above recommendation, consideration could be given to:

- Identifying and addressing any potential regulatory or legislative barriers, prioritising those jurisdictions that have the greatest volume of offshore activity and/or where the risks are highest
- Applying an outcome, rather than prescriptive, approach to setting which data and information could and should be exchanged
- Developing protocols for securely and efficiently exchanging information and data in a structured way.

Beyond this recommendation, all parties involved in the delivery of the offshore legislative framework will need to coordinate on risks and issues arising across jurisdictions, particularly where activity overlap is greatest.

10 How efficient is NOPSEMA, and how does it reduce burden for industry and recovering costs?

Key points

NOPSEMA is operationally efficient within their current remit

The majority of NOPSEMA's costs, approximately 70%, relate to employee expenses. NOPSEMA's costs have risen over the review period due to an increase in FTEs. However, employee expenses per FTE and employee expenses per regulatory activity undertaken have generally remained static or fallen.

The costs of NOPSEMA's corporate support function as a proportion of total expenses has remained between 9% to 11% across the review period and is in-line with what we would expect from a corporate support function for an organisation of NOPSEMA's size.

Improvements to operational efficiency would be expected should regulatory process efficiency be improved, NOPSEMA move to a 'One NOPSEMA' operating model, and the adoption of improved data-enabled risk-based approaches – each discussed through our report. For example, should the permissioning document assessment process be streamlined further through digitation, document simplification, or other means – as is recommended – there should be a corresponding reduction in processing costs for NOPSEMA.

NOPSEMA's cost recovery model appears effective, although transparency should be improved

Based on our analysis, we consider NOPSEMA's costs to be reasonable and its cost recovery model to be effective.

There is some cross-subsidisation between safety levies and environmental levies. If smaller titleholders are relatively more involved in exploration than production or less complex activities (resulting in lower activity rating), this could lead to larger titleholders paying relatively more in levies than the cost they impose. However, this needs to be balanced against other factors such as the need to encourage innovation and ability to pay.

There is an opportunity to improve transparency of the information provided to stakeholders regarding how fees and levies are developed and benefit in investigating the application of inflationary measures, like the CPI, to fees and levies.

Reducing regulatory burden must remain the key focus

NOPSEMA has a number of mechanisms in place to examine and improve the efficiency of regulatory processes.

There is an opportunity to reduce regulatory burden on industry through more streamlined permissioning assessment processes. While there is complexity in addressing these issues, the current course is not sustainable for either industry or NOPSEMA – it is not reflective of effective and efficient regulation. This issue is discussed more fully in **Section 6.1.4**.

Recommendations: [We do not make recommendations for this section](#)

Opportunities: [19](#), [20](#)

In this section we seek to answer whether NOPSEMA is efficient in its delivery of its functions under the OPGGS Act. We begin with an examination of NOPSEMA's regulatory processes and operational efficiency (**subsection 10.1**). We conclude this section with a discussion of NOPSEMA's cost recovery approach (**subsection 10.2**).

10.1 Reducing burden on industry and streamlining operational expenditure

A key objective of the 2009 Productivity Commission Review was streamlining regulatory processes for the industry. Pursuit of this objective remains relevant and is a focus for NOPSEMA. Ultimately, a reduction in burden on the industry will help ensure NOPSEMA and titleholders can apply the right degree and focus of resources on managing OHS, well integrity, and environment risks and help ensure Australia remains an attractive investment location.

In this subsection we examine two main levers for reducing regulatory burden:

- Improving the efficiency of NOPSEMA's regulatory processes across the inspectorate and assessment functions
- Improving NOPSEMA's operational efficiency across its staffing, ICT, and process models.

While both levers are important, it is pertinent to highlight that the 'size of the prize' for reduction in regulatory burden is much higher for improving the efficiency of regulatory processes than for operational efficiency of NOPSEMA staffing, ICT, and process models. For example, delayed decision-making, a consequence of an inefficient regulatory process, can have significant financial and operational implications for a titleholder.

10.1.1 Analysis of the efficiency of regulatory processes

NOPSEMA has a number of mechanisms for identifying regulatory process improvement opportunities

NOPSEMA utilises two main systems to manage regulatory processes – RMS and the Quality Management System (QMS). RMS is discussed further in **Section 6**. We also discuss the need for improved regulatory process efficiency in relation to permissioning documents in **Section 6**. We do not duplicate these discussions here but do highlight such improvements would improve regulatory process efficiency.

QMS is used to document and manage the development of NOPSEMA policies, processes, and procedures. Within QMS there is a corresponding area for each of the regulatory functions NOPSEMA undertakes (e.g. EP assessments). Within these areas of QMS, the processes have associated process owners who are responsible for managing and reviewing processes. Processes are reviewed on a biannual basis, with the opportunity for NOPSEMA personnel to request revisions ahead of formal reviews, as required (e.g. where feedback from a stakeholder or inspection triggers a need for review).

NOPSEMA also maintain a register of potential legislative or regulatory enhancements, informed through discharging its regulatory duties or feedback from stakeholders. NOPSEMA raise improvement opportunities with DISER Offshore Resources Branch through their regular interactions. An additional channel for regulatory improvement is through the sunset provisions contained within the regulations themselves, which stipulates a minimum period for formal review of their fitness-for-purpose.

Based on our examination, the following key regulatory improvements made during the period of the review:

- Transparency improvements made in 2018 to the EP assessment process. NOPSEMA claims that the improvements reduce regulatory burden by:
 - Reducing the number of EPs rejected for insufficient consultation and through setting deadlines for public consultation
 - Greater ability for industry to see and share learnings through published EPs
 - Increased uniformity over structure (as opposed to content) of EPs, improving assessment efficiency
- Review of the Well Integrity portion of the regulations. An example improvement cited by NOPSEMA resulting from this review is that multiple wells can now be captured by a single WOMP if each well is subject to similar risks.

10.1.2 Analysis of NOPSEMA's operational efficiency

10.1.2.1 NOPSEMA's historic expenditure versus activity levels

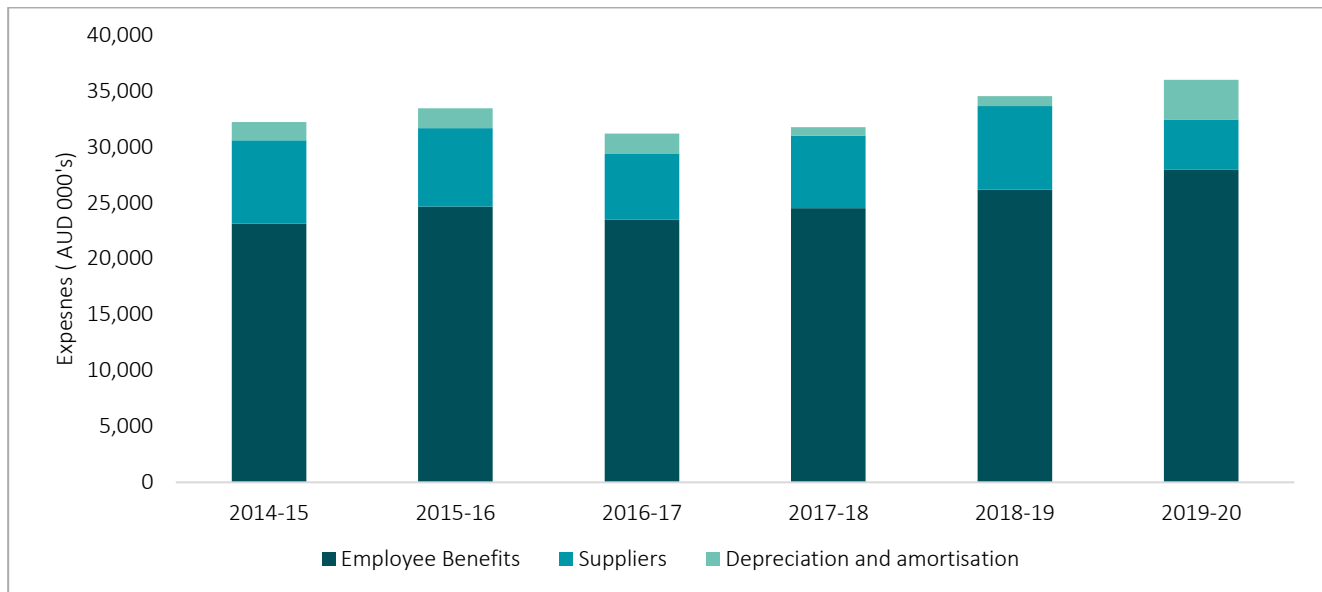
NOPSEMA appears to be operating in an efficient manner within its current remit

Figure 10.1 highlights a marginal increase in total expenditure over the past five years and, referring to **Figure 10.2**, NOPSEMA's activity levels have remained relatively stable. The increasing expenditure can mostly be attributed to the increase in employee expenses. NOPSEMA has advised that increases in costs are partly due to increased levels of stakeholder and community engagement, which are not captured in regulated activities shown in **Figure 10.2**. Regulatory employee expenses per assessment and inspection undertaken

remained relatively static across the period, with a slight increase observed in regulatory employee expenses per assessment and a slight decrease observed in regulatory employee expenses per inspection (see **Figure 10.3**). While there are limitations in using this metric, it provides a useful proxy for examining NOPSEMA's operational efficiency in undertaking its regulatory activities.

Over the review period approximately 75% of NOPSEMA's total expenses relate to employees, including the associated recruitment and training. Depreciation and amortisation costs account for approximately 3% of total expenses and mostly relate to NOPSEMA's RMS software. The remaining minor cost categories relate to information technology and communications costs, professional services, recruitment and training costs, travel costs and, administration and office costs.

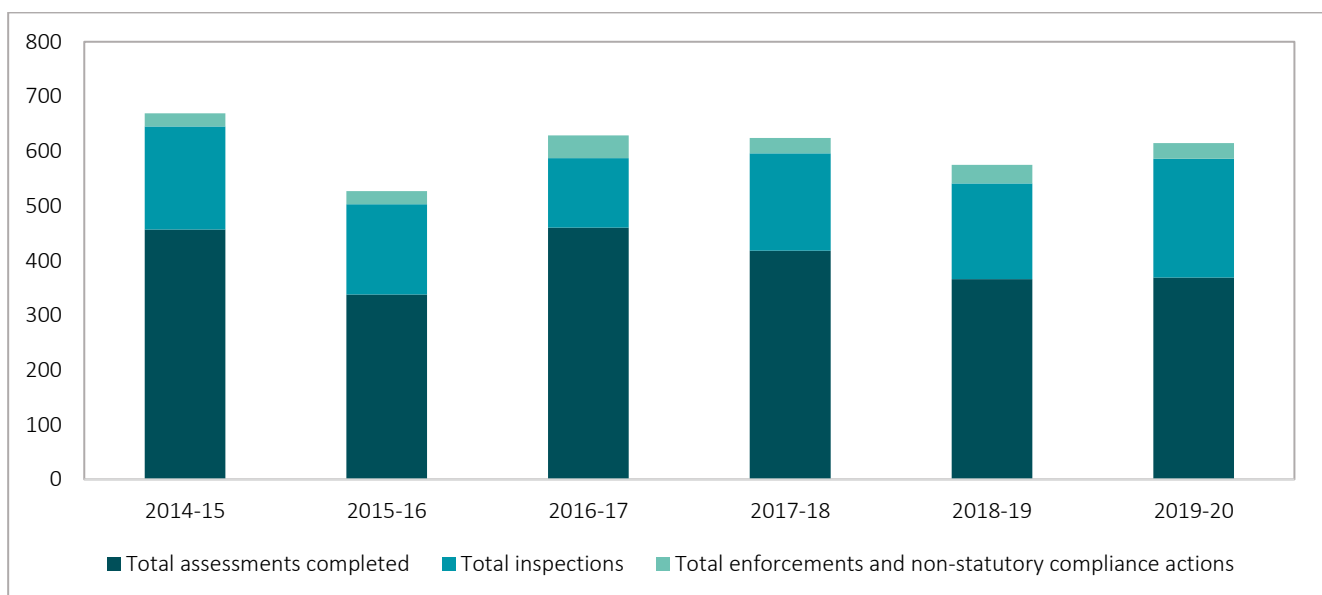
Figure 10.1: NOPSEMA costs by category from 2014-15 to 2019-20



Nominal values. Note – the above graph is in financial year.

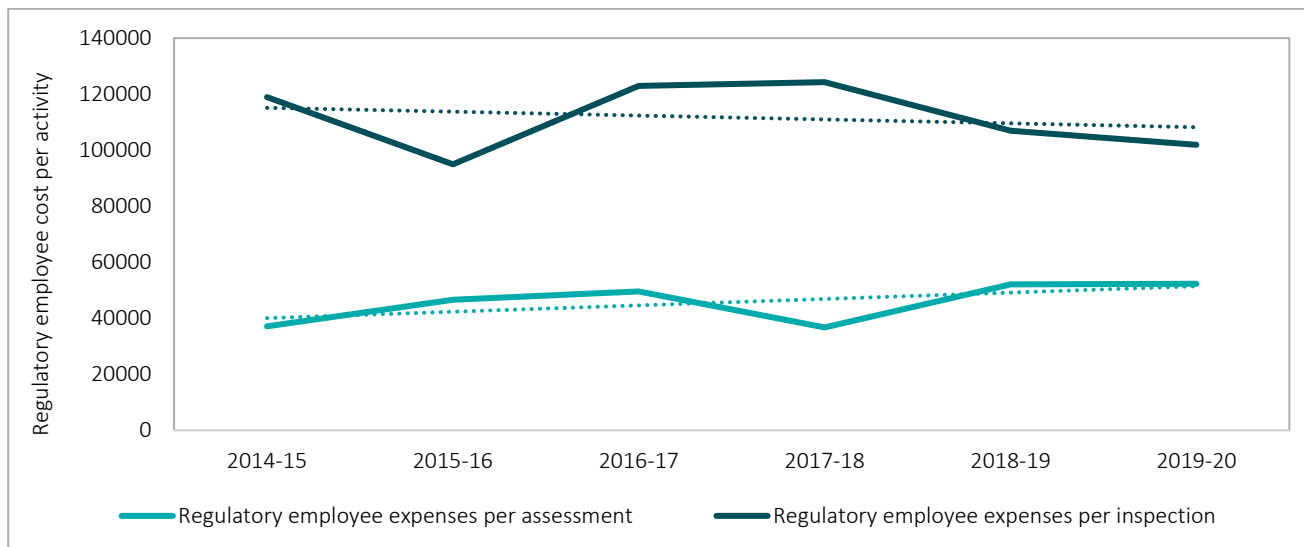
Source: NOPSEMA Annual Report

Figure 10.2: NOPSEMA key regulatory activities by category from 2014-15 to 2019-20



Regulatory activities include all enforcements, assessments and inspection across Environmental, Safety and Well Integrity functions. Note – the above graph is in financial year.

Source: Deloitte analysis adapted from NOPSEMA data

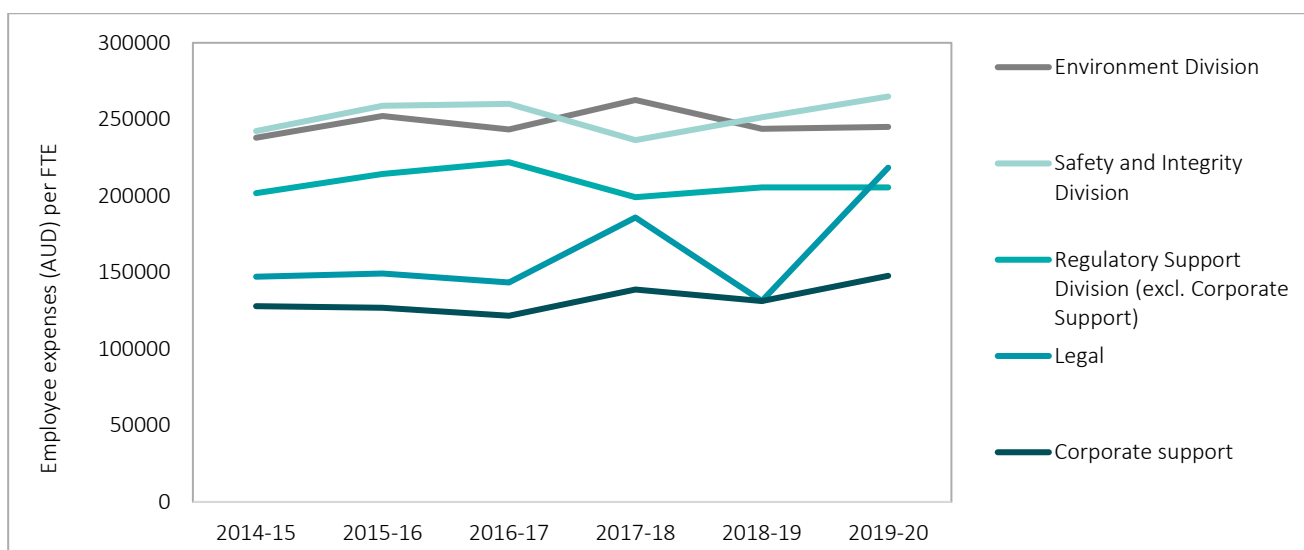
Figure 10.3: NOPSEMA regulatory employee expenses per assessment and inspection from 2014-15 to 2019-20

Regulatory employee expenses are those for Environmental Division and Safety and Integrity Division; regulatory activities include all assessments and inspection (across Environmental, Safety and Well Integrity functions); nominal values. Note – the above graph is in financial year.

Source: NOPSEMA Annual Report, Deloitte analysis adapted from NOPSEMA data

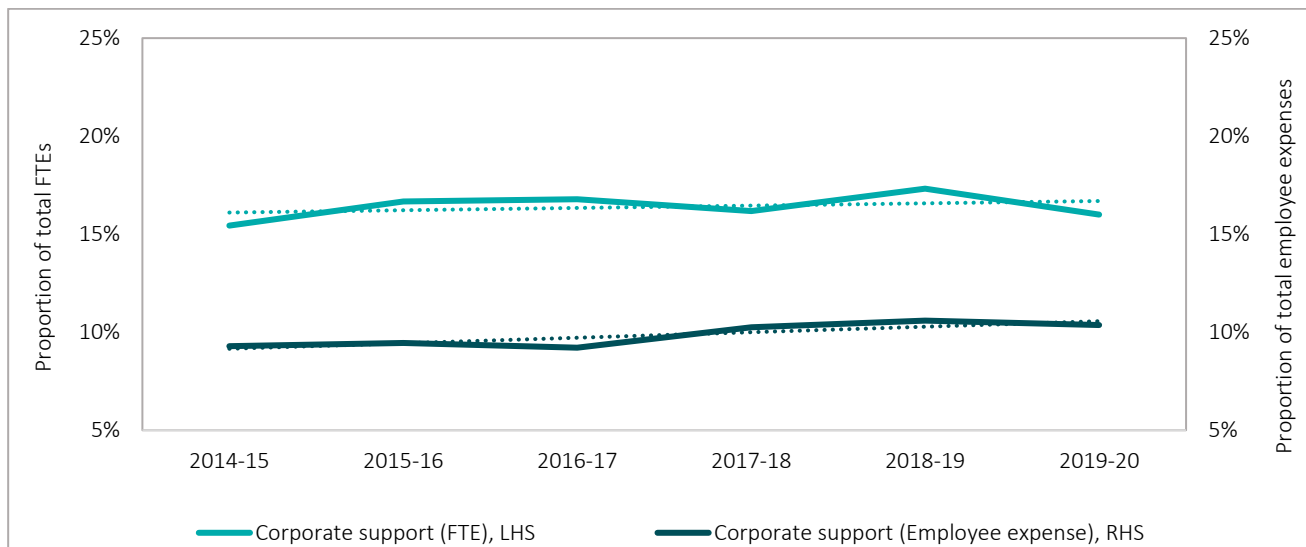
NOPSEMA seek to manage procurement in accordance with the *Commonwealth Procurement Rules* under section 105B(1) of the PGPA Act. NOPSEMA's main supplier costs relate to ICT services, consultants, and temporary personnel. Overall, NOPSEMA's supplier costs have tended to decrease across the review period (**Figure 10.1**).

Referring to **Figure 10.4** and **Figure 10.5**, we have analysed NOPSEMA's employee costs per FTE and NOPSEMA's corporate support functions (ICT, Finance, and Human Resources) as a proportion of NOPSEMA's total FTEs and total employee expenses (see **Figure 10.6**). NOPSEMA's employee expenses per FTE have remained relatively static across the review period. Regulatory functions have higher average salaries due to the need to provide competitive remuneration vis-à-vis industry to attract and retain talent. Similarly, NOPSEMA's corporate support function has remained between 9% to 11% of overall employee expenses across the review period and is in-line with what we would expect from a corporate support function for an organisation of this size.

Figure 10.4: NOPSEMA's employee expenses per FTE from 2014-15 to 2019-20

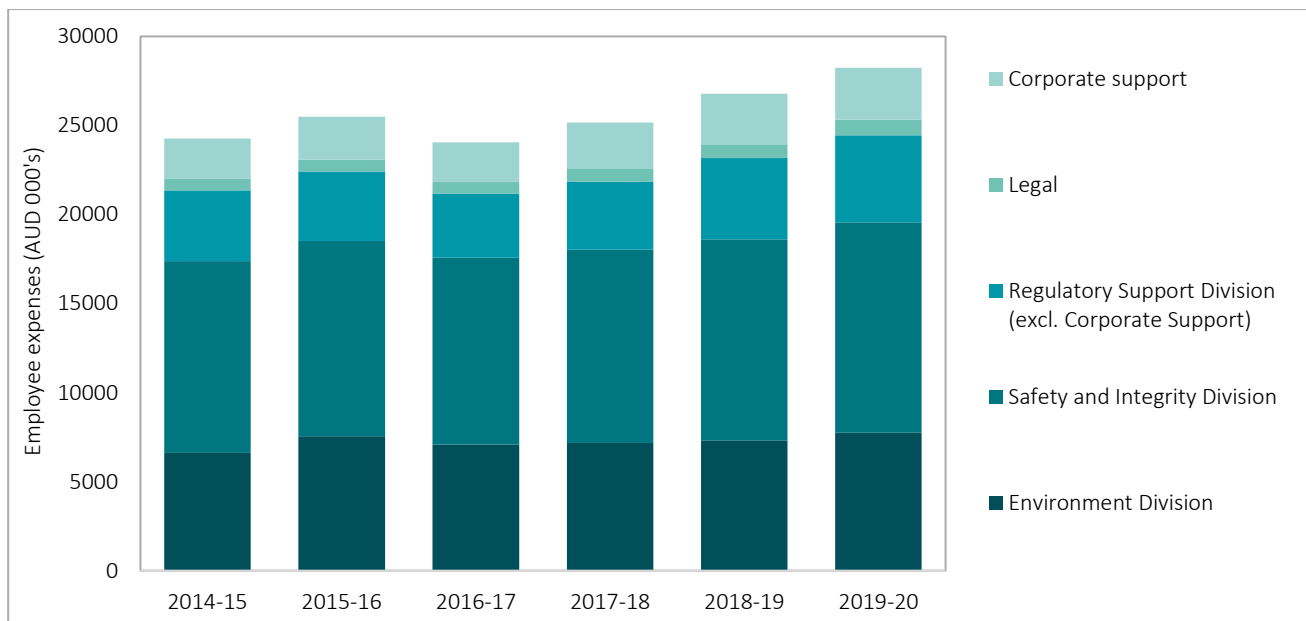
Total employee expenses divided by the number of FTEs; nominal values

Source: Deloitte analysis adapted from NOPSEMA data

Figure 10.5: NOPSEMA's corporate support function analysis from 2014-15 to 2019-20

Corporate support FTEs as a proportion of total NOPSEMA FTEs; corporate support employee expenses as a proportion of total employee expenses; nominal values

Source: Deloitte analysis adapted from NOPSEMA data

Figure 10.6: NOPSEMA employee expenses by division from 2014-15 to 2019-20

Source: Deloitte analysis adapted from NOPSEMA data

Based on the information we have examined, NOPSEMA appear to be operating in a reasonably efficient manner. Improvements to operational efficiency would be expected should regulatory process efficiency be improved, NOPSEMA move to a 'One NOPSEMA' operating model, and through the adoption of data-enabled risk-based approaches. For example, should the permissioning document assessment process be streamlined further through digitation, document simplification, or other means – as is recommended – there should be a corresponding reduction in processing costs for NOPSEMA.

10.1.3 NOPSEMA's cost profile moving forward

NOPSEMA faces an uncertain operating environment over the next 12 to 18 months

NOPSEMA's operating environment continues to evolve. We have outlined three areas of uncertainty and their potential cost implications (see **Table 10.1**). These will require careful management by NOPSEMA to ensure it maintains efficiency while potentially building new capabilities and inheriting an expanded remit.

Table 10.1: Potential cost implications of key uncertainties in NOPSEMA's environment

Uncertainty	Potential cost implication
Changes to NOPSEMA's mandate to include Offshore Renewables (e.g. NOPSEMA becoming the Offshore Renewables Safety and Environmental management regulator)	<ul style="list-style-type: none"> The quantum of costs incurred will depend on NOPSEMA's exact remit in the Offshore Renewables framework There may be an increase to NOPSEMA's cost base from investing in people, processes, and systems capabilities to undertake an expanded remit Likely to be an upfront investment required to build capability. The longer-term cost profile will be predominantly dictated by timing and degree of industry uptake of offshore renewables solutions.
Decommissioning policy and associated legislative changes	<ul style="list-style-type: none"> The impact is unknown at this stage. Changes imposed may see an expansion of NOPSEMA's capabilities with regards to financial assurance over titleholder abilities to fund whole of life costs for an asset NOPSEMA could explore a supplier panel arrangement in the short-medium term as a means of sourcing capabilities and to manage fluctuations in resource requirements. As the industry trends towards a greater number of transactions, NOPSEMA could explore increasing its inhouse capabilities in this area A review of cost recovery arrangements to enable NOPSEMA to recover these costs would be required if any change to NOPSEMA's role eventuates.
Increasing industry transactions	<ul style="list-style-type: none"> This is part of the longer-term trend of industry maturing, which will likely see an increase in asset sales (i.e. transactions) as larger operators look to exit the market Transactions will require close scrutiny by NOPSEMA, which may have implications for staffing levels.

Source: Deloitte analysis adapted from NOPSEMA data

10.2 Cost recovery

10.2.1 Australian Government and NOPSEMA cost recovery framework

The Australian Cost Recovery Guidelines (CRGs) set out the overarching framework for government entities to design, implement and review cost recovered activities provided on behalf of the Australian Government⁴⁸. These guidelines apply to NOPSEMA's approach to cost recovery. The cost recovery framework is underpinned by three principles that must be applied across all stages of the cost recovery process: efficiency and effectiveness, transparency and accountability, and stakeholder engagement.

For each cost recovered activity, the responsible government entity must:

- Obtain policy approval from the Australian government to cost recover
- Hold the statutory authority to charge
- Ensure alignment between expenses and revenue
- Maintain up-to-date, publicly available documentation and reporting.

Additionally, each Department of State (in this case, Department of Finance) must conduct a portfolio review at least every 5 years.

NOPSEMA was established to operate on a full cost recovery basis, to be funded by industry fees. NOPSEMA has the statutory authority to charge levies and fees under the OPGGS Act, and:

- Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003*
- Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations* (the **Regulatory Levies**)

⁴⁸ Australian Government Cost Recovery Guidelines (RMG 304). See: <https://www.finance.gov.au/publications/resource-management-guides/australian-government-cost-recovery-guidelines-rmg-304>

- *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009.*

Under the CRGs, it is a requirement that each cost recovered activity must be documented in a CRIS prior to charges commencing. A CRIS is an explanatory document that provides key information on how cost recovery for a specific government activity is implemented. NOPSEMA's CRIS is set on a three-year cycle in order to provide a stable fiscal regime to titleholders. NOPSEMA conducts regular reviews of its CRIS to ensure that cost recovery arrangements are adequate and that it can continue to effectively discharge its regulatory functions.

Each financial year, NOPSEMA prepares a report that assesses the cost effectiveness of its operations (the **cost effectiveness report**). The cost effectiveness report outlines NOPSEMA's:

- Financials for the year under review
- Achievement of budget targets and explanations for variations
- Current cost recovery arrangements
- Key performance data related to its legislated functions
- Organisational effectiveness
- Financial outlook.

The most recent cost effectiveness report undertaken was for the 2018-19 financial year. NOPSEMA outlined in its 2018-19 cost effectiveness report that it would:

- Undertake a CRIS review in 2020 to identify whether levies need to increase to meet ongoing regulatory demands.
- Consider the timing of levy increases to ensure any increase is not imposed at a time that would create unnecessary burden on industry. However, NOPSEMA advised us that it will seek to minimise changes to levies and fees for industry due to the current economic climate as a result of the COVID-19 pandemic. In the 2020 CRIS review, NOPSEMA did not increase levies.

10.2.2 Current levy and fee structure

When NOPSEMA was established in 2012, the cost recovery levies were maintained in a similar form to the arrangements that were in place under NOPSA in order to minimise change for industry and facilitate a smooth hand over in the transition period.

NOPSEMA's revenue is sourced from levies and fees collected from titleholders that are planning or undertaking petroleum activities in Commonwealth waters and where state/territory powers have been conferred. NOPSEMA's cost recovery arrangements consist of a range of levies which vary depending on the type and scope of regulatory submissions and fees for specific activities. More specifically, levy revenue is mostly derived from safety levies and environmental levies (refer to **Figure 10.7**). Levy revenue has contributed to more than 99% of revenue⁴⁹ since NOPSEMA's inception in 2012.

⁴⁹ After the cost of transitioning from NOPSA to NOPSEMA was removed.

Figure 10.7: NOPSEMA levy revenue, by type, 2014-15 to 2018-19

Source: Deloitte analysis adapted from NOPSEMA data (NOPSEMA Annual Report 2018-19)

10.2.2.1 Safety case levies⁵⁰

Safety case levies are imposed on the operators of facilities and are payable when a safety case for a facility is accepted by NOPSEMA. The safety case levy is an annual levy, imposed for a calendar year or part (depending when it comes into force). A safety case levy is comprised of two components, the

- Safety management system
- Facility amount/the pipeline amount.

Only one safety management system amount is payable by an operator of a facility regardless of the number of facilities operated.

The facility amount is derived from the facility rating (a rating of 1 to 25 is assigned, as per the Regulatory Levies, reflecting the increasing complexity of facilities) and the unit value (for mobile and other than mobile facilities).

NOPSEMA also has the authority to recover actual costs above a \$30,000 threshold for safety investigations via an investigation levy, however these are not common. The investigation levy covers additional regulatory costs incurred by NOPSEMA in investigating major safety related incidents. Routine investigations generally require low inputs from NOPSEMA and form part of the activities that are cost recovered through the annual levy. If costs exceed \$30,000, they would be recovered by the investigation levy from the individual operator. This levy is set to match the additional costs incurred by NOPSEMA (including independent expert witnesses, travel, accommodation and legal fees).

10.2.2.2 Well levies

Well levies are imposed on titleholders who hold the relevant permit or licence to conduct well activities. The well levies consist of an annual levy, an activity levy (in relation to a well operations management plan), and an investigation levy.

The annual levy applies to all eligible wells, which includes wells that have been drilled within title areas but not abandoned and that require ongoing regulation. The annual levy funds the general compliance monitoring and maintenance of the ongoing regulatory infrastructure (allocated to structural integrity activities).

NOPSEMA is required to make decisions regarding WOMPs (e.g. approval, rejection) WOMP. The activity levy is payable at the time that a registered holder of an eligible title applies for acceptance of a plan. The activity levy is only intended to be imposed in relation to the initial submission and for each five-year revision.

⁵⁰ For further information, please see the NOPSEMA 2018-19 CRIS: <https://www.nopsema.gov.au/assets/Corporate/A638103.pdf>

As above, an investigation levy will apply if costs exceed \$30,000 and covers the additional regulatory costs incurred by NOPSEMA in investigating major well related incidents.

10.2.2.3 Environment plan levies

An EP levy is imposed on titleholders who hold the relevant permit or licence to conduct activities. The levy is made up of two components, which are calculated separately and subsequently multiplied by the number of activities within the EP.

The EP levy is calculated as:

Number of activities x [(unit value x activity rating) + (unit value x compliance rating x N)] where:

- The activity rating is the average regulatory effort required by NOPSEMA in assessing those activities
- The compliance rating is the average ongoing compliance regulatory effort required by NOPSEMA
- 'N' is the number of whole calendar years that the EP is valid.

10.2.2.4 Fees for expenses

For specific activities, NOPSEMA may charge fees reflecting the expenses occurred in carrying out the activity.

NOPSEMA has the authority to charge such a fee to recover all expenses incurred for the purposes of assessing a safety case in relation to a proposed facility. The amount or rate of the fee is an amount determined by the NOPSEMA CEO and must not exceed the total of the expenses incurred by NOPSEMA for the purposes of assessing the safety case.

Similarly, NOPSEMA also uses the same mechanism to charge fees for assessing offshore project proposals and financial assurance arrangements (in the situation where the APPEA method is not used or if the arrangements are complex).

The activities for which these fees are charged are only undertaken occasionally.

10.2.2.5 2018-19 CRIS levy increases

Analysis undertaken by NOPSEMA for its 2018-19 CRIS forecast an increase in expenditure for additional personnel required to return to 'steady state' FTE establishment levels and to fund 'additional functions' such as stakeholder and community engagement to build community confidence in the regulatory framework. The analysis showed NOPSEMA would be unable to 'break even' in future years unless levies were increased. After consultation with industry stakeholders, unit values were increased by 10%, effective 1 January 2019. **Table 10.2** outlines the levy changes.

Table 10.2: NOPSEMA changes to levy rates

Levy	Levy rates to 31 Dec 2018	Levy rates from 1 Jan 2019
Safety case levies		
Facility Amount – unit value	\$35,000 per year	\$38,500 per year
Safety Management System Amount – mobile facility	\$113,000 per year	\$124,300 per year
Safety Management System – not a mobile facility	\$170,000 per year	\$187,000 per year
Pipeline facility – unit value	\$14,000 one-off	\$15,400 one-off
Safety Management System - pipeline facility	\$56,000 one-off	\$61,600 one-off
Structural integrity (well) levies		
Annual well levy	\$4,125 per year	\$4,540 per year
Well operations management plan	\$35,000 unit value	\$38,500 unit value
Environment plan levies		
Activity amount (imposed on submission of an environment plan for acceptance by NOPSEMA)	\$3,600 unit value	\$3,960 unit value
Compliance amount (Divided into equal instalments payable annually 1 January)	\$3,600 unit value	\$3,960 unit value

Source: Deloitte analysis adapted from NOPSEMA data

Additionally, in the 2018-19 CRIS it was agreed with stakeholders that NOPSEMA should retain a reserve of approximately 10% of next year's budget to ensure it continued to adequately recover costs. This was intended to assist NOPSEMA manage its cashflow and mitigate exposure to potential industry fluctuations.

10.2.3 Levy calculation process and methodology

10.2.3.1 Methodology

NOPSEMA operates on a full cost recovery basis, with levies broadly designed to align with the estimated costs of undertaking the OHS, well integrity, and environmental management regulatory activities. These activities are separately identifiable tasks that can be allocated to an appropriate levy or charge. NOPSEMA has two other activity output areas that do not have a separate cost recovery charge: regulatory support⁵¹ and corporate support services.

The following summarises the steps involved in estimating levies and fees:

- Estimate the total percentage of time that personnel spend on key activity outputs (for each of the technical teams)
- Allocate indirect costs to technical teams
- Allocate costs (direct and indirect) into key activity output categories
- Determine levies and fees based on estimated cost and forecast industry activity and applying judgement regarding other factors such as the size of a titleholder's organisation and the complexity of their activities.

Direct costs consist of:

- Employee expenses (including superannuation, allowances, memberships and leave entitlements) of the occupational health and safety, structural integrity and environmental management specialists
- Recruitment, training, equipment and travel costs of regulatory employees
- External consultants and experts engaged for regulatory purposes
- Workshop expenses incurred for regulatory purposes.

An examination of the level of effort required for each output was undertaken in 2014-15, with this work reviewed and revalidated by NOPSEMA over time. The process involved each team time-sheeting and allocating their time and effort to each of the key activity outputs. NOPSEMA has advised that it is currently in the process of undertaking a second detailed review, where time spent on any additional functions NOPSEMA is undertaking will also need to be reviewed. The work will support the development of the next CRIS.

NOPSEMA allocates all indirect expenses on a full-time equivalent basis across the three outputs. Indirect costs consist of:

- Employee expenses of the human resources, information technology and communications, finance and, administration functions
- Recruitment, training and travel costs of these functions
- All expenses relating to the Perth and Melbourne offices.

The allocation of indirect costs for 2018-19 are as illustrated in **Table 10.3** below. The appropriateness of NOPSEMA's method for allocating indirect costs was confirmed in a review by external audit consultants commissioned by NOPSEMA and we have not sought to re-examine this.

Table 10.3: NOPSEMA Allocation to outputs, by FTE, 2018-19

Output	OHS	Well integrity	Environment
Allocation of regulatory support by FTE	13.8	3.4	10.2
Allocation of corporate support by FTE	10.9	2.7	8.1
Allocation proportion	50%	13%	27%

Source: Deloitte analysis adapted from NOPSEMA data (Cost Recovery Implementation Statement 2017-18)

⁵¹ This includes additional functions that consume NOPSEMA's resources and are of benefit to both industry and the community. An example includes stakeholder and community engagement to build confidence in NOPSEMA's regulatory framework.

10.2.3.2 NOPSEMA's model for calculating levies

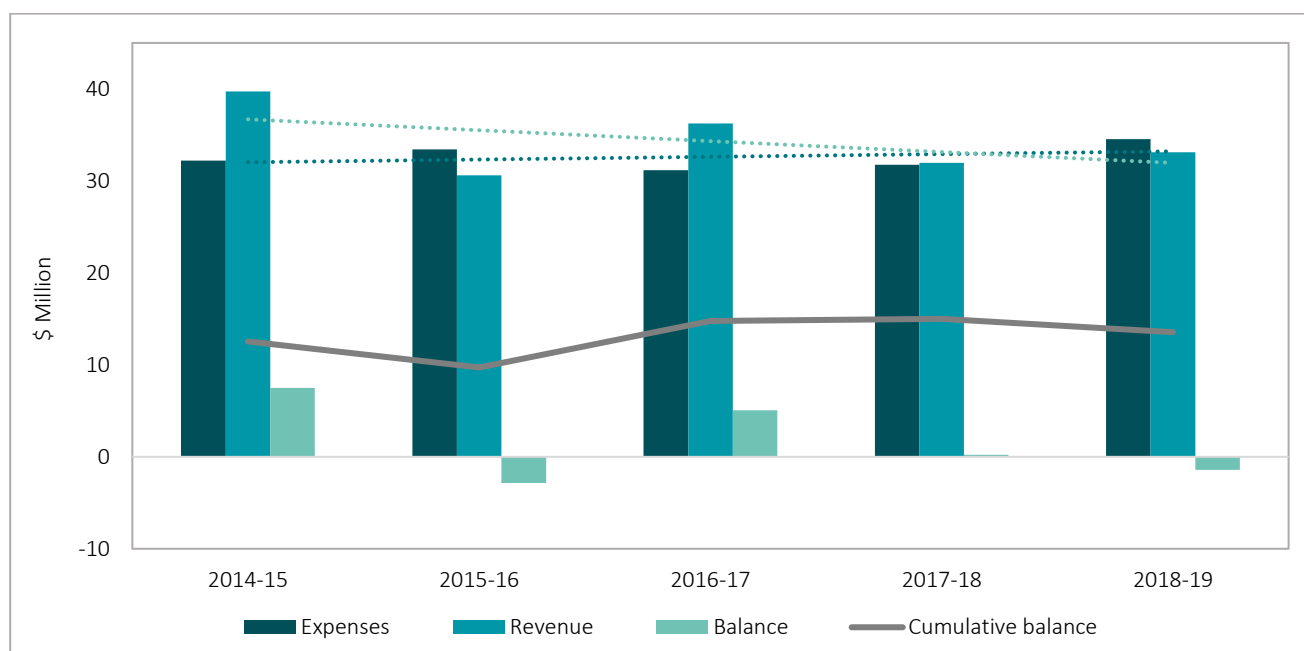
As part of our analysis, some parts of NOPSEMA's cost recovery spreadsheet modelling for its 2018-19 CRIS process were examined. NOPSEMA utilises a number of separate spreadsheet models for different activities and that not all of these models were examined by the review team. However, we understand the separate spreadsheet models apply the same approach and principles.

NOPSEMA's modelling of costs appear to reflect the process described above.

10.2.4 Historical expenditure and cost recovery

Figure 10.8 below illustrates NOPSEMA's historical financial performance over the past five years. It illustrates an overall decrease in NOPSEMA's revenue whilst expenditure has remained relatively stable. In 2014-15 and 2016-17, revenue was markedly higher than expenditure. In 2014-15, this was attributed to significant submissions of 5-year EPs. In 2016-17, this was attributed to additional non-recurring safety case revenue equal to approximately \$7 million. In 2018-19, an operating deficit of \$1.4 million was recorded. This was compared to a \$0.2 million surplus recorded in 2017-18. The operating loss was attributed by NOPSEMA to lower than anticipated levels of industry activity (i.e. less revenue received).

Figure 10.8: NOPSEMA's financial performance, 2014-15 to 2018-19



Source: Deloitte analysis adapted from NOPSEMA data (Cost Recovery Implementation Statement 2017-18; Annual report on the cost effectiveness of the operations of NOPSEMA 2018-19)

10.2.5 Analysis

10.2.5.1 Consistency with Australian Government Cost Recovery Guidelines

NOPSEMA's fees and levies have generally been developed in line with the Australian Government Cost Recovery Guidelines

On the basis of the information we examined, the levies charged by NOPSEMA has generally been developed in line with the Australian Government CRGs and align to the three principles of these guidelines, which are each examined in turn below.

10.2.5.2 Efficiency and effectiveness

NOPSEMA's cost recovery arrangements are considered to be efficient and effective but could be indexed to an appropriate inflationary measure

Within the context of cost recovery, efficiency and effectiveness involves making proper use of available resources (people, money and other supplies) to achieve government policy outcomes. Government activities should meet quantity, quality and other targets, be undertaken at minimum cost, and be conducted in accordance with applicable policy and legislative requirements. Under the CRGs, efficiency also relates to whether it is efficient to provide the activity on a cost recovery basis and considers the balance between

developing a more precise, but more complex and hence more expensive costing model, and developing a simpler and less expensive, but less precise, costing model.

The effectiveness of cost recovery involves the reliability and accuracy of the cost recovery model and related processes in measuring costs and reflecting those costs in the related charges. Effective cost recovery includes appropriate revenue management.

Since its inception in 2012, NOPSEMA has sought to minimise the need to adjust levies in order to provide long term certainty to industry. NOPSEMA has managed costs internally, where it can, to avoid increases in levies.

This review has also considered NOPSEMA's cost recovery arrangements in relation to the balance it strikes between developing a more precise, but more complex and hence more expensive costing model, and developing a simpler and less expensive, but less precise, costing model. Under the CRGs, cost recovery charges should be:

- Clear and easy to understand
- Closely linked to the specific activity
- Set to recover the full efficient costs of the specific activity⁵²
- Efficient to determine, collect and enforce
- Set to avoid volatility, while still being flexible enough to allow for changes based on fluctuations in demand or costs.

As part of NOPSEMA's levy setting process, NOPSEMA estimates costs based on an allocation of personnel time to activities plus an allocation of indirect costs. However, NOPSEMA applies judgement to set levies; while the primary driver is the cost of activities, NOPSEMA also considers other factors such as the titleholder's ability to pay, the size of the titleholder, and the complexity of titleholder activities. For example, the compliance effort required for seismic surveys is on average higher than the revenue collected for this type of activity.

NOPSEMA has advised that a key factor considered in determining levy amounts is the objective of encouraging exploration and innovation within the industry. It is noted that under the CRGs, the effect of cost recovery on competition, innovation and the financial viability of the directly affected individuals and organisations should be analysed⁵³. There may, therefore, be justification for the cross-subsidy observed. Another key factor is ability to pay, with NOPSEMA considering the size of titleholders and the value of projects and revenue derived from activities in determining the levy amounts.

The levies comprise over 99% of NOPSEMA's revenue, providing a stable revenue stream. This ensures that NOPSEMA can fund operating and capital expenditure while minimising the need to adjust levy or fee charges. Additionally, the 10% reserve of its annual budget at the end of each financial year also helps mitigate NOPSEMA's exposure to potential fluctuations in revenue and cash flows from industry volatility.

The levy arrangements (and minimal fee for service arrangements) appear straightforward to administer. The costs of administering the cost recovery scheme are, in our view, proportional to the charges for, and potential revenue from, the activity. Additionally, NOPSEMA's levies can be somewhat tailored to titleholders with the assignment of 'activity' and 'compliance' ratings.

NOPSEMA's levies were increased by 10% in the 2018-19 CRIS in order to recover its cost fully. NOPSEMA noted to us that it would like its levies and fees to keep pace with CPI, but that it may be constrained from pursuing this objective due to additional factors, such as industry perception. Under the legislative framework NOPSEMA is responsible for developing and proposing changes to levy and fee amounts.

Opportunity #19

NOPSEMA is encouraged to consult with industry, perhaps through the next CRIS process, on indexing levies and fees to the CPI or another appropriate index to ensure cost recovery keeps pace with inflation.

⁵² Or at the level set by the Australian Government if partial cost recovery has been agreed.

⁵³ Australian Cost Recovery Guidelines, p.17.

10.2.5.3 Transparency and accountability

NOPSEMA provide transparency over cost recovery mechanisms but should provide further visibility over fee and levy calculations

In a cost recovery context, transparency can be achieved through documenting key information about the activity, such as policy approval, statutory authority to charge and the cost recovery model, in an accessible way for those who pay charges. Transparency can also be achieved through frequent reporting on cost recovery performance. Accountability refers to entities, personnel and responsible Ministers being answerable for their actions and decisions in relation to cost recovery.

NOPSEMA provide transparency over cost recovery mechanisms but should provide further visibility over fee and levy calculations

In relation to transparency, NOPSEMA publishes its cost effectiveness report, annual report and CRIS on its website. As part of NOPSEMA's annual cost effectiveness review, audited financial statements are presented and titleholders are invited to participate in a review. This is part of NOPSEMA's open and transparent reporting responsibility and allows for comparison and analysis of NOPSEMA's performance against its budget presented to Parliament.

There is additional information on cross-subsidisation of activities which is not provided publicly. This additional information may assist stakeholders understand how levies are developed and how levies align to actual costs being incurred for key activities. While NOPSEMA does have this level of detailed examination readily available, it is not information which is publicly published. Instead, the high level over-and-under recovery amounts are reported (after the process of 'balancing' by NOPSEMA has been undertaken).

Our view is that, while NOPSEMA is transparent with the majority of details relating to its cost recovery arrangement and is in accordance with the Australian Government Cost Recovery Guidelines, it could improve the level of transparency in relation to the information provided to stakeholders.

Opportunity #20

NOPSEMA is encouraged to review and update its CRIS modelling to ensure it is complete and transparent, and that it is consistent with its objectives and principles for cost recovery. The rationale for the levy amounts that are set, and the factors that NOPSEMA considers when setting the levy amounts, should be clearly documented.

In relation to accountability, we found no evidence to suggest that NOPSEMA is not accountable for its actions in relation to cost recovery.

10.2.5.4 Stakeholder engagement

NOPSEMA engages with stakeholders on the development of cost recovery arrangements

The CRGs requires agencies to actively engage with stakeholders throughout all stages of the cost recovery process, from policy development through to implementation and review.

NOPSEMA engages with stakeholders prior to the implementation of their CRIS by contacting all past and present levy payers, advising them of proposed changes, conducting stakeholder briefing sessions and seeking feedback from stakeholders. This process was undertaken in 2018 to inform NOPSEMA's 2018-19 CRIS. As part of NOPSEMA's ongoing performance reporting, NOPSEMA undertakes an annual cost effectiveness review and publishes the audited report on its website. All titleholders are invited to an annual stakeholder meeting to discuss the report and any issues in general. In July 2020, NOPSEMA's Chief Financial Officer conducted an industry briefing on the Cost Effectiveness Report for 2018-19.

10.2.6 Impact of levies and fees on titleholders

Affordability and ability to pay were not raised as concerns by industry

Under NOPSEMA's cost recovery model, relatively small titleholders pay the same as larger titleholders for a given activity (disregarding adjustments made for 'activity' and 'compliance' ratings, described above), irrespective of the size of the titleholder. It is possible that this may cause problems with ability to pay, although this was not raised as a significant issue via NOPSEMA's stakeholder consultation or as part of our consultation with stakeholders.

We observe that larger titleholders are responsible for paying levies and fees that make up a large proportion of revenue collected by NOPSEMA. NOPSEMA has advised that approximately 80% of its revenue comes from approximately 20% of the industry. In considering whether this is reasonable, a key factor to consider is the degree of alignment between the costs of the activity and the revenue. As noted above, there is some cross-subsidisation between safety levies and environmental levies. If smaller titleholders are relatively

more involved in exploration than production or less complex activities (resulting in lower activity rating), this could lead to larger titleholders paying relatively more in levies than the cost they impose. However, this needs to be balanced against other factors such as the need to encourage industry participation, innovation, and ability to pay. This is a matter that NOPSEMA should address transparently via the CRIS process and seek feedback from industry on.

10.2.7 Perceptions as to the fairness and equity of the current levy regime

There were mixed views regarding the equity and fairness of fees and levies

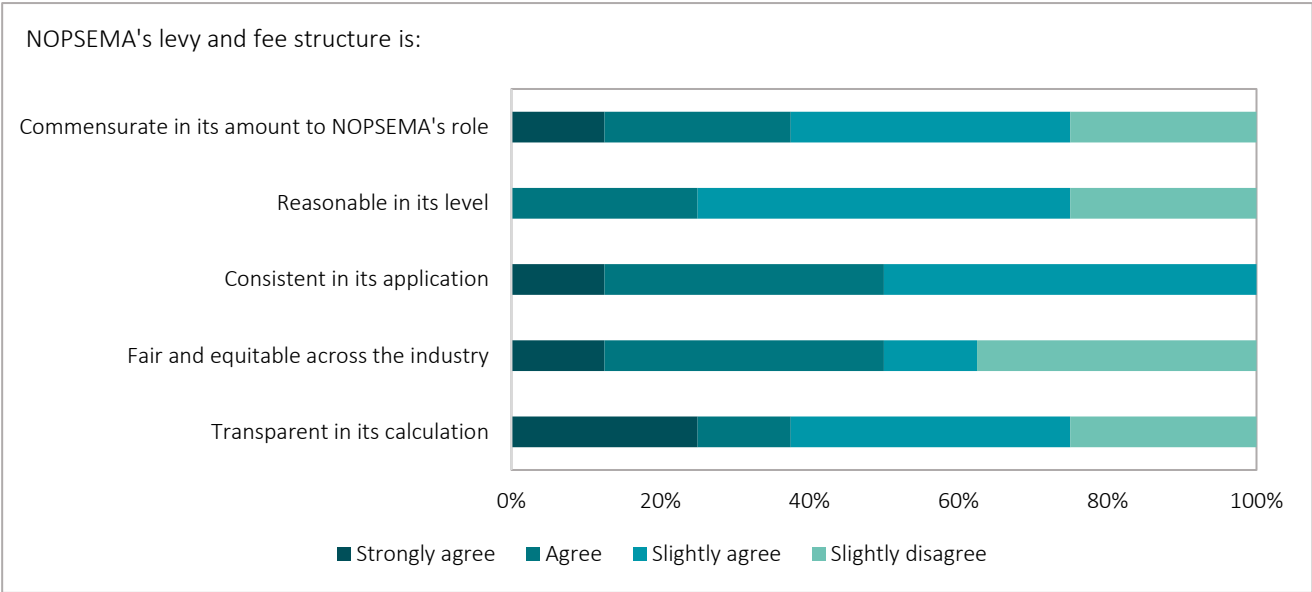
NOPSEMA perceives that the industry seems comfortable with the current levy and fee regime. NOPSEMA has maintained a consistent approach to cost recovery and the industry is familiar with and accepts these arrangements

Stakeholders we surveyed as part of our review indicated had mixed sentiments with the statement that levies and fees are ‘fair and equitable’ across the industry, with only 50% of stakeholders agreeing or strongly agreeing to this item (see Figure 10.9).

However, during the last CRIS process, NOPSEMA advised us that they received limited feedback from industry stakeholders regarding fairness and equity. Specifically, NOPSEMA’s impressions were that the industry was broadly comfortable with levy increases, saw them as necessary, and acknowledged that it was reasonable to expect increases in levy and fee amounts given historically stability of cost recovery amounts.

We discuss mechanisms to more proactively and transparently engage with stakeholders in Section 9, particularly where stakeholders may be reluctant to provide direct feedback to the regulator on contentious matters such as cost recovery. As such we do not raise a recommendation in response to the discussion above.

Figure 10.9: Survey responses to NOPSEMA’s levy and fee structure



Source: Deloitte Stakeholder Survey, Deloitte analysis

11 2020 Endorsed Program Assessment

Key points

NOPSEMA is achieving the objectives of the Endorsed Program

We consider NOPSEMA to be meeting the Objects of the OPGGS (Environment) Regulations. Specifically, NOPSEMA's assessment processes align to the principles of ecologically sustainable development and the reduction of environmental impacts and risks of activities to 'as low as reasonably practicable' and 'acceptable' levels.

NOPSEMA appears to be meeting all of its commitments as outlined within the Endorsed Program, specifically those in relation to Part 3 protected matters and administration.

NOPSEMA has made good progress to address all improvements and observations made by the *2015 NOPSEMA Endorsed Program Review*. NOPSEMA is also working effectively with DAWE and its portfolio agencies, in line with the *2017 Program Administrative Arrangements*. We consider that NOPSEMA is achieving the objectives of the Endorsed Program and is operating in line with the Program Administrative Arrangements.

Based on our review of case studies and analysis of stakeholder feedback, we consider that the next step for NOPSEMA is to review its approach to selecting protected matters, under Part 3 of the EPBC Act, to ensure that the scope of assessments are commensurate to the level of impact and risk imposed by the proposed activities. It is important for assessments to be scaled and focused on key risks.

NOPSEMA could also work to improve implementation of the subjective 'acceptability' tests. This could potentially be achieved by providing greater internal and external transparency of the assessment criteria and the limits of 'acceptability'. NOPSEMA could also work with titleholders at an earlier and more informal stage to ensure that their draft EPs address the most significant risks and issues. This would help to reduce the number of EPs that are rejected or returned for amendment, and potentially streamline the size of EP documents. These measures would help to improve stakeholder views of NOPSEMA as being consistent in its approach to assessments.

The EPBC Act and OPGGS regulation is complex and there are a number of government entities involved in policy development or relevant advice

Titleholders and NOPSEMA are required to engage with a highly complex set of legislative instruments and relevant guidelines under the environmental assessment process. This complexity is further compounded by the large number of Commonwealth government entities with policy, regulatory or advisory responsibility over or for elements of the offshore petroleum industry, for example with providing specialist advice on seismic or species matters (e.g. Parks Australia, Australian Antarctic Division, and Geoscience Australia).

Collaboration and coordination through a 'One Government' approach is needed and links to a key theme of the review. NOPSEMA has effective relationships with its peers and, in the main, successfully navigates this complexity – and helps titleholders to do so as well. At the foundation of effective collaboration and coordination is the exchange of and use of data and information. We recommend collaboration on data and new regulatory tools between DAWE and NOPSEMA as part of the review and digitisation of EPBC Act decisions.

Recommendations: [EPBC-R-1](#), [R-2](#), [R-3](#), [R-4](#), [R-5](#)

Opportunities: [No opportunities were identified in this section](#)

11.1 Overview

Author's note:

The output of the 2020 Endorsed Program Assessment is captured in this section of our report – **Section 11: 2020 Endorsed Programme Assessment**. The intent of this section is to be a distinct but integrated ‘chapter’ within our wider examination of NOPSEMA’s operations across occupational health and safety, well integrity, and environmental management functions.

As such, to meet the purposes of the 2020 Endorsed Program Assessment, there is a degree of necessary replication with select content examined in other sections of the report; a need for separate background, summary, approach and methodology, and key statistics and data subsections; and the redefinition of terms to improve the readability for those interested solely in the 2020 Endorsed Programme Assessment.

However, while able to be read separately to the other sections of the report, the findings and recommendations contained within 2020 Endorsed Program Assessment should be considered in conjunction with the full suite of findings and recommendations we make in relation to NOPSEMA.

11.1.1 Background

In 2014, the Minister for Environment (the **Minister**) endorsed the National Offshore Petroleum and Environmental Management Authority’s (**NOPSEMA**) environmental management authorisation process for petroleum and greenhouse gas (**GHG**) activities administered under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the **OPGGs Act**) after a comprehensive Strategic Assessment of its practices. The endorsement was made pursuant to Part 10 of the *Environment Protection and Biodiversity Conservation Act 1999* (the **EPBC Act**) and served to confirm NOPSEMA as the sole environment regulator in Commonwealth waters, expanding its remit to include matters protected under Part 3 of the EPBC Act. The Strategic Assessment made under Part 10 of the EPBC Act is referred to as the **2014 Endorsed Program** or the **Endorsed Program**.

Following the endorsement of the environmental authorisation process by the Federal Minister for the Environment, the Minister approved a class of actions which, if undertaken in accordance with the Endorsed Program, would not require referral, assessment and approval under the EPBC Act. The approved class of actions includes ‘all actions which are petroleum and greenhouse gas activities taken in Commonwealth waters and in accordance with the Endorsed Program’, and excludes such actions that:

- have, will have or are likely to have a significant impact on the environment on Commonwealth land
- are taken in any area of sea or seabed that is declared to be part of the Great Barrier Reef Marine Park
- have, will have or are likely to have a significant impact on the world heritage values of the Great Barrier Reef World Heritage property or on the national heritage values of the Great Barrier Reef National Heritage place
- are taken in the Antarctic
- are injection and/or storage of greenhouse gas.⁵⁴

Additionally, actions taken in state or territory waters are also noted not to be covered by the approved class of actions. Therefore if, for example an activity could have a significant impact on Commonwealth land, it would not be covered by the Endorsed Program, and would need to be referred under the EPBC Act to the Department of the Environment (**DoE**).

Following Program endorsement, NOPSEMA entered into administrative arrangements with **DoE** – now the Department of Agriculture, Water, and the Environment (**DAWE**) – to ensure respective commitments would be met specified in the Endorsed Program. In 2017, the administrative arrangements were updated to the *2017 Program Administrative Arrangements* (the **Administrative Arrangements**).

One of the aims of the Endorsed Program was to deliver a streamlined environmental approvals process for titleholders seeking to undertake petroleum and GHG activities in Commonwealth waters. The Minister’s approval meant that titleholders no longer needed to refer their proposed activities for assessment under the EPBC Act. As part of the Endorsed Program, a commitment was made for periodic reviews of the Endorsed Program. The purpose of the reviews is to assess the performance of the Endorsed Program against Endorsed Program objectives including ensuring that impacts on matters protected under Part 3 of the EPBC Act are not unacceptable.

To meet this commitment, we (“Deloitte”, “we”, “us” or “the review team”) have undertaken the **2020 Endorsed Program Assessment** as part of our *2020 statutory review of the National Offshore Petroleum Safety and Environment Management Authority* (this document)⁵⁵. We were engaged in July 2020 by the Department of Industry, Science, Energy, and Resources (**DISER**) to undertake the review.

⁵⁴ Approval Decision for the taking of actions in accordance with an Endorsed Program under the EPBC Act 1999 (Cth), made by the then Environment Minister on 27 February 2014.

⁵⁵ In accordance with section 695 of the OPGGS Act, NOPSEMA is subject to an independent review (the review) of its operations every five-year period after its first review.

The 2020 Endorsed Program Assessment is the second such assessment, with the first, the *EPBC Act Streamlining Review* (the **2015 Endorsed Program Assessment**), undertaken in 2015.

11.1.2 Scope and objective of the 2020 Endorsed Program Assessment

The 2020 Endorsed Program Assessment details our review of two key obligations in accordance with the terms of reference (**TOR**), which are attached at **Appendix A**. We understand these two key obligations were developed by DISER in consultation with DAWE and NOPSEMA. Specifically, we examined:

- NOPSEMA's progress in achieving the objective of the 2014 Endorsed Program Report⁵⁶ under the EPBC Act of ensuring all offshore petroleum and GHG are carried out in a manner consistent with the Object of the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (the **OPGGS (Environment) Regulations**)
- A review of the actions of both NOPSEMA and DAWE required under the Administrative Arrangements and provision of advice on whether all commitments are being met.

The period of our assessment is the five-year period from 1 January 2015 to 31 December 2019. However, given the timing of the assessment, we have also considered NOPSEMA's actions and processes through the impact of the COVID-19 pandemic where appropriate as current and important context to be reflected in our findings.

11.1.3 Our point of view and recommendations

Our assessment has found NOPSEMA to be meeting its obligations in administering the streamlined Endorsed Program under the EPBC Act. We have found:

- NOPSEMA is adhering to the Objects of the OPGGS (Environment) Regulations. Specifically, NOPSEMA aligns to the five principles of ecologically sustainable development (**ESD**) and seeks to ensure activities are carried out by titleholders in a manner that reduces environmental impacts to 'As Low As Reasonably Practicable' (**ALARP**) and 'acceptable' levels
- NOPSEMA is meeting all of its commitments and outcomes specified under the Endorsed Program so that environmental impacts on protected matters (as defined in Part 3 of the EPBC Act) are not unacceptable
- NOPSEMA is appropriately implementing continuous improvement opportunities identified through prior reviews
- NOPSEMA is meeting its commitments under the Administrative Arrangements
- NOPSEMA's Environment Plan (**EP**) assessment process to be robust in its approach, but viewed by stakeholders as highly complex, prescriptive in its delivery, and resulting in a high level of effort to comply with the process regardless of the level of risk by the proposed activity.

The recommendations and opportunity identified below fall within the category of 'continuous improvement' for the administration of the environment assessments and related IT tools and expert advice.

In support of our findings we offer **5 recommendations** for consideration as outlined in **Table 11.1**. Additional considerations and detail relating to the recommendations are contained within the respective sections where they are raised. For completeness, the above findings and below recommendations are also outlined in **Section 1.3** and **Table 2.1**, respectively.

Table 11.1: Consolidated list of recommendations pertaining to the 2020 Endorsed Program Assessment

Recommendation	
EPBC-R-1	NOPSEMA should continue improving their guidance on how they assess 'ALARP' and 'acceptable' environmental risk and ensure that the approach is consistent between assessments (where appropriate).
EPBC-R-2	NOPSEMA, with the support of other Government Departments as required, should enable more effective cumulative impact assessment in the marine environment over spatial and temporal extents as well as across other industries.
EPBC-R-3	In reference to the opportunities for improvement and observations from the 2015 Endorsed Program Assessment:

⁵⁶ <https://www.environment.gov.au/system/files/pages/06872cd4-b755-4ecf-a4e7-dd16145e1384/files/offshore-program-report.pdf>

Recommendation

- NOPSEMA should update the *Environment Plan Content Requirements* N-04750-GN1344 (A339814) to reflect additional information on defining acceptable levels as currently provided in the *Offshore Project Proposal Content Requirements Guidance Note* N-04790-GN1663 (A473026)
- NOPSEMA should consider further transparency in the assessment process, including publication of assessment timeline and progress (e.g. the issue of Response to Request for Further Written Information)
- DAWE should consider options to make the process of identifying protected matters and related plans for management more efficient.

EPBC-R-4 NOPSEMA, in consultation with DAWE, should agree acceptable levels on particular sensitive receptors, or within a significant location (such as a Biologically Important Area (**BIA**)). This could support an outcome to improve cumulative impact assessments on key species at certain locations.

This recommendation should be read in conjunction with **recommendation EPBC-R-2**.

EPBC-R-5 DAWE, in consultation with NOPSEMA, should focus on ensuring Recovery Plans that are relevant to the offshore petroleum industry are unambiguous, contain contemporary information and fit for purpose. Further, DAWE, in consultation with NOPSEMA should upgrade interactive IT tools such as the National Conservation Values Atlas (**NCVA**) (or a subsequent platform with relevant data) to be consistent with marine threatened species Recovery Plans. Information in those tools should be updated close to real time when the Recovery Plans are made or amended.

11.2 Assessment approach and method

11.2.1 Assessment activities

The 2020 Endorsed Program Assessment was undertaken in parallel with the activities specified in **Section 3**. Specific to the 2020 Endorsed Program Assessment, we undertook the following activities:

- Interviews with key NOPSEMA personnel, including the CEO, Head of Division – Safety & Integrity, Head of Division – Environment, Head of Division – Regulatory Support, and General Counsel. Refer to highlighted personnel in **Appendix B** for NOPSEMA personnel interviewed for the Endorsed Program Assessment. This included detailed discussions with NOPSEMA personnel to understand how individual environment approvals are processed, and how strategic issues are considered and assessed
- A review of NOPSEMA's progress in achieving the objective of the Endorsed Program under the EPBC Act of ensuring all offshore petroleum and greenhouse gas storage activities are carried out in a manner consistent with the Object of the OPGGS (Environment) Regulations
- A review of the actions of both NOPSEMA and DAWE as required under the Administrative Arrangements and a determination as to whether all commitments are being met by NOPSEMA
- Consultation with a broad cross-section of industry stakeholders, including international regulators, titleholders, and conservation groups. Our approach to consultation included a detailed industry survey and structured interviews examining perceptions of NOPSEMA's environment regulation processes. Please refer to **Appendix C** for a listing of industry stakeholders engaged through our consultation process and the consultation methods applied
- Examination of NOPSEMA-provided documentation, including policies, procedures, corporate plans, performance reports and data, and other materials. Refer to highlighted items in **Appendix D** for a list of key materials examined
- Detailed walkthrough sessions with NOPSEMA personnel to understand current processes and systems used to discharge its environment-related regulatory functions
- Walkthroughs of case studies with NOPSEMA personnel to test the process and outcomes of assessments made under the Endorsed Program. The selection of case studies and a high-level description of each are outlined below
- Attendance at key meetings and sessions to understand how meetings and decisions are made in the context of NOPSEMA's regulatory activities, including attendance at the NOPSEMA Leadership Team (**NLT**) meeting and the Compliance Committee meeting held in September 2020
- Independent research and analysis of other jurisdictional approaches to regulation of offshore environmental matters.

11.2.2 Assessment framework

To guide our assessment activities, the review team applied a structured and holistic assessment framework (see **Table 11.2**). The framework sets out the dimensions of our assessment, the expected standards of assessment, and assessment activities applied to assess the standards. Assessment dimensions one to five are covered by the Endorsed Program Assessment. Assessment dimensions six to eight are examined in other sections of the report given their applicability to NOPSEMA's broader functions under the OPPGS Act (i.e. Well Integrity and Occupational Health and Safety functions).

The assessment framework sets out the structure for the detailed findings, with each subsection of **Section 11.4** corresponding to an assessment dimension.

In evaluating each assessment dimension, we have examined both the historic performance and actions of NOPSEMA across the assessment period as well as applying a 'future focused' lens to identifying instances where NOPSEMA's effectiveness could be improved moving forward.

Table 11.2: Assessment framework for the Endorsed Program

Assessment dimension	The expected standard(s)	How the standard(s) were assessed
PRIMARY assessment dimensions examined as part of the 2020 Endorsed Program Assessment		
1 NOPSEMA's adherence to the relevant Object(s) of regulations and legislation <ul style="list-style-type: none"> NOPSEMA's adherence to the principles of ecologically sustainable development NOPSEMA's application of checks for proponent's adherence to ALARP and acceptability criteria. 	<ul style="list-style-type: none"> Offshore petroleum and GHG storage activities are carried out in a manner consistent with the principles of ecologically sustainable development set out in section 3A of the EPBC Act The activities are carried out in a manner by which the environmental impacts and risks of the activity will be reduced to ALARP The activities are carried out in a manner by which the environmental impacts and risks of the activity will be of an acceptable level. 	<ul style="list-style-type: none"> Process walkthroughs and interviews with NOPSEMA personnel (including applying case studies where relevant) Interviews with NOPSEMA, DAWE, Australian Antarctic Division (AAD) and Parks Australia personnel Stakeholder engagement with authority holders Review of relevant materials including published guidance, case studies and publicly available assessment material.
2 NOPSEMA's adherence to the Endorsed Program's commitments and outcomes <ul style="list-style-type: none"> NOPSEMA's commitment to protection of EPBC Act Part 3 matters NOPSEMA and DAWE's commitments relating to the administration of the Endorsed Program. 	<ul style="list-style-type: none"> All commitments and outcomes outlined in the Endorsed Program, in relation to protected matters, are met by NOPSEMA (refer to Table 1 and Table 2, on pages 10 and 33 of the Endorsed Program, respectively) All commitments outlined in the Endorsed Program, in relation to administration, are met by NOPSEMA (refer to Table 3, page 37 of the Endorsed Program). <p>Note: Although DAWE have commitments under the Endorsed Program, an assessment of DAWE's adherence to its commitments was out of scope.</p>	<ul style="list-style-type: none"> Process walkthroughs and interviews with NOPSEMA personnel (including applying case studies where relevant) Interviews with NOPSEMA, DAWE, AAD and Parks Australia personnel Review of relevant materials including published guidance, case studies and publicly available assessment material.
3 NOPSEMA's implementation of continuous improvement opportunities <ul style="list-style-type: none"> NOPSEMA's identification of continuous improvement opportunities NOPSEMA's implementation of continuous improvement opportunities. 	<ul style="list-style-type: none"> NOPSEMA has established practices to identify, monitor, and complete corrective actions There is evidence of a continuous improvement process NOPSEMA and DAWE have completed all relevant observations from prior reviews in a timely manner, reporting status to executive leadership. 	<ul style="list-style-type: none"> Gap analysis of progress against previous review findings Interviews with NOPSEMA, DAWE, AAD, and Parks Australia personnel Review of relevant materials.

Assessment dimension	The expected standard(s)	How the standard(s) were assessed
4 NOPSEMA's implementation of the Administrative Arrangements <ul style="list-style-type: none"> NOPSEMA's execution of its roles and responsibilities under the Administrative Arrangements Effectiveness of the relationship between NOPSEMA and DAWE. 	<ul style="list-style-type: none"> NOPSEMA successfully shares information with and advises DAWE on post approval matters and their approval conditions NOPSEMA and DAWE collaborate in an open and constructive manner NOPSEMA is meeting its agreed actions. 	<ul style="list-style-type: none"> Interviews with NOPSEMA, DAWE, AAD and Parks Australia personnel Review of relevant materials including policy documents and administration and cooperation arrangements.
5 NOPSEMA's environment plan assessment process <ul style="list-style-type: none"> NOPSEMA's EP assessment process, policies, and procedures The efficiency of NOPSEMA's EP assessment process, policies, and procedures. 	<ul style="list-style-type: none"> NOPSEMA's EP assessment process is risk based, reliable, consistent, integrated with other NOPSEMA monitoring, compliance, and enforcement processes, and enables the adherence to program commitments and relevant Objects of the regulations and legislation EP assessment processes are efficient and streamlined relative to arrangements prior to the Endorsed Program being in effect. 	<ul style="list-style-type: none"> Survey and interviews with key stakeholders across NOPSEMA's stakeholder ecosystem Process walkthroughs and interviews with NOPSEMA personnel (including reviewing case studies where relevant) Interviews with DAWE, AAD, and Parks Australia personnel.
ENABLING assessment dimensions examined as part of other sections of the report Elements of NOPSEMA's operational framework which indirectly enable the successful delivery of the Endorsed Program		
6 Effectiveness of compliance, monitoring, and enforcement approaches <ul style="list-style-type: none"> NOPSEMA's compliance, monitoring, and enforcement processes, policies, and procedures Observed outcomes of compliance, monitoring, and enforcement activities. 	<ul style="list-style-type: none"> NOPSEMA's processes, policies, and procedures have the appropriate safeguards, are consistent with one another and form a cohesive (integrated) approach to regulatory activities, enable the application of an objective/risk-based regulatory approach, align to appropriate government standards and leading practice, and align to the relevant legislation and regulations. 	<ul style="list-style-type: none"> Process walkthroughs and interviews with NOPSEMA personnel (including applying case studies where relevant) System/technology demonstrations <p>For an examination of this assessment dimension as it relates to NOPSEMA's full regulatory remit – Occupational Health and Safety, environmental management, and well integrity – please refer to Section 6.</p>
7 Effectiveness of stakeholder engagement and collaboration to enable NOPSEMA to discharge its duties in accordance with the Endorsed Program <ul style="list-style-type: none"> Depth and breadth of NOPSEMA's stakeholder relationships, engagement approach, and communications. 	<ul style="list-style-type: none"> NOPSEMA has a wide range of effective and productive relationships with its state/territory and Commonwealth government peers, international peers, industry stakeholders, and community/adjacent industry stakeholders. 	<ul style="list-style-type: none"> Survey and interviews with key stakeholders across NOPSEMA's stakeholder ecosystem, including government, industry, and NGO sector. Interviews with NOPSEMA personnel

Assessment dimension	The expected standard(s)	How the standard(s) were assessed
8 Effectiveness of supporting operational practices to enable NOPSEMA to discharge its duties in accordance with the Endorsed Program	<ul style="list-style-type: none"> NOPSEMA has defined processes and frameworks to managing its stakeholder engagement activities NOPSEMA actively seeks to build community confidence in the regulation of offshore oil and gas activities. 	<ul style="list-style-type: none"> Review of relevant materials. <p>For an examination of this assessment dimension as it relates to NOPSEMA's full regulatory remit – Occupational Health and Safety, environmental management, and well integrity – please refer to Section 9.</p>
	<ul style="list-style-type: none"> Processes, policies, and procedures are aligned, consistent, integrated, efficient, have clearly defined roles and responsibilities, and incorporate appropriate controls Technology and information management capabilities support the operationalisation of processes, policies, and procedures NOPSEMA has sufficient people capability and capacity to deliver its functions under the OPGGS Act and the Endorsed Program, including effective training and performance management approaches Governance and assurance mechanisms provide sufficient management oversight and control, managing operational risk. 	<ul style="list-style-type: none"> Process walkthroughs and interviews with NOPSEMA personnel System/technology demonstrations Examination of people practices and training Examination of governance arrangements. <p>For an examination of this assessment dimension as it relates to NOPSEMA's full regulatory remit – Occupational Health and Safety, environmental management, and well integrity – please refer to the following sections:</p>
	<ul style="list-style-type: none"> NOPSEMA's enabling processes, policies, and procedures NOPSEMA's technology and information management capabilities NOPSEMA's people capabilities and talent management NOPSEMA's governance and quality assurance arrangements. 	<ul style="list-style-type: none"> People and talent management capabilities: Section 7, specifically subsection 7.3 Processes, policies, and procedures: Sections 6, 7, 8, and 9 Technology and information management: Section 6 Governance: Sections 5, 6, and 7.

11.2.3 Case studies

Case studies formed an important basis of our assessment approach and were selected by NOPSEMA and the Deloitte review team. The selection of the case studies aimed to provide a:

- Representative sample of NOPSEMA's environment work program for our analysis, highlighting both common and uncommon issues and challenges faced in administering the work program
- Practical application of NOPSEMA's operational processes, policies, and procedures.

The review team also reviewed a number of publicly available documents including the EPs for each case study. We also considered the broader strategic issues associated with the assessments via interviews, survey outcomes, and written detail provided by titleholders.

Table 11.3 and Table 11.4 outline the case studies selected to inform our assessment.

Table 11.3: Case studies used to inform the 2020 Endorsed Program Assessment

Case study ID ⁵⁷	Description
Biofouling case studies <i>CS001 and CS002</i>	<p>NOPSEMA identified that two floating facilities had entered Commonwealth waters with residual biofouling which was confirmed to be an invasive marine species. Inspectors found that titleholders responsible for the activities may not be managing the risk to ALARP or acceptable levels. The matter was taken to the NOPSEMA Compliance Committee and a decision was made to take compliance actions, including a Request for an EP revision.</p> <p>Analysis identified that the risk magnitude was not evident for other titleholders and facilities. The inspection strategy was updated to reflect the new inspection approach for biosecurity matters and new guidance was developed and published. NOPSEMA also: participated in a Biosecurity Workshop; accepted an invitation to be an observer on the Marine Pest Sectoral Committee (MPSC); strengthened working relationships with state agencies; and agreed to work with members of the MPSC to develop good practice guidance on biofouling management.</p>
Rectification of missing EP <i>CS003</i>	<p>NOPTA requested advice from NOPSEMA on renewal of a retention lease. A WOMP was identified but no EP identified for one well head. Advice was provided to NOPTA that there were no serious compliance issues but that one well head did not have an EP and that NOPSEMA would seek an EP submission (Enforcement RMS 757). An EP was then submitted and accepted.</p>
An Offshore Project Proposal <i>CS004</i>	<p>The review team considered this offshore project proposal (OPP) as it was a large-scale proposal involving surface infrastructure, subsea infrastructure, wells, and trunkline installation. Our review of the OPP indicated that there were defined environmental performance outcomes for all receptors that may have been impacted by the activity from planned and unplanned events. These environmental performance outcomes reflected key criteria for acceptability of impacts and risks including criteria that directly related to requirements of the EPBC Act and various Commonwealth plans for management and listed species recovery plans.</p>
Oil spill investigation and subsequent Direction <i>CS005</i>	<p>An oil spill of 2,000 litres was reported on 24 July 2018 at 0815 hours. The NOPSEMA Spill Risk Manager initiated an investigation with inspection at 1300 hours of the same day, finding that production had ceased, wells were shut in and relevant authorities notified. The authority holder was considering restarting the operation, however the NOPSEMA inspection team indicated that further action was required prior to restart. On 25 July NOPSEMA issued a Direction directing the authority holder to take specific actions prior to restart.</p> <p>A multi-disciplinary NOPSEMA team was established to understand the events and any failings. The authority holder provided a report outlining how they would comply with the Direction as well as additional actions they would implement following a restart. NOPSEMA then confirmed that the direction had been complied with to NOPSEMA's satisfaction. Approximately two months later, NOPSEMA issued a final report including a series of recommendations. These were then tracked and resolved by the Environment inspector. Recommendations associated with restoring asset integrity were resolved by the Safety and Integrity inspector.</p>

⁵⁷ Case study (CS) numbers have been developed by the review team to preserve anonymity of cases extracted from NOPSEMA's Regulatory Management System (RMS).

Case study ID ⁵⁷	Description
Multi-client 3D and 2D Marine study CS006	<p>A draft EP was submitted and NOPSEMA identified that there was a potential for unacceptable impacts on listed species including pygmy blue whales (PBW), Southern right whales (SRW) and pinnipeds. The EP was requested to be amended three times to deal with temporal and spatial overlap with species habitat and potential for noise in calving areas for SRW, overlap with PBW foraging season and consistency with PBW and SRW conservation management plans and potential injury to pinnipeds. Expert advice from AAD was sought in relation to PBW and SRW at the second review point.</p> <p>The EP was eventually accepted with Conditions and the relevant Program commitments were met with those conditions, and the decision making was consistent with the principles of ESD.</p> <p>The survey is currently on hold at the time of the review.</p>
Marine Seismic Survey CS007	<p>A marine seismic survey EP was submitted to NOPSEMA, with a potential for unacceptable impacts on PBW, SRW and sperm whales. The EP was then revised twice to provide controls to prevent SRW stress response, detection of sperm whales and a demonstration that impacts to PBW could be managed so that there is no injury or displacement from the foraging BIAs (as required by the Recovery Plan).</p> <p>Note BIA maps and descriptions are available in the NCVA (which is hosted by DAWE).</p> <p>NOPSEMA was not reasonably satisfied that impacts to protected matters except PBW would be managed to ALARP and acceptable levels, noting scientific uncertainty in the effectiveness of detection and control measures. However, the EP was accepted with limitations (conditions) that there would be no discharge of seismic airguns in the PBW BIA in the relevant time period, and that there would be a limitation of anthropogenic noise in the BIA so that PBW could continue to utilise the area without injury and is not displaced from a foraging area.</p> <p>This activity has now been completed at the time of the review.</p>
Exploration Drilling CS008	<p>An exploration drilling EP was submitted to NOPSEMA with a large loss of well control (LOWC) release scenario. The response capability presented was found not to reduce the risk to ALARP and acceptable levels. The EP was revised twice at NOPSEMA's request. The first revision included an updated well design including an additional liner to divide the reservoir interval, thereby reducing the maximum volume of sand that may be exposed, resulting in a lower calculated Worst Credible Discharge flow rate. Additional control measures were also added to reduce the risk to ALARP.</p> <p>The second revision included a much reduced LOWC discharge volume and a shorter duration for relief well drilling (103 to 83 days) and demonstrated the suitability of the method used to for estimate financial assurance. Additional commitments were also made for monitoring of capping-stack-deployment-capable vessels.</p> <p>Drilling is commencing and a NOPSEMA inspection planned at the time of the review.</p>
Marine Seismic Survey CS009	<p>A marine seismic survey EP was submitted, and NOPSEMA identified a potential for unacceptable impacts on commercial fisheries as well as a number of EPBC Act listed whale species (i.e. humpback, blue and SRW).</p> <p>A revised EP was then submitted and accepted by NOPSEMA, which incorporated comprehensive information on interactions with and impacts to whales, commercial fish stocks and fishing operations. Stronger measures were introduced to manage impacts. For commercial fish stocks and fishing operations, this included the establishment of a Scientific Advisory Committee (SAC) to inform design of research projects and the development of a compensation scheme in the form of a Fisheries Displacement Mitigation Plan.</p> <p>NOPSEMA reviewed the establishment of the SAC, the fisheries displacement mitigation plan and the design of the research studies. Recommendations were made to enhance the functioning of the SAC.</p> <p>Two investigations were undertaken in response to complaints received from commercial fishers regarding the administration of the compensation scheme. NOPSEMA issued a general direction after two investigations identified that the compensation scheme was not being implemented in a manner in keeping with the intent of the EP, particularly regarding communication practices and timely assessment of compensation schemes.</p> <p>NOPSEMA then engaged with fisheries and relevant petroleum policy agencies to highlight the challenges associated with interactions between fisheries and seismic surveys. Stakeholders have agreed that there is a need for a policy framework to manage interactions and a standard compensation scheme administered by an independent, expert panel.</p>

Case study ID ⁵⁷	Description
Produced Formation Water discharge issue <i>CS010</i>	<p>An EP for an operations activity was submitted to NOPSEMA, and NOPSEMA identified a risk of unacceptable impacts on the Commonwealth marine area due to produced formation water (PFW) discharge (i.e. risk of oil in water discharged to sea). The Regulations previously set a limit of 30 mg/L of petroleum (averaged over 24 hours) in any produced formation water discharged to sea and outlined testing requirements for monitoring equipment. This was changed in 2014 to require that PFW discharge must be at an acceptable level and reduced to ALARP. The OPGGS (Environment) Regulations also require an implementation strategy with provision for monitoring and evaluation.</p> <p>The operations EP was revised four times and accepted on the fourth submission. The issues identified in the previous versions included: a lack of clarity around the extent and severity of impacts on the Commonwealth marine area, monitoring of PFW concentrations and a requirement to meet the 99% safe dilution target at marine areas of very high conservation value (even though this was a deviation from industry standard practice).</p> <p>The final EP was accepted once NOPSEMA was reasonably satisfied that impacts to the Commonwealth marine area would be managed to acceptable levels with clear and measurable levels of ecological protection included in the EP, a mixing zone established at the 99% species protection level, a management and monitoring framework (with corrective actions if needed), and a requirement for continuous improvement opportunities to be investigated.</p>

Table 11.4: Work practice case studies used to inform the 2020 Endorsed Program Assessment

Work practice case study ID	Description
NOPSEMA Transparency project	<p>In 2015, NOPSEMA's Environment Division initiated a stakeholder engagement and transparency work program to improve consultation practices in the offshore petroleum industry and to increase transparency of regulatory decision making. NOPSEMA worked collaboratively with industry and stakeholders in relation to the priority initiatives. A Transparency Taskforce was established to align transparency efforts with other jurisdictions. The subsequent regulatory process led to the full publication of EPs and introduction of a public comment period for exploration activities. These reforms have helped to improve community understanding of the offshore petroleum environmental approvals process. There are tangential benefits including lifting industry performance by facilitating knowledge-sharing with stakeholders and between industry participants.</p>
NOPSEMA Inspector Powers project	<p>In 2016, NOPSEMA identified that the NOPSEMA inspector powers did not fully enable NOPSEMA to effectively monitor compliance with environmental law in all circumstances, particularly regarding access to premises. Amendments were drafted and passed in Federal Parliament in 2019. NOPSEMA personnel were alerted and a comprehensive table was published outlining the amendments and linking to policy and procedures. Face to face briefings with NOPSEMA staff were also provided.</p>
Oil Pollution emergency powers project	<p>In 2016, NOPSEMA identified a legislative barrier to NOPSEMA inspectors being able to undertake compliance monitoring and enforcement action within a state/territory jurisdiction in the event an oil pollution emergency originated in Commonwealth waters. Legislative and regulatory amendments were developed, including a policy relating to compliance monitoring, enforcement and intervention for offshore oil pollution incidents. This policy was communicated to stakeholders and published by NOPSEMA.</p>

11.3 Offshore activity, monitoring, compliance, and enforcement data

This section provides context for:

- The scale and location of offshore petroleum and GHG storage activities, including their interaction with Australian Marine Parks (AMPs)
- Environment related offshore reportable incidents, including those incidents which have an interaction with a protected matter (other than the Commonwealth Marine Area)
- NOPSEMA's environment-related monitoring, compliance, and enforcement activities.

This section does not provide an analysis of this data. Please refer to **subsection 11.4** for an analysis of the relevant data.

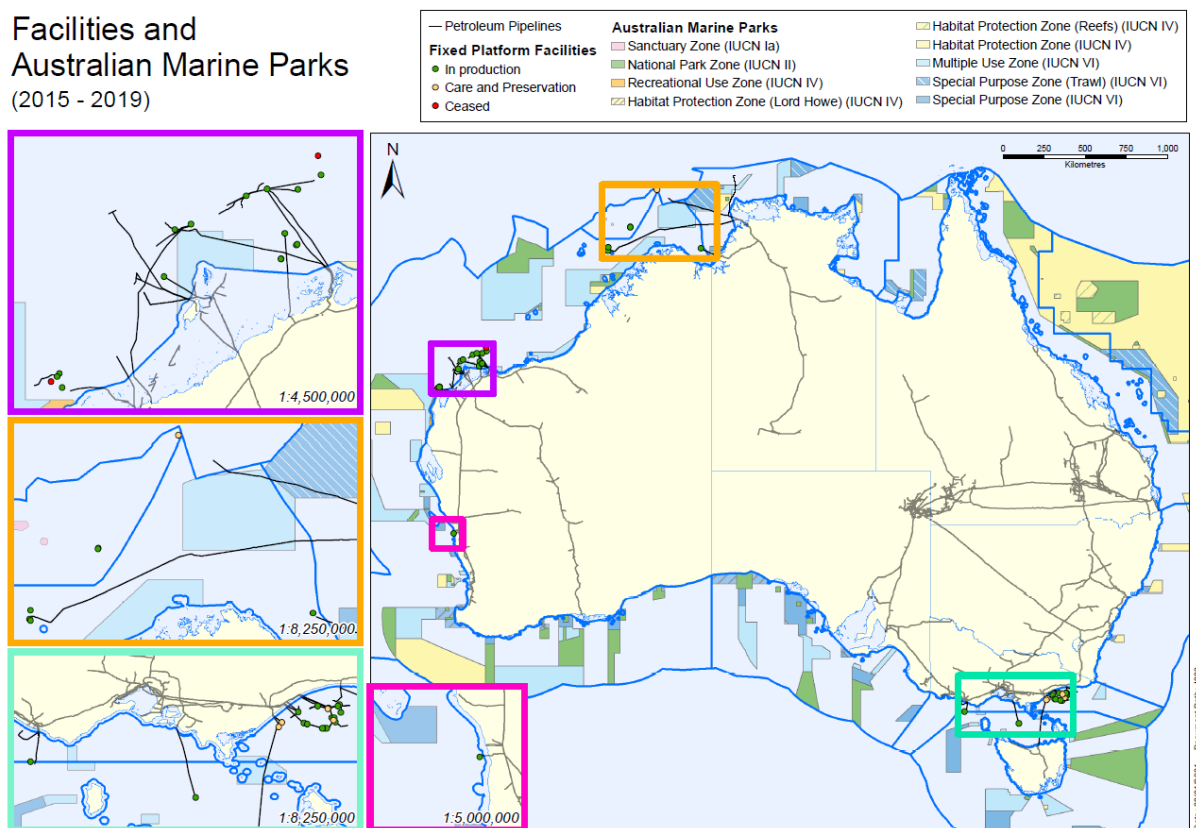
11.3.1 Offshore petroleum and GHG storage facilities and activities

Australia's active offshore facilities are highly dispersed (refer to **Figure 11.1**). Across the review period there was an increase of 10 active facilities⁵⁸, from 148 in 2015 to 158 in 2019 (see **Figure 11.2**), although the total number of petroleum activities (excluding seismic surveys, which are discussed further below) decreased by 12, from 52 in 2015 to 40 in 2019 (see **Figure 11.3**).

Of note, NOPSEMA highlighted to the review team that⁵⁹:

- All offshore petroleum and GHG storage activities will interact with EPBC Part 3 protected matters as the Commonwealth Marine Area itself is a protected matter. However, an interaction does not mean there will be a resultant unacceptable environmental impact
- During the review period, there appeared to be no overlap with AMPs where petroleum or GHG storage activities have been deemed 'unallowable activities'
- Under the relevant Management Plans for the AMPs, petroleum activities are generally allowable in Multiple Use Zones and Special Purpose Zones (International Union for Conservation of Nature (IUCN) category VI), with the exception of Special Purpose (mining exclusion) zones. The Director of National Parks has authorised offshore petroleum and greenhouse gas exploration activities to occur in certain marine park blue (IUCN category VI) zones by issuing class approvals. The class approvals themselves specify the relevant marine park zones where activities are authorised subject to conditions, which include that activities must be carried out in accordance with an EP accepted under the Environment Regulations. Pipelines may be permitted by the Director of National Parks authorisation in IUCN category II and IV zones.

Figure 11.1: Overview of offshore fixed platform facilities, pipelines, and Australian Marine Parks for 2015 to 2019⁶⁰

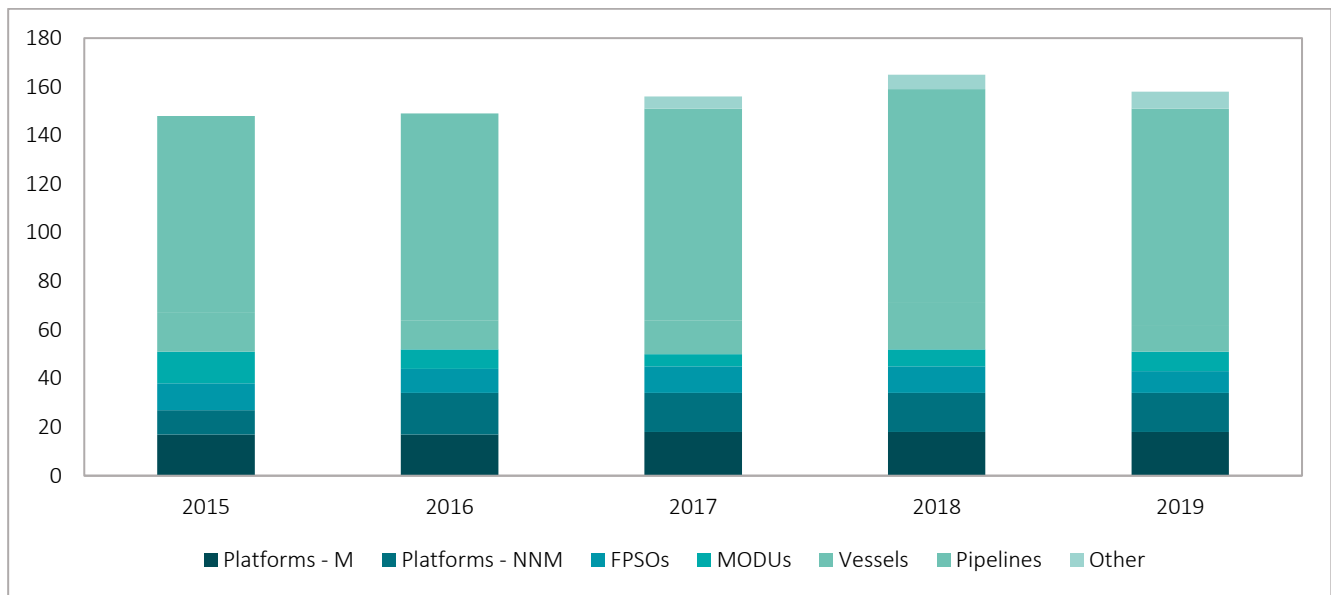


Source: NOPTA, data extracted from National Offshore Petroleum Information Management System (NOPIMS) (provided by NOPSEMA)

⁵⁸ For fixed facilities (platforms and pipelines), all facilities with an accepted safety case are deemed 'active' as they are still being maintained/inspected (regulatory effort) and there are people safety risks. However not all are currently producing hydrocarbons. For mobile facilities, they must be in jurisdiction and engaged in petroleum activity at some stage within the year to be deemed 'active'. The majority of activities that began in 2015 would have been assessed in years leading up to 2015, during the previous review period and are thus out of scope of the present review.

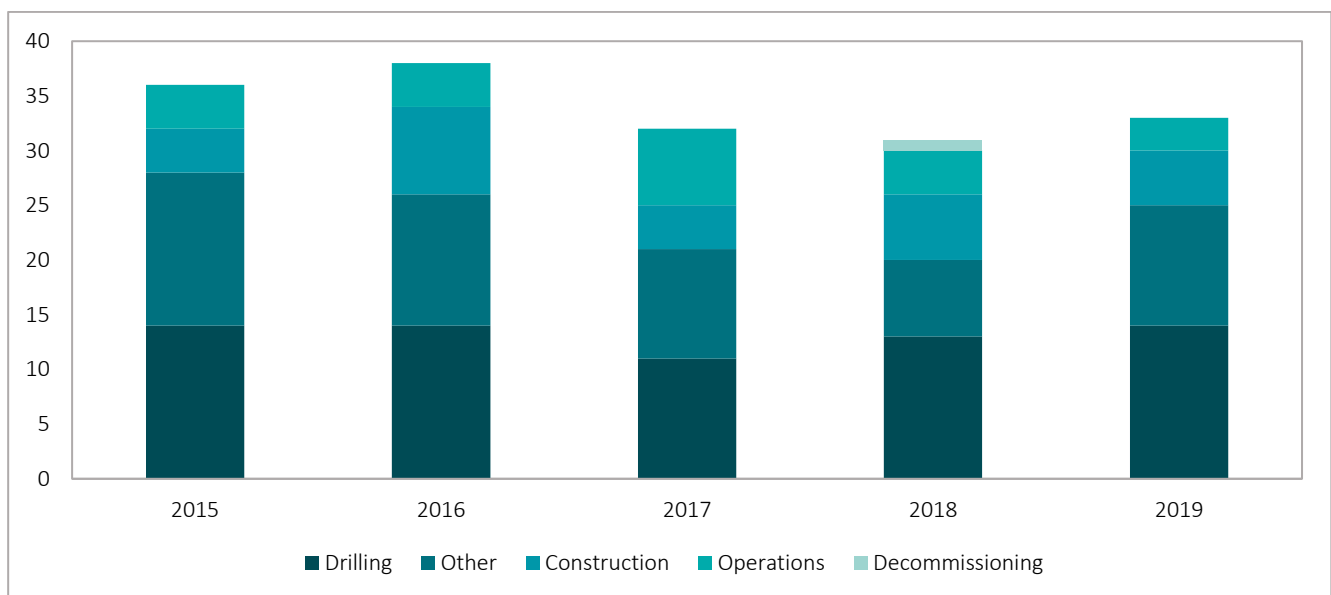
⁵⁹ NOPSEMA internal document, 2021.

⁶⁰ Jurisdiction covers Commonwealth waters only; petroleum activities are as defined in the OPGGS (Environment) Regulations.

Figure 11.2: Active offshore facilities from 2015 to 2019

Platforms – M: Manned Platforms; Platforms – NNM: Not Normally Manned Platforms; FPSOs: Floating Production Storage and Offloading; MODUs: Mobile Offshore Drilling Unit.

Source: Deloitte analysis adapted from NOPSEMA data

Figure 11.3: Active petroleum activities (excluding seismic activities) from 2015 to 2019⁶¹

Source: Deloitte analysis adapted from NOPSEMA data

Table 11.5 outlines offshore seismic survey activity, showing a general reduction in activity for both 2D and 3D seismic surveying across the period both in terms of the number of surveys undertaken and the size of those surveys⁶². There has been an increase in the total survey area for 3D surveys since 2017. **Figure 11.4** illustrates the geographic spread of these surveys, relative to AMPs, across the period.

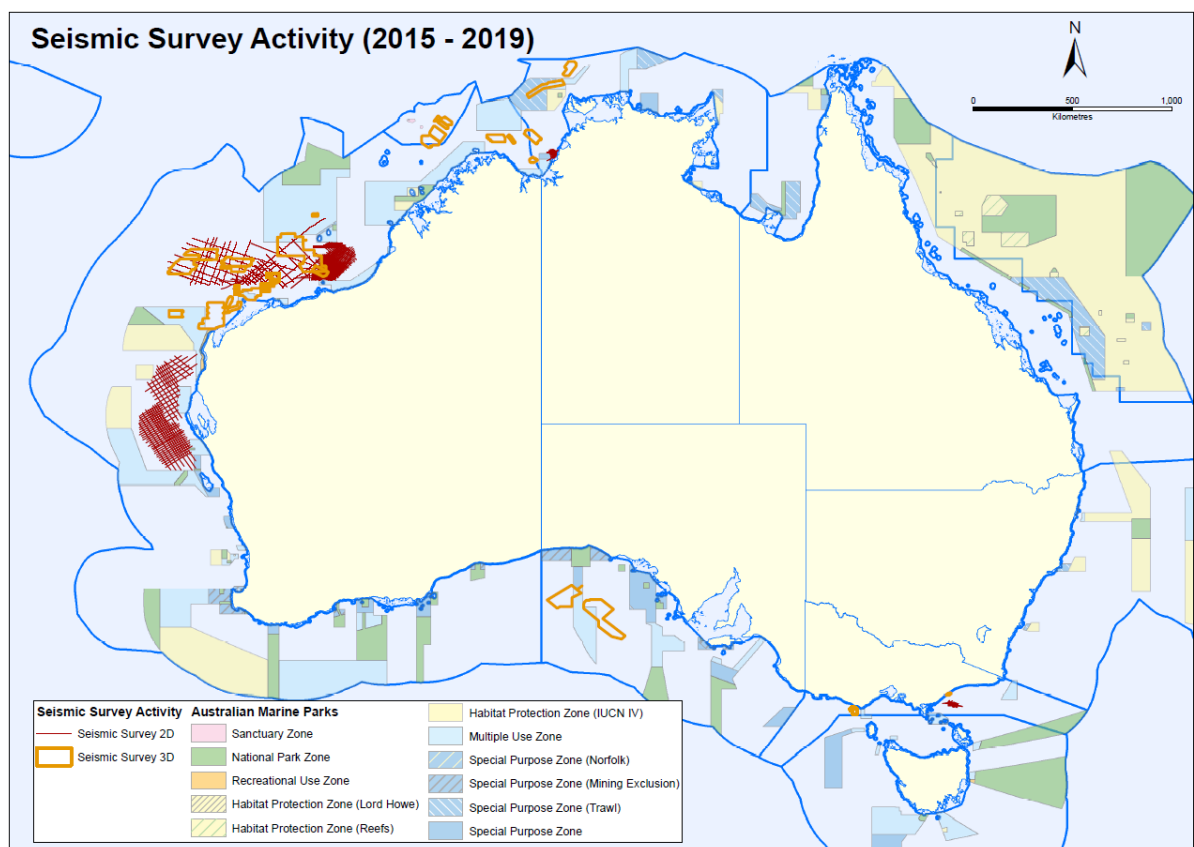
⁶¹ Figures are dependent on titleholders providing start/stop notifications to NOPSEMA. For a petroleum activity that spans multiple years, the activity has been counted for each year it is active.

⁶² The majority of activities that began in 2015 would have been assessed in years leading up to 2015, during the previous review period and are thus out of scope of the present review.

Table 11.5: Total number of 2D and 3D seismic surveys that occurred by year as well as the total line kilometres (2D surveys) and square kilometres (3D surveys) from 2015 to 2019

Seismic Survey type	2015	2016	2017	2018	2019	Totals
2D	7	2	1	1	0	11
3D	17	3	3	5	4	32
Total number	24	5	4	6	4	43
Total survey area km ² (3D)	64,352	18,197	3,743	10,176	14,358	110,826
Total line km (2D)	22,039	12,335	1,065	205	0	35,644

Source: NOPTA, data extracted from NOPIMS (provided by NOPSEMA)

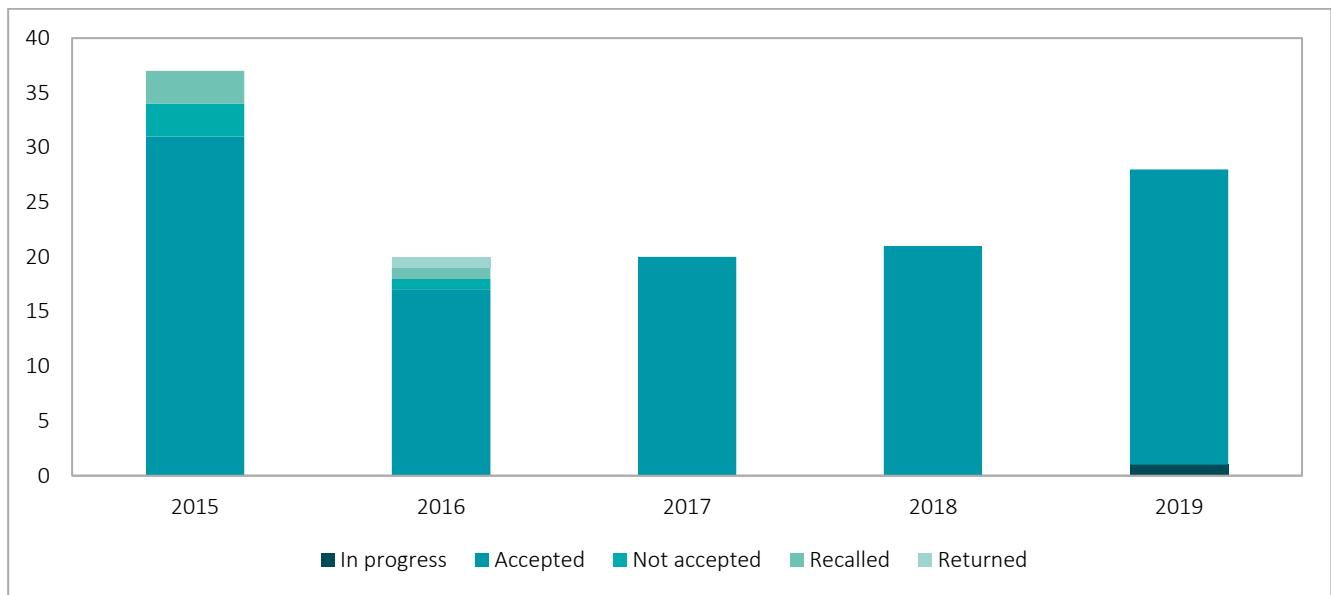
Figure 11.4: Overview of seismic surveys (2D and 3D) and Australian Marine Parks for 2015 to 2019⁶³

Source: NOPTA, data extracted from NOPIMS (provided by NOPSEMA)

11.3.2 NOPSEMA assessment of Environment Plans, reportable incidents, NOPSEMA inspection and investigation activities, and NOPSEMA enforcements

Figure 11.5 outlines the total number of new EP assessments from 2015 to 2019. Of the total number of new EPs submitted, approximately 3% were not accepted, excluding those EPs recalled, returned, or in the process of being assessed.

⁶³ Jurisdiction covers Commonwealth waters only; petroleum activities are as defined in the OPGGS (Environment) Regulations.

Figure 11.5: Outcome of new Environment Plan assessments from 2015 to 2019

Source: Deloitte analysis adapted from NOPSEMA data

Table 11.6 outlines a relatively stable number of environmental-related reportable incidents reported to NOPSEMA from 2015 to 2019⁶⁴. Of these incidents, 6 had an impact on EPBC Act Part 3 protected matters (see **Table 11.7**). NOPSEMA investigated a total of 29 environmental incidents based on incident severity (46% of total reportable environmental incidents).

Table 11.6: Total reportable incidents reported to NOPSEMA by activity type from 2015 to 2019

Incident category	Activity type	2015	2016	2017	2018	2019	Total
Chemical release	Drilling					1	1
	Operations	2		3	1	4	10
Drilling fluid/mud release	Drilling					1	1
Fauna incident	Drilling					1	1
	Operations		2	1	5	3	11
Hydrocarbon vapour/petroleum liquid release	Drilling		1				1
	Operations	9	3	7	7	2	28
	Construction				1		1
	Not specified		1				1
Other	Operations	1	1	1	2	1	6
	Other	1				1	2
Total		13	8	12	16	14	63

Source: NOPSEMA data

⁶⁴ All incidents occurred in the Commonwealth Marine Area. Accidental chemical, fluid and hydrocarbon release volumes vary and initial investigations indicated that total numbers provided are generally not indicative of significant impacts to the environment. Therefore, the figures noted above should not be used as a proxy for evaluating actual environmental impacts across the review period. Fauna incidents includes all fauna related incidents without distinguishing the listing status or severity of incident.

Table 11.7: Total reportable incidents impacting EPBC protected matters* reported to NOPSEMA by activity type from 2015 to 2019

Protected matter	Activity type	2015	2016	2017	2018	2019	Total
Commonwealth marine area	Operations					1	1
Listed migratory species	Drilling					1	1
	Operations			1	2		3
Listed threatened species and communities	Operations				1		1
Total				1	3	2	6

*In each case, the reportable incident involved a single animal.

Source: NOPSEMA data

Table 11.8 outlines a relatively stable number of environmental-related inspection activities undertaken by NOPSEMA from 2015 to 2019.

Table 11.8: Total environment inspections undertaken by NOPSEMA by activity type from 2015 to 2019

Activity type	2015	2016	2017	2018	2019	Total
Operations	23	24	31	34	32	144
Drilling	19	10	8	9	7	53
Seismic	15	3	4	7	5	34
Other	8	6		3	2	19
Construction	4		1	1		6
Decommissioning		1			1	2
Total	69	44	44	54	47	258

Source: NOPSEMA data

Finally, **Table 11.9** outlines the range of enforcement actions undertaken by NOPSEMA during the review period for environmental related activities. Enforcement actions were undertaken where NOPSEMA identified a significant threat to the environment through an inspection or investigation. NOPSEMA issued general directions in order to prevent or limit further environmental harm from occurring. NOPSEMA issued requests for revisions to EP to improve future environmental management arrangements of titleholders. Written advice or warnings were issued in response to environmental management issues where NOPSEMA identified that the issue did not warrant escalated enforcement action.

Table 11.9: Total environmental enforcements and non-statutory compliance actions undertaken by NOPSEMA from 2015 to 2019

Enforcement type	Activity type	2015	2016	2017	2018	2019	Total
General directions	Not specified				1		1
	Operations		1		1	2	4
	Seismic		1		1		2
Prohibition notice	Operations		1				1
	Seismic		1				1
Request for a revision to an environment plan	Other		1				1
	Operations	1	2	3			6
Improvement notice	Decommissioning					1	1
	Operations			3	2	2	7
	Seismic	1				1	2
Written advice/warning	Not specified			1		3	4
	Operations	2		7	2	2	13
	Seismic			2	1	1	4
Total		4	7	16	8	12	47

Source: NOPSEMA data

For an analysis of NOPSEMA's monitoring, compliance, and enforcement activities, including its enforcement powers, please refer to **Section 6**.

11.4 Detailed findings for the 2020 Endorsed Program Assessment

11.4.1 Section structure

The detailed findings section provides background on NOPSEMA's environmental regulatory processes (**subsection 11.4.2**) and examines each of the five primary assessment dimensions below:

- NOPSEMA's adherence to the relevant Object of the regulations (**subsection 11.4.3**)
- NOPSEMA's adherence to the Endorsed Program's commitments and outcomes (**subsection 11.4.4**)
- NOPSEMA's implementation of continuous improvement opportunities (**subsection 11.4.5**)
- NOPSEMA's implementation of the Administrative Arrangements (**subsection 11.4.6**)
- NOPSEMA's environment plan assessment process (**subsection 11.4.7**).

11.4.2 Background to NOPSEMA's environmental regulatory processes

NOPSEMA, in regulating offshore environment activities (in addition to its other functions), administers two assessment processes controlling the undertaking of offshore petroleum or GHG storage activities by a proponent (a titleholder seeking permission to undertake a given offshore activity). The two processes are:

- Assessing an OPP
- Assessing an EP.

For all new offshore projects, a proponent must submit an OPP to NOPSEMA for approval. The preparation of an OPP was introduced as a requirement upon commencement of the Endorsed Program to allow for public scrutiny and comment on offshore developments early within the project lifecycle⁶⁵. NOPSEMA assesses the potential environmental impacts and risks arising from the proposed activities. The OPP process includes a public comment period, the outputs of which are compiled by the proponent into a consultation report for consideration by NOPSEMA as part of the OPP assessment process.

In addition, by law, a proponent can only undertake an offshore activity once NOPSEMA has assessed and accepted the requisite EP for that activity. The high-level components of an EP are outlined below:

- The scope of an EP is determined with regard to the nature and scale of the proposed activity and the identified impacts on and risks to the receiving environment
- The OPGGS (Environment) Regulations also detail required content for an EP and includes (for example):
 - A description of the activity, including location and proposed timetable
 - A description of the environment that may be affected by the activity
 - Details and an evaluation of the environmental impacts and risks
 - Details of the control measures that will be in place to reduce the environmental impacts and risks of the activity to a level that is acceptable and ALARP
 - Environmental performance standards and outcomes (and associated measurement criteria)
 - An implementation strategy describing the titleholder's environmental management system, roles and responsibilities for implementing the EP and the monitoring, recording and auditing that will be undertaken to review environmental performance
- The titleholder is also required to provide an Oil Pollution Emergency Plan (**OPEP**) that provides adequate arrangements for responding to and monitoring oil pollution, including financial assurance of funds to respond to the emergency
- NOPSEMA assesses EPs and 'accepts' the document if it is satisfied with the contents of the EP (e.g. the arrangements demonstrate the impacts and risks will be reduced to ALARP and are acceptable)
- Once 'accepted', NOPSEMA monitors compliance through inspections with the permissioning documents and listed NOPSEMA laws
- Where compliance issues are identified, NOPSEMA may also undertake a range of enforcement actions.

⁶⁵ NOPSEMA, 2020. See: <https://www.nopsema.gov.au/environmental-management/assessment-process/offshore-project-proposals/>

The latter two points regarding monitoring, compliance, and enforcement are discussed further in **Section 6**.

11.4.3 NOPSEMA's adherence to the Objects of the regulations

To achieve the objective of the Endorsed Program, NOPSEMA must undertake its activities in a manner consistent with the Objects of the OPGGS (Environment) Regulations.

The Object of the OPGGS (Environment) Regulations is to ensure that any petroleum activity or GHG activity undertaken in an offshore area is carried out in a manner:

- Consistent with the principles of ESD set out in section 3A of the EPBC Act
- By which the environmental impacts and risks of the activity will be reduced to as low as reasonably practicable
- By which the environmental impacts and risks of the activity will be of an acceptable level.

We have examined each Object, in turn.

11.4.3.1 Are offshore petroleum and GHG storage activities carried out in a manner consistent with the principles of ecologically sustainable development set out in section 3A of the EPBC Act?

NOPSEMA align to the principles of ecologically sustainable development

The principles of ESD are⁶⁶:

1. Decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equity considerations
2. If there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation
3. The principle of inter-generational equity – i.e. that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations
4. The conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making
5. Improved valuation, pricing and incentive mechanisms should be promoted.

NOPSEMA must consider the principles of ESD through its decision-making process including when first assessing the suitability of an offshore project proposal for publication, and when making a final decision on accepting the proposal⁶⁷.

We have assessed NOPSEMA against each principle below and, overall, based on the evidence examined, we believe NOPSEMA is appropriately adhering to the principles of ESD.

11.4.3.1.1 ESD principle 1 – Decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equity considerations

NOPSEMA demonstrated that their assessment process includes consideration of the principles of ESD, including to ensure that their decision-making processes effectively integrate long and short-term considerations. As an example, case studies presented by NOPSEMA (e.g. ref. CS009) demonstrated that consideration is given to the long-term success of fisheries in areas where there are petroleum activities. Specifically, this required a titleholder to provide further information and assessment of the potential for impacts to commercial fish stocks from a proposed marine seismic survey. In response to a request from NOPSEMA, the titleholder committed to the establishment of a SAC to inform the design of research projects and plans for fisheries displacement mitigation⁶⁸.

The establishment of the SAC enabled a more open and balanced approach in addressing the concerns raised by fisheries. It was comprised of persons with a range of knowledge and experience including scientists, fishing industry representatives, and fishers. While the SAC focused on the accepted activity and current fishing efforts, the outcomes of the SAC included to identify initiatives such as

⁶⁶ Section 3A of the EPBC Act.

⁶⁷ Regulation 5C relates to the assessment of suitability of offshore project proposals for publication. The criteria for assessment are set out in 5C(2) and include that the proposal identifies and evaluates the environmental impacts and risks of the project, sets out environmental performance outcomes that are consistent with the principles of ecologically sustainable development and relevant to the identified environmental impacts and risks for the project, does not involve an activity or part of an activity being undertaken in any part of a declared World Heritage property within the meaning of the EPBC Act. NOPSEMA may only accept a proposal for an offshore project if it is consistent with the principles of ESD are enshrined in regulation 5D (5) and (6) (there are a number of other criteria that must also be met).

⁶⁸ NOPSEMA internal documents.

research that can aid in advancing knowledge of seismic activities on fishing for future activities. In doing so this can be considered an example of where NOPSEMA has demonstrated an assessment process that integrates both long-term and short-term economic, environmental social and equity considerations.

Fisheries consistently noted NOPSEMA's professionalism and openness to engaging with them. However, despite the openness, professionalism of staff, and what we consider to be a genuine willingness to engage by NOPSEMA, it is our view that the relationship between NOPSEMA and other users of the marine estate has eroded across the review period. We observed low trust and confidence in NOPSEMA as the regulator for offshore petroleum activities with this group. This is discussed further in **Section 9.3.2.2**.

11.4.3.1.2 ESD principle 2 – If there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation

Where there were apparent scientific uncertainties, NOPSEMA demonstrated a conservative approach to their decision making. Their assessment process required that evaluations made by titleholders are to acknowledge uncertainty in predictions of environmental impacts and where necessary consider the application of adaptive management principles to ensure that the principles of ESD can be achieved.

This was evident in one of the case studies reviewed (ref. CS009) where a potential for impact to commercial fisheries was identified, but NOPSEMA noted that the analysis for how the survey would impact on commercially targeted fish was insufficient. In response, NOPSEMA issued their decision that they were 'not reasonably satisfied', and a commitment was made by the titleholder for an initiative to support ongoing research of the predicted impacts from seismic surveys on commercial fish stocks displacement⁶⁹.

A further example (ref. CS010) was provided to us by NOPSEMA that demonstrated, in lieu of scientific certainty, NOPSEMA was 'reasonably satisfied' only after further assessment of the impact of a marine discharge on the environment, and commitment made by the titleholder to the monitoring of discharge streams and application of an adaptive management strategy that demonstrated protection of environmental values⁷⁰. In both examples, NOPSEMA required additional analysis and control measures, in circumstances where there was a lack of scientific certainty.

11.4.3.1.3 ESD principle 3 – The principle of inter-generational equity-that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations

NOPSEMA's assessment process was presented to us in their discussion of the case studies as well as the broader process and their public facing Guidelines. As stated in the *Environment Plan Decision Making Guideline* (N-04750-GL1721 Rev 6, Nov 2019) as key to NOPSEMA's decision making is the Object of the OPGGS Environment Regulations to ensure that any petroleum activity is carried out in a manner consistent with the principles of ecologically sustainable development. As such, the principles of ESD feature predominately in the decision-making process because they are integral to defining acceptable levels of impact and risk. NOPSEMA provided evidence of the steps which demonstrate how they consider the principles of ESD, including the principle of inter-generational equity. As an example, NOPSEMA's assessment of an activity was found to have a potential impact to fisheries, and resulted in the titleholder committing to identify initiatives such as research to aid in advancing knowledge of seismic activities on fishing for future activities, thus enabling ongoing protection of the environment for future generations. In addition, Environmental Performance Outcomes as set by the titleholder are assessed by NOPSEMA to be consistent with the principles of ESD. Accepted EPs and OPPs reviewed (e.g. ref. CS004) showed that principles, including the requirement for inter-generational equity, were demonstrated to be considered in NOPSEMA's assessment of acceptability and carried through to the environmental performance outcomes. The impact assessment noted that there will be impacts from an activity to an area of coral, but that it was considered to be reversible within 5 years, and therefore preserves inter-generational equity⁷¹.

11.4.3.1.4 ESD principle 4 – The conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making

An examination of accepted EPs and OPPs demonstrated, in our view, that conservation of biological diversity and ecological integrity is addressed by titleholders as it is a requirement for NOPSEMA in decision-making. This was evident in one example, where the titleholder discussed the potential for impacts to biological diversity and ecological integrity as a result of the installation of a significant length of pipeline through a marine park. In this instance, environmental performance outcomes were set to specifically limit the extent of impacts such that they remained below a threshold to impact biological diversity and ecological integrity.⁷²

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ For example, see: <https://www.nopsema.gov.au/assets/OPPs/A724553.pdf>

⁷² Ibid.

11.4.3.1.5 ESD principle 5 – Improved valuation, pricing and incentive mechanisms should be promoted

We do not consider that this principle of ESD is directly relevant to the role of NOPSEMA in undertaking regulatory assessments on well integrity, safety and environment matters.

However, in the Strategic Assessment process, this ESD was considered by government. At that time, government took the view that the Endorsed Program addressed this fifth ESD by ensuring that NOPSEMA, as an organisation, was cost recovered:

‘The Program describes an objective-based regulatory regime. Objective-based regulation is a cost effective approach to regulation as it encourages ongoing innovations and efficiency in pursuit of particular objectives and outcomes. In addition, NOPSEMA is a full cost-recovery agency whereby its regulatory activities are paid for through fees and levies on the industry required under legislation. These are charged on the basis of regulatory activity and ensure adequate ongoing funding levels to support the achievement of the objects of the OPGGS and EPBC Acts’.

The objective based regime is still in place, and NOPSEMA continues to operate on a full cost recovery basis and ensures adequate ongoing funding levels in order to support the achievement of the objects of the OPGGS Environment Regulations and the EPBC Act. Accordingly, we consider that NOPSEMA is compliant with this ESD principle.

11.4.3.2 Are the activities carried out in a manner by which the environmental impacts and risks of the activity will be reduced to as low as reasonably practicable?

NOPSEMA demonstrates application of the ALARP test through specific decision-making questions

A core purpose of the EP is for the titleholder to document their case for why their petroleum activity meets the requirements of the OPGGS (Environment) Regulations and can be managed to levels of impacts and risk that are ALARP. This is demonstrated through a titleholder’s evaluation and the regulators assessment of the environmental impacts and risks, captured in an EP.

To assess whether the activities as presented are ALARP, NOPSEMA considers a set of decision-making questions including⁷³:

- What method(s) have been selected and have they been used consistently across all impacts and risks?
- What control measures have been rejected and what are the reasons for rejection?
- Has the titleholder explained why a certain level of impact or risk has been assigned?
- Does the titleholder deviate from industry codes/standards and explain why this is appropriate for this activity?
- Has there been a proper exploration of alternative, additional, and improved control measures for higher order impacts and risks?
- Would NOPSEMA make the same environmental management decision given all the relevant factors explained by the titleholder in the EP?

This approach to decision making was observed in case studies presented, including one example where NOPSEMA identified that the proposed response to a spill of hydrocarbons did not reduce the risk to ALARP levels. In response to this, the titleholder was requested to demonstrate a timely spill response which included a revision to the EP and additional control measures to reduce intervention timeframes⁷⁴. This was also evident in a review of assessment findings for another project⁷⁵, where specific consideration of impacts from the activity on a protected matter were determined to not be ALARP. In this instance NOPSEMA requested the titleholder to provide further controls in order to reduce the impacts to ALARP, this included consultation with a subject matter expert to assess the effectiveness of a range of controls.

11.4.3.3 Are the activities carried out in a manner by which the environmental impacts and risks of the activity will be of an acceptable level?

Acceptability of activities is challenging for NOPSEMA to assess and titleholders to demonstrate

‘Environmental impact’ is defined in the OPGGS (Environment) Regulations to mean any change to the environment, whether adverse or beneficial, that wholly or partially results from an activity. Sub-regulation 10A(c) of the OPGGS (Environment) Regulations requires that an EP demonstrate that the environmental impacts and risks of the activity will be of an ‘acceptable’ level.

NOPSEMA has acknowledged that this a challenging criterion to demonstrate and assess because *“each environmental receptor, including different plants, animals, ecological communities, and the social, economic and cultural features of those, have a different level*

⁷³ NOPSEMA, 2019. See: <https://www.nopsema.gov.au/assets/Guidelines/A524696.pdf>

⁷⁴ NOPSEMA internal document.

⁷⁵ Ibid.

of sensitivity or resilience to the changes (impacts and risks) caused by a petroleum activity. Accordingly, consultation with relevant persons is an important part of establishing context for defining an acceptable level and successfully demonstrating it will be met⁷⁶.

Challenges with demonstrating acceptability were also expressed in our stakeholder survey, with titleholders indicating that this was an area in need of further guidance and consistency.

Based on the information provided in the case studies, there were observed differences in the findings of the assessment presented to the review team (as undertaken by NOPSEMA assessors) in applying tests for whether impacts and risks were acceptable. As an example, in one case study, NOPSEMA highlighted that the potential impacts on PBW, SRW, and sperm whales was not demonstrated to be acceptable (ref. CS007). The titleholder was requested to provide further evaluation to prevent SRW stress response, energetic loss and reduction in fitness; to undertake an evaluation of passive acoustic monitoring for detecting the presence of sperm whales for both day and night; and to provide demonstration that impacts to PBW can be managed so that there is no injury or displacement from a foraging BIA (as required by the Recovery Plan).

While the review team did not undertake their own assessment of this proposal, nor come to a conclusion that the impacts were acceptable, it can be inferred from the requests made by NOPSEMA that this information was relevant in their determination of acceptability.

In another case study examined, NOPSEMA determined, based on insufficient analysis being presented within the EP, that the titleholder had not demonstrated acceptability of impacts and risks on a number of EPBC Act listed whale species (humpback, blue and SRW) (ref. CS009). The titleholder responded in a subsequent submission and NOPSEMA determined that the revised EP incorporated comprehensive information on potential interactions with and impacts to whales. However, in a review of the accepted EP undertaken by the review team, it was not apparent that the titleholder had in fact addressed the matters raised in the first example to support their case for acceptability of impacts. It is unclear whether there are common criteria NOPSEMA assessors use, as appropriate for the nature and scale of the proposed activity, or whether this is based on the specific knowledge and expectations of assessors.

Challenges with demonstrating acceptability was also expressed in the stakeholder survey, with titleholders expressing concern *“that effort required to demonstrate criteria for acceptance of EP’s is highly variable”*, highlighting this as an area in need of further guidance and consistency.

It appears that titleholders may not have a view of the differences in impacts as understood by NOPSEMA and that there is a need for further understanding and alignment in information used as the basis for decision-making.

In relation to an evaluation of acceptability for matters protected under EPBC Act, it would appear appropriate that titleholders consult with relevant divisions of DAWE to clarify expectations and seek guidance. These inputs can then inform the case that the titleholder presents to NOPSEMA that their activity does not pose an unacceptable level of impact. DAWE confirmed to us that titleholders contact DAWE as DAWE is a ‘relevant person’, and DAWE input is then provided to both the titleholder and NOPSEMA.

It was not apparent how NOPSEMA considers the impacts of petroleum activities in the context of other industry impacts, and that the cumulative impact assessment processes may be limited. NOPSEMA’s consideration appears to be made on a project-by-project basis, with the assessment of impacts largely done in isolation of other current or anticipated projects from the same and other industries. As an example, EPs reviewed demonstrated that cumulative assessment is focused on multiple stressors from the proposed activity on a receptor, or stressors a result of the project in addition to other oil and gas activities in the region. There does not appear to be more strategic consideration of other sources of stressors, including from other adjacent industries. The current approach, in our view, does not sufficiently allow for the assessment of the cumulative impacts that an offshore petroleum activity can have on a matter protected under the EPBC Act.

Recommendation EPBC-R-1

NOPSEMA should continue improving their guidance on how they assess ‘ALARP’ and ‘acceptable’ environmental risk and ensure that the approach is consistent between assessments (where appropriate).

⁷⁶ NOPSEMA, 2019. See: <https://www.nopsema.gov.au/assets/Guidelines/A524696.pdf>

Recommendation EPBC-R-2

NOPSEMA, with the support of other Government Departments as required, should enable more effective cumulative impact assessment in the marine environment over spatial and temporal extents as well as across other industries.

11.4.4 NOPSEMA's adherence to the Endorsed Program's commitments and outcomes

We consider that NOPSEMA is meeting its commitments specified in the Endorsed Program

A key element of the Endorsed Program is the program's commitments and outcomes. Two sets of commitments were made. The first relates to EPBC Act Part 3 protected matters, specifically the following:

- The World Heritage Values of a declared World Heritage Property
- National Heritage Values of a declared National Heritage Place
- The ecological character of a declared Ramsar Wetland
- Listed threatened species and ecological communities
- A listed migratory species
- The environment in a Commonwealth Marine Area
- The environment on Commonwealth Land.

In addition to protected matters, NOPSEMA and DAWE were required to adhere to a number of commitments for the administration of the Endorsed Program.

We examine below whether:

- All commitments and outcomes outlined in the Endorsed Program, in relation to protected matters, are being met by NOPSEMA
- All commitments outlined in the Endorsed Program, in relation to administration, are being met by NOPSEMA.

11.4.4.1 Commitments and outcomes in the Endorsed Program pertaining to protected matters

Overall, we believe:

- There is no evidence that any planned industry offshore petroleum activities occurred in any part of a declared World Heritage Property during the review period
- Case studies reviewed showed careful and detailed consideration of matters of national environmental significance. NOPSEMA's assessment process and practices focuses on matters of national environmental significance and consideration of important marine habitats
- Industry offshore petroleum activities, under the oversight of NOPSEMA compliance actions, did not compromise the outcomes outlined in Table 1 of the Endorsed Program⁷⁷.

As a general comment, during preparation of an EP, titleholders are required to complete 'protected matters searches' using the Protected Matters Search Tool operated by DAWE. The search generally covers the area of the environment that may be affected by the proposed activities and is used to help understand the potential for interactions between their activity and various protected matters. The search reports are included in the EP for assessment by NOPSEMA.

Table 11.10 outlines the respective commitments and whether it has been met by NOPSEMA.

⁷⁷ Endorsed Program, page 10.

Table 11.10: Examination of commitments and outcomes in the Endorsed Program pertaining to protected matters

Part 3 matter, outcome, and commitments	
<p>Matter: World Heritage Properties</p> <p>Outcome: The outstanding universal value of World Heritage Properties will be identified, protected, conserved, and transmitted to future generations.</p> <p>Commitments:</p> <ul style="list-style-type: none"> NOPSEMA will not accept an Environment Plan that involves the activity or part of the activity, other than arrangements for environmental monitoring or for responding to an emergency, being conducted in any part of a declared World Heritage Property within the meaning of the EPBC Act NOPSEMA will not accept an Environment Plan that proposes activities that will contravene a plan of management for a World Heritage Property or proposes unacceptable impacts to the world heritage values of a World Heritage Property If there is no plan of management for a World Heritage Property, then NOPSEMA will take all reasonable steps to ensure that any accepted Environment Plan that refers to the property is not inconsistent with the Australian World Heritage management principles NOPSEMA will develop guidance (that will be updated from time to time) that titleholders should have regard to in the preparation of their Environment Plans. The guidance will: - make reference to consideration of the protection of the values of World Heritage properties - include references to relevant guidance documents to be considered by titleholders in preparing Environment Plans such as Statements of Outstanding Universal Value, plans of management and EPBC Act guidance documents In undertaking assessments, NOPSEMA will have regard to relevant policy documents, guidelines, Statements of Outstanding Universal Value and plans of management on the [DAWE] website. 	<p>Our assessment</p> <p>Based on the case studies and materials we examined, NOPSEMA has met its respective commitments during the review period in relation to world heritage properties.</p> <p>NOPSEMA advised the review team that there are no current or planned petroleum activities in any part of a declared World Heritage Area.</p> <p>Case study (ref. CS008) involved a proposed petroleum activity which NOPSEMA considered to have a risk of affecting the Ningaloo Coast World Heritage Property (in a worst-case oil spill scenario, that is, not via petroleum activities undertaken in the actual area). However, through requiring revised well head design, installation of thickened reservoir liner and reduction of intervention timeframe, and increased monitoring of capping-stack-deployment capable vessels, these risks were ultimately reduced to ALARP.</p> <p>NOPSEMA has established processes and procedures in place to ensure that it will not accept an EP that contravenes its commitments in relation to this protected matter. This includes that RMS will not allow acceptance of an EP that would contravene a plan of management for a World Heritage Property or proposes unacceptable impacts to the world heritage values of a World Heritage Property.</p> <p>NOPSEMA has a regular notification system with DAWE in relation to draft or final policy documents, guidelines, gazettal instruments and plans of management to ensure that assessments are compliant.</p>
<p>Matter: National Heritage Places</p> <p>Outcome: The outstanding value to the nation of National Heritage Places will be protected, conserved and transmitted to future generations of Australians.</p> <p>Commitments:</p>	<p>Based on the case studies and materials we examined, NOPSEMA has met its respective obligations as outlined in the Endorsed Program during the review period in relation to National Heritage Places. Case studies (e.g. ref. CS008) demonstrate consideration of National Heritage Places in the assessment of risks and impacts, specifically the risks associated with major unplanned events (e.g. oil spills).</p>

Part 3 matter, outcome, and commitments

Our assessment

<ul style="list-style-type: none"> • NOPSEMA will not accept an Environment Plan that proposes activities that will contravene a plan of management for a National Heritage Place or proposes unacceptable impacts to the National Heritage Values of a National Heritage Place • If there is no plan of management for a National Heritage Place, then NOPSEMA will take all reasonable steps to ensure that any accepted Environment Plan that refers to the place is not inconsistent with the National Heritage management principles • NOPSEMA will develop guidance (that will be updated from time to time) that titleholders should have regard to in the preparation of their Environment Plans. The guidance will: <ul style="list-style-type: none"> o Make reference to consideration of the protection of the values of National Heritage places o Include references to relevant guidance documents to be considered by titleholders in preparing Environment Plans such as gazettal instruments and EPBC Act guidance documents • In undertaking assessments, NOPSEMA will have regard to relevant policy documents, guidelines, gazettal instruments and plans of management on the [DAWE] website. 	<p>NOPSEMA has quality assurance processes in place to prevent acceptance of an EP that would contravene a plan of management for a National Heritage Place or propose unacceptable impacts to the National Heritage Values of a National Heritage Place.</p> <p>NOPSEMA maintains guidance on its website for titleholders making reference to consideration of the protection of the values of National Heritage Places and refers to guidance documents.</p> <p>NOPSEMA has a regular notification system with DAWE in relation to draft or final policy documents, guidelines, gazettal instruments and plans of management to ensure that assessments are compliant.</p>
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Matter: Wetlands of international importance

<p>Outcome: The ecological character of each Ramsar Wetland will be maintained, and the conservation use of each wetland is promoted for the benefit of humanity in a way that is compatible with maintenance of the natural properties of the ecosystem.</p> <p>Commitments:</p> <ul style="list-style-type: none"> • NOPSEMA will not accept an Environment Plan that proposes activities that will contravene a plan of management for a Ramsar Wetland or proposes unacceptable impacts to the ecological character of a Ramsar Wetland • If there is no plan of management for a Ramsar Wetland, then NOPSEMA will take all reasonable steps to ensure that any accepted Environment Plan that refers to the wetland is not inconsistent with the Australian Ramsar management principles • NOPSEMA will develop guidance (that will be updated from time to time) that titleholders should have regard to in the preparation of their Environment Plans. The guidance will: - make reference to consideration of the protection of the ecological character of the Ramsar Wetland - include references to relevant guidance documents to be considered by titleholders in preparing Environment Plans such as Ramsar Information Sheets, Ecological Character Descriptions and EPBC Act guidance documents • In undertaking assessments, NOPSEMA will have regard to relevant policy documents, guidelines, Ramsar Information Sheets, Ecological Character Descriptions and plans of management on the [DAWE] website. 	<p>NOPSEMA has quality assurance processes in place to prevent acceptance of an EP that would contravene a plan of management for a Ramsar Wetland or propose unacceptable impacts to the ecological character of a Ramsar Wetland.</p> <p>Based on the materials we examined, NOPSEMA has met its respective obligations as outlined in the Endorsed Program during the review period in relation to wetlands of international importance.</p> <p>NOPSEMA maintains guidance on its website for titleholders making reference to consideration of the protection of the values of Ramsar Wetlands and refers to relevant guidance documents.</p> <p>NOPSEMA has a regular notification system with DAWE in relation to draft or final policy documents, guidelines, gazettal instruments and plans of management to ensure that assessments are compliant.</p>
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Part 3 matter, outcome, and commitments

Matter: **Listed threatened species and ecological communities**

Outcome: The survival and conservation status of listed threatened species and ecological communities will be promoted and enhanced, including through the conservation of critical habitat and other measures contained in any recovery plans, threat abatement plans or conservation advices.

Commitments:

- NOPSEMA will not accept an Environment Plan that proposes activities that will result in unacceptable impacts to a listed threatened species or ecological community
- NOPSEMA will not accept an Environment Plan that is inconsistent with a recovery plan or threat abatement plan for a listed threatened species or ecological community
- NOPSEMA will have regard to any approved conservation advice in relation to a threatened species or ecological community before accepting an Environment Plan
- NOPSEMA will develop guidance (that will be updated from time to time) that titleholders should have regard to in the preparation of their Environment Plans. The guidance will:
 - Make reference to consideration of the listing category and protection of the listed threatened species or ecological community
 - Include references to relevant guidance documents to be considered by titleholders in preparing Environment Plans such as recovery plans, threat abatement plans, conservation advice and EPBC Act guidance documents
- In undertaking assessments, NOPSEMA will have regard to relevant policy documents, recovery plans, threat abatement plans, conservation advice and guidelines on the [DAWE] website.

Matter: **Listed migratory species**

Outcome: The survival and conservation status of listed migratory species and their critical habitat will be promoted and enhanced.

Commitments:

- NOPSEMA will not accept an Environment Plan that proposes activities that will result in unacceptable impacts to a migratory species or an area of important habitat for a migratory species
- NOPSEMA will develop guidance (that will be updated from time to time) that titleholders should have regard to in the preparation of their Environment Plans. The guidance will:
 - Make reference to consideration and protection of the listed migratory species

Our assessment

Of the fauna incidents reported to NOPSEMA, only one was sufficiently severe to trigger a further investigation. The remaining fauna incidents were accidental in nature, involving very low numbers of individual animals and had no significant environmental impact as defined in *EPBC Policy Statement 1.1*.

The single fauna related major investigation conducted in 2018 was triggered because of the deliberate killing of an Australian fur seal ('listed marine species' under the EPBC Act) on an offshore platform in 2018. The matter was investigated by NOPSEMA and handed over to DAWE for consideration of further enforcement action under the EPBC Act.

Case studies reviewed give consideration to Recovery Plans and threat abatement plans for listed threatened species and provide information to support that activities are not inconsistent with such plans.

Accordingly, based on the case studies we examined (particularly ref. CS006, CS007, CS008, CS009 and CS010) and relevant guidelines and materials we examined, **NOPSEMA has met its respective obligations as outlined in the Endorsed Program during the review period in relation to listed threatened species and ecological communities.**

Case studies (including ref. CS007 and in examples of OPPs) showed consideration of listed migratory species including some species of whales and birds. NOPSEMA's assessment process includes focused assessment on such matters of national environmental significance and consideration of important habitats including, but not limited to, migratory corridors and breeding islands.

Of the fauna incidents reported to NOPSEMA only one was sufficiently severe to trigger a further investigation. The remaining fauna incidents were accidental in nature, involving very low numbers of individual animals and had no significant environmental impact as defined in *EPBC Policy Statement 1.1*.

Part 3 matter, outcome, and commitments

Our assessment

<ul style="list-style-type: none"> o Include references to relevant guidance documents to be considered by titleholders in preparing Environment Plans such as wildlife conservation plans, and EPBC Act guidance documents • In undertaking assessments, NOPSEMA will have regard to relevant policy documents, wildlife conservation plans and guidelines on the [DAWE] website. 	<p>No other fauna-related major investigations were required during the reporting period.</p> <p>NOPSEMA completes major investigations where there is a significant threat to the environment.</p> <p>Accordingly, based on the case studies and materials we examined, NOPSEMA has met its respective obligations as outlined in the Endorsed Program during the review period in relation to listed migratory species.</p>
<p>Matter: Commonwealth Marine Area</p> <p>Outcome: The environment of Commonwealth Marine Areas will be maintained and protected in conformity with relevant marine bioregional plans and plans of management for relevant Commonwealth reserves.</p> <p>Commitments:</p> <ul style="list-style-type: none"> • NOPSEMA will not accept an Environment Plan that proposes activities that will result in unacceptable impacts to the environment of a Commonwealth Marine Area • NOPSEMA will have regard to any relevant bioregional plan and not act inconsistently with a plan of management for a Commonwealth reserve or a Commonwealth Heritage place in deciding whether or not to accept an Environment Plan • If there is no plan of management for a Commonwealth reserve, then NOPSEMA will ensure that acceptance of an Environment Plan is not inconsistent with the IUCN reserve management principles • If there is no plan of management for a Commonwealth Heritage place, then NOPSEMA will take all reasonable steps to ensure that any accepted Environment Plan that refers to the place is not inconsistent with the Commonwealth Heritage management principles • NOPSEMA will develop guidance (that will be updated from time to time) that titleholders should have regard to in the preparation of their Environment Plans. The guidance will: <ul style="list-style-type: none"> o Make reference to consideration of the environment of the Commonwealth Marine Area o Include references to relevant guidance documents to be considered by titleholders in preparing Environment Plans such as gazettal instruments, bioregional plans, wildlife conservation plans, plans of management and EPBC Act guidance documents • In undertaking assessments, NOPSEMA will have regard to relevant policy documents, gazettal instruments, bioregional plans, wildlife conservation plans, plans of management and EPBC Act guidance documents on the [DAWE] website. 	<p>Based on the case studies and materials we examined, NOPSEMA has met its respective commitments for this protected matter during the review period in relation to the Commonwealth Marine Area.</p> <p>As noted earlier, all offshore petroleum and GHG storage activities will interact with EPBC Part 3 protected matters as the Commonwealth Marine Area itself is a protected matter. However, an interaction does not mean there will be a resultant unacceptable environmental impact.</p> <p>NOPSEMA has in place processes to ensure that it will not accept an EP that will result in unacceptable impacts. NOPSEMA's assessment processes also include relevant linkages to supporting materials contained within the DAWE website. We saw no evidence that these materials were not considered in making assessment decisions.</p> <p>During the review period, there appeared to be no overlap with AMPs where petroleum or GHG storage activities have been deemed 'unallowable activities' (refer to Figure 11.1 and Figure 11.4).</p> <p>One written warning was issued to a titleholder following review of an environment incident notification and subsequent identification that 4 seismic lines had been shot within the IUCN category II Marine National Park portion of the West Cape York Commonwealth Marine Reserve during 2014. The letter was issued in 2015 and is therefore included in the current statistics (see Table 11.9).</p>

Part 3 matter, outcome, and commitments

Matter: Commonwealth Land

Outcome: The environment on Commonwealth Land will be maintained and protected in conformity with relevant plans of management.

Commitments:

- NOPSEMA will not accept an Environment Plan that proposes activities that will result in unacceptable impacts to the environment on Commonwealth Land
- NOPSEMA will have regard to any bioregional plan and not act inconsistently with a plan of management for a Commonwealth reserve or a Commonwealth Heritage place in deciding whether or not to accept an Environment Plan
- If there is no plan of management for a Commonwealth Heritage Place, then NOPSEMA will take all reasonable steps to ensure that any accepted Environment Plan is not inconsistent with the Commonwealth Heritage management principles
- If there is no plan of management for a Commonwealth reserve, then NOPSEMA will ensure that acceptance of an Environment Plan is not inconsistent with the IUCN reserve management principles
- NOPSEMA will develop guidance (that will be updated from time to time) that titleholders should have regard to in the preparation of their Environment Plans. The guidance will:
 - Make reference to consideration of the environment of the Commonwealth Land
 - Include references to relevant guidance documents to be considered by titleholders in preparing Environment Plans such as gazettal instruments, bioregional plans, plans of management and EPBC Act guidance documents
- In undertaking assessments, NOPSEMA will have regard to relevant policy documents, gazettal instruments, bioregional plans, plans of management and guidance documents on the [DAWE] website.

Source: *Endorsed Program, pages 33 to 36*

11.4.4.2 Commitments in the Endorsed Program pertaining to administration

Table 11.11 outlines the respective commitments and whether it has been met by NOPSEMA.

Table 11.11: Examination of commitments in the Endorsed Program pertaining to administration

Administrative commitments

Agree and enter into administrative arrangements with [DAWE] for the transfer of relevant information regarding the administration of the Program.

Our assessment

Based on the materials we examined, NOPSEMA has met its respective obligations as outlined in the Endorsed Program during the review period in relation to Commonwealth Land.

Activities that have, will have or are likely to have a significant impact on the environment on Commonwealth land require a decision about separate referral under the EPBC Act, because those activities are excluded from the Approved Class of Actions covered by the Endorsed Program.

NOPSEMA has quality assurance processes in place to prevent the assessment of an EP that would result in unacceptable impacts to the environment on Commonwealth land or be inconsistent with a plan of management for a Commonwealth Reserve or Commonwealth Heritage Place.

NOPSEMA maintains guidance on its website for titleholders making reference to consideration of the protection of the values of Commonwealth Land and Commonwealth Heritage Places and refers to relevant guidance documents.

NOPSEMA has a regular notification system with DAWE in relation to draft or final policy documents, guidelines, gazettal instruments and plans of management to ensure that assessments are compliant.

Our assessment

NOPSEMA has met this commitment.

Based on the evidence we examined, NOPSEMA and DAWE have met their respective administrative commitments as outlined in

Administrative commitments

Our assessment

Responsible: NOPSEMA and DAWE within 6 months of Program endorsement.

the Endorsed Program within the required timeframes. There are Administrative Arrangements in place between NOPSEMA and DAWE and these were updated in 2017. The Administrative Arrangements set out mechanisms for exchanging information and for the parties to collaborate (discussed further in **subsection 11.4.6**).

Prepare amendments to NOPSEMA's existing advice documents to reflect consideration of matters protected under Part 3 of the EPBC Act.

NOPSEMA has met this commitment.

Based on the evidence we examined, NOPSEMA and DAWE have met their respective administrative commitments as outlined in the Endorsed Program within the required timeframes. This has occurred through a wide range of NOPSEMA advice documents, most importantly for authority holders via the EP content requirements⁷⁸. Other guidance includes the *Petroleum activities and Australian marine parks guidance note*, and the *Responding to public comment on environment plans guidance note*.

Develop specific advice document(s) that titleholders should consider in the preparation of their Offshore Project Proposals and Environment Plans, to make reference to consideration of the protected matters under Part 3 of the EPBC Act. This advice should include references to relevant guidance documents to be considered by titleholders in preparing Offshore Project Proposals and Environment Plans such as EPBC Act guidance documents.

NOPSEMA has met this commitment.

Based on the evidence we examined, NOPSEMA and DAWE have met their respective administrative commitments as outlined in the Endorsed Program within the required timeframes. This has occurred through a wide range of NOPSEMA advice documents, most importantly for authority holders via the EP content requirements⁷⁹.

Responsible: NOPSEMA and DAWE within 6 months of Program endorsement.

Source: *Endorsed Program, page 37*

⁷⁸ Available at: <https://www.nopsema.gov.au/assets/Guidance-notes/A339814.pdf>. Other guidance includes the Petroleum activities and Australian marine parks guidance note, and the Responding to public comment on environment plans guidance note, the ALARP Guidance note, the Risk assessment guidance note, ALARP in the context of well integrity. The environment plan assessment policy and environment inspections policy also reflect this requirement.

⁷⁹ Ibid.

11.4.5 NOPSEMA's implementation of continuous improvement opportunities

The implementation of continuous improvement actions is a core component of protecting those matters listed under Part 3 of the EPBC Act. The Endorsed Program stipulates that the Administrative Arrangements between NOPSEMA and DAWE “provide a mechanism for continuous improvement through learning from the outcomes of assessment decisions, any relevant reviews, updates to relevant policies, guidelines, recovery plans and any other relevant new information that relates to the protection of matters protected under Part 3 of the EPBC Act⁸⁰.”

In this section we have examined whether:

- NOPSEMA has established practices to identify, monitor, and complete corrective actions
- There is evidence of a continuous improvement process (this is covered in the Administrative Arrangements **Section 11.4.6** below)
- NOPSEMA and DAWE have completed all relevant observations from prior reviews in a timely manner, reporting status to executive leadership.

11.4.5.1 Relevant recommendations and findings from the 2015 Statutory Review of NOPSEMA

Under section 695(2) of the OPGGS Act, the Minister is required to conduct independent statutory reviews, with the previous review conducted in 2015. The scope of that review included an assessment of NOPSEMA's governance arrangements in accordance with the *Public Governance, Performance and Accountability Act 2013* (the **PGPA Act**), NOPSEMA's ability to respond to changes within the industry, and the effectiveness of NOPSEMA's interactions with its stakeholder ecosystem. Relevant to NOPSEMA's environment regulatory functions, the review also assessed the operational effectiveness of NOPSEMA in bringing about improvements in:

- The occupational health and safety of persons engaged in offshore petroleum operations or offshore greenhouse gas storage operations
- The structural integrity of facilities, wells, and well-related equipment
- Offshore petroleum environmental management – which includes the effectiveness of the integration of environmental management into NOPSEMA's functions
- Offshore GHG storage environmental management.

NOPSEMA's environment-specific regulatory responsibilities include NOPSEMA being the sole regulator for petroleum activities in Commonwealth waters that relate to matters listed as ‘protected’ under the EPBC Act⁸¹. Specifically, in relation to EPBC related matters, the 2015 Statutory Review of NOPSEMA found that there was insufficient trust (from state regulators, their respective ministers, as well as from community and environmental-aligned non-government organisations (**ENGOS**)) in NOPSEMA's ability to appropriately regulate the environment through the EPBC Act. Lower trust stems from the disparate powers and capabilities each state and territory has in carrying out regulation of the offshore petroleum sector, the differing timetables for conferring powers, the complexity of these powers, transparency in decision making and the concerns that environmental regulation would be seen as a secondary priority.

Our review examines whether the recommendations and findings from the 2015 Statutory Review of NOPSEMA have been effectively implemented, and this is covered in **Appendix E**.

11.4.5.2 Assessment of progress against the 2015 Endorsed Program Assessment

NOPSEMA has made sound progress against the findings of the 2015 Endorsed Program Assessment

Environmental Resources Management Australia (**ERM**) was commissioned to assess NOPSEMA's performance in meeting the Program objectives, including ensuring that impacts on matters protected under Part 3 of the EPBC Act were not unacceptable.

The ERM assessment found that NOPSEMA met all commitments under the Endorsed Program in the review period, and that the required processes and procedures were in place. As such, the ERM concluded that no formal recommendations or modification of management arrangements were required at that time.

However, the assessment identified a range of “opportunities for improvement”, which NOPSEMA accepted and agreed it would implement. Suggestions for refinement of management arrangements (Opportunities for Improvement (**OFI**)) were proposed, as well as additional considerations outside the scope of the assessment (recorded as Observations) to further support meeting the Program

⁸⁰ Endorsed Program, page 45.

⁸¹ As described in NOPSEMA publication *Clarifying arrangements for Environmental regulation of petroleum activities in Commonwealth waters March 2014*.

commitments on an ongoing basis. These were included in the *Program Review Report – NOPSEMA Response* (the **NOPSEMA response**) observations and improvements.

NOPSEMA provided an updated response to these OFIs and Observations as summarised in **Table 11.12**.

Deloitte has examined information that was provided by NOPSEMA as demonstration of ongoing progress to address the OFIs and Observations made by the 2015 Endorsed Program Assessment. Overall, we have found NOPSEMA to have made sound progress to address the OFIs and Observations.

Table 11.12: Opportunities for Improvement and Observation from the 2015 Endorsed Program Assessment

2015 Report reference ⁸²	2015 OFI/Observation ⁸³	Our assessment ⁸⁴
I-1	NOPSEMA to update advice documents to provide a more direct pathway from the <i>Environment Plan Content Requirement Guidance Note</i> to the reference list of EPBC Act information to consider during the preparation of submissions that include activities that may impact matters protected under Part 3 of the EPBC Act.	<p>NOPSEMA has updated guidance since the previous review, and EPBC Act information is now incorporated within both the <i>Environment Plan Content Requirements</i> N04750-GN1344 (see A339814⁸⁵) and <i>Decision-Making Guideline</i> (see A524696).</p> <p>In relation to seismic surveys, an information paper has been developed to support acoustic impact assessment. This paper gives regard to defining acceptable levels of impact for threatened species (see A625748).</p> <p>The <i>Offshore Project Proposal Content Requirements Guidance Note</i> N-04790-GN1663 (see A473026), contains additional information to the <i>Environment Plan Content Requirements Guidance Note</i>, including a conceptual framework for defining acceptable levels and establishing levels of environmental performance. Given this is a key process for EP preparation in ensuring protection of matters of National Environmental Significance, this should be included in the <i>Environment Plan Content Requirements Guidance Note</i>.</p>
I-2	The level of detail with regards to the application of specific plans of management related to matters protected under Part 3 of the EPBC Act as part of the assessment of impacts, and in the ALARP and acceptability justification contained in EPs is not recorded in RMS in a consistent manner for all case studies. NOPSEMA should consider setting expectations and standards within internal documentation referred to by the assessment teams to ensure that greater consistency in records is achieved.	<p>Recommendation: Update the Environment Plan Content Requirements N04750-GN1344 (see A339814) to reflect additional information on defining acceptable levels as currently provided in the Offshore Project Proposal Content Requirements Guidance Note N-04790-GN1663 (see A473026).</p> <p>NOPSEMA has updated internal procedures to ensure findings related to matters protected under the EPBC Act are appropriately recorded in the RMS. The <i>Assessment Standard Operating Procedure</i> 7.3.9 was updated, and training implemented, to require that all assessments must include a protected matters scope which is reflected by RMS records and requirement to record findings under protected matters headings to prompt assessor.</p> <p>The reviewer notes that NOPSEMA is required under the Endorsed Program to not accept an EP that proposes activities that will result in unacceptable impacts to protected matters. As described in their Standard Operating Procedure (SOP), NOPSEMA decide what protected matters are in the scope of an assessment on a</p>

⁸² Reference to the respective OFI and/or observation from the 2015 Endorsed Program Assessment.

⁸³ OFI and/or observation as described in the 2015 Endorsed Program Assessment.

⁸⁴ Our review and assessment of NOPSEMA's progress in addressing OFIs and/or observations raised in the 2015 Endorsed Program Assessment.

⁸⁵ These refer to NOPSEMA document reference numbers.

2015 Report reference⁸² 2015 OFI/Observation⁸³

Our assessment⁸⁴

		case-by-case basis. They have informed us that in cases where the nature and scale of the activity and associated risks to protected matters are lower (lower threshold for assessment), the protected matters are only assessed at a 'general level' and not at a detailed 'topic scope' level (which has a higher threshold for assessment).
I-3	Provide a reference to the <i>Australian Government Guidance</i> relating to Australian Government agencies' roles and relevance under the OPGGS Act, within the <i>Environment Plan Content Requirements Guidance Note</i> , to increase awareness of titleholders of the availability of Department of Environment (DOE) [now DAWE] to provide advice related to matters protected under Part 3 of the EPBC Act.	References to <i>Australian Government Guidance</i> are now incorporated in the <i>Environment Plan Content Requirements</i> N04750-GN1344 (see A339814). Note that NOPSEMA is proposing to provide further update to reference to the <i>Australian Government Consultation Guidance</i> (see A705589).
I-4	Examine further opportunities to share resources and or information between NOPSEMA and DOE [now DAWE] where relevant.	The Administrative Arrangements have been revised and are in place. NOPSEMA and DAWE indicated that there are regular meetings which are reported by both parties as an effective means to stay up to date with proposals, new guidance, statutory instrument status and reviews to policy.
I-5	Review the search criteria applied for the EP submission and summaries search tool and consider functionalities to allow searches such as using radius/coordinates or environmental features (e.g. Biologically important areas, World Heritage Place, Commonwealth Marine Parks) as references.	NOPSEMA has made significant alterations to the EP search tool, including to enable stakeholders to subscribe in order to access to search by activity type, organisation and by location.
I-6	Examine ongoing opportunities for further data sharing between NOPSEMA, DOE [now DAWE], DOIS [now DISER] and titleholders.	NOPSEMA reported that they have continued to provide support to DAWE by encouraging titleholders to provide further information that expands on online available references. Titleholders are understood to be meeting with DAWE during preparation of approval documents and sharing information that they are using as a basis for outcomes presented.
I-7	NOPSEMA to consider notifying DOE [now DAWE] when an EP is submitted to NOPSEMA for assessment that includes unplanned activities occurring within the boundaries of a World Heritage Place or programmed Marine Reserve, to support DOE [now DAWE] in meeting their reporting obligations.	NOPSEMA, at the time of the recommendations, already had in place a process to notify DAWE of any OPPs regardless of their proximity to a WHP. In their response to the improvements and observations of the 2015 review, they indicated that they would undertake discussions with DAWE to extend their automatic notification system to EPs.
O-1	Consider communicating more broadly the applicability of commitment 1.1 and 1.2 to offshore petroleum activities to increase awareness and understanding amongst agency personnel, titleholders and stakeholders. [Commitment 1.1: NOPSEMA will not accept an EP that involves the activity or part of the activity, other than arrangements for environmental monitoring or responding to an emergency, being undertaken in any part of a declared World Heritage Property within the	Based on our analysis, we note there has been updates to the <i>Environment Plan Content Requirements</i> N04750-GN1344 (see A339814) and <i>Decision Making Guideline</i> (see A524696), as well as the <i>Offshore Project Proposal Content Requirements Guidance Note</i> N-04790-GN1663 (see A473026). The <i>Offshore Project Proposal Content Guidance Note</i> contains additional information to the <i>Environment Plan Content Guidance Note</i> , including a

2015 Report 2015 OFI/Observation⁸³ reference⁸²

meaning of the EPBC Act. Commitment 1.2: NOPSEMA will not accept an EP that involves the activity or part of the activity, other than arrangements for environmental monitoring or responding to an emergency, being undertaken in any part of a declared World Heritage Property within the meaning of the EPBC Act.]

Our assessment⁸⁴

conceptual framework for defining acceptable levels and establishing levels of environmental performance.⁸⁶ Given this is a key process for EP preparation in ensuring protection of matters of National Environmental Significance, this should be included in the *Environment Plan Content Guidance Note*.

Recommendation: Update the Environment Plan Content Requirements N04750-GN1344 (see A339814) to reflect additional information on defining acceptable levels as currently provided in the Offshore Project Proposal Content Requirements Guidance Note N-04790-GN1663 (see A473026).

O-2	Consider process (through liaison with titleholders or update of Guidance note) to enable relevant DOE [now DAWE] personnel to be available to titleholders to provide the relevant advice on matters protected under Part 3 of the EPBC Act and associated plans of management.	Based on our examination, the <i>Offshore Project Proposal Content Requirements Guidance Note</i> has a reference to the <i>Australian Government Guidance</i> , Australian Government agencies' roles and relevance under the OPGGs Act.
O-3	Follow-up inspections should include focus areas, targeting key threats to matters protected under Part 3 of the EPBC Act (vessel movements, noise emissions near values and sensitivities deemed sensitive to noise, etc.)	NOPSEMA's <i>Environment Inspection Policy</i> (see A216699) and process for programming inspections is risk-based ⁸⁷ . Environmental risk factors used to inform inspection programming include but are not limited to the environment that may be affected by planned activities and/or unplanned events including matters protected under Part 3 of the EPBC Act. For all titleholders undertaking a seismic activity that overlaps habitat critical to survival or biologically important areas during an important life cycle stage for migratory or threatened species listed under the EPBC Act, inspections are required at least once prior to the commencement or during the activity.
O-4	It was recognised during interviews that, although communication and information exchanges between parties has occurred during the [2015] review period, there is a need for closer relationships to be developed. [ERM] noted that increased communication has been reported over the last quarter of the Review period, and it is anticipated that such communication lines would be fostered over time.	Administrative Arrangements have been reviewed in 2017 and changes implemented. Both NOPSEMA and DAWE reported good working relationships evident through regular liaison with Program contacts and recently through the delivery of Work Orders in relation to regulatory advice on assessments under Part 9 of EPBC Act (see A33809).
O-5	Consider the benefit in providing publicly additional detail regarding the progress of the authorisation process for submitted EPs.	The requisite regulations have been amended and systems updated to support greater EP assessment transparency. This includes requirements for the publication of (a) all exploration EPs for a 30-day public comment period and (b) all EPs when under assessment and accepted in full. NOPSEMA has updated

⁸⁶ NOPSEMA, 2020. See: <https://www.nopsema.gov.au/assets/Guidance-notes/A473026.pdf>

⁸⁷ We note earlier in our report that NOPSEMA would benefit from greater use of data-driven risk-based assessments and inspections processes.

2015 Report **2015 OFI/Observation⁸³**
reference⁸²

Our assessment⁸⁴

internal systems and external websites to facilitate transparency and updated procedures and guidance documents.

Recommendation: NOPSEMA should consider further transparency in the assessment process, including publication of assessment timeline and progress (e.g. the issue of Response to Request for Further Written Information).

O-6 DOE [now DAWE] to consider available mechanisms to enable more effective identification by titleholders, stakeholders and NOPSEMA assessment officers of the plans of management relevant to a particular petroleum activity, based on the specific characteristics of that activity (e.g. geography, type of activity, affected matters protected under Part 3 of the EPBC Act)

It was reported by NOPSEMA, and supported by titleholders, that the process currently followed by titleholders is to complete a protected matters search (using a DAWE tool⁸⁸). The tool provides a list of relevant species for the area of activity. It is up to the titleholder to then search the DAWE website for relevant plans of management. This is currently a manual process, and there would be benefit in further consideration to review the process further with a view to better link the protected matters search tool with relevant Recovery Plans and plans for management.

Recommendation: DAWE to consider options to make the process of identifying protected matters and related plans for management more efficient.

O-7 NOPSEMA, and by association, titleholders, rely on information that is available publicly, and this information can be broad and difficult to interpret within the context of a specific activity. DOE [now DAWE] may consider the issue of publicly available advice on standards and best practice applicable to matters protected under Part 3 of the EPBC Act to guide titleholders and stakeholders with ALARP and acceptability criteria applicable to petroleum activities.

NOPSEMA has reported utilising relevant documents published on DAWE's website to inform assessments in relation to matters protected under the EPBC Act. This includes statutory plans of management and Recovery Plans for threatened species.

NOPSEMA has indicated that further liaison/clarification from DAWE in relation to the interpretation of certain aspects of Recovery Plans may be beneficial to NOPSEMA and industry going forward.

O-8 Further clarification on the applicability of the Transitional Management Arrangements for CMR would benefit titleholders and stakeholders in understanding the requirements applicable to the undertaking of petroleum activities.

Australian Marine Parks Guidance Note (see A620236) is in place. The guidance was developed in close consultation with Parks Australia. The intent of guidance is to assist titleholders in preparing EPs that comply with regulatory requirements.

O-9 As part of the review and acceptance process for EP summaries, NOPSEMA should ensure that sufficient content related to matters protected under Part 3 of the EPBC Act provided in the EP (e.g. plans of management used in the assessment of impacts and risks) is presented in the EP summaries prepared by titleholders, to provide both DOE [now DAWE] and stakeholders with

Following the amendments to the OPGGS (Environment) Regulations in April 2019, EPs are published in full for public consumption. This includes all material

⁸⁸ DAWE, 2020. See: <http://www.environment.gov.au/webgis-framework/apps/pmst/pmst.jsf>

<div> <div>2015 Report reference⁸²</div> <div>2015 OFI/Observation⁸³</div> </div>	<div> <div>Our assessment⁸⁴</div> </div>
<div> <div>O-10</div> <div> <div>visibility and certainty that the assessed and accepted EP had appropriate consideration for matters protected under Part 3 of the EPBC Act.</div> </div> </div>	<div> <div>that is relevant to the assessment of impacts on matters protected under the EPBC Act.</div> </div>
<div> <div>O-10</div> <div> <div>Examine whether the release of information on submission (rather than acceptance) on NOPSEMA's website meets the needs of DOE [now DAWE] for stakeholder management purposes and international reporting obligations.</div> </div> </div>	<div> <div>All EPs are now published in full and are available online. It was noted that OPPs go through a significant review period offline prior to being made available on NOPSEMA's website, and that this includes notification to DAWE.</div> </div>
<div> <div>O-11</div> <div> <div>The review identified that the trigger for reporting to DOE [now DAWE] on proposed major developments adjacent to a WHP is not clear to the agencies concerned, both in terms of what constitute 'major developments' and to what extent the proximity trigger is applicable. NOPSEMA could consider the requirement for reporting to DOE [now DAWE] as part of the consultation requirements associated with proposed petroleum activities.</div> </div> </div>	<div> <div>NOPSEMA's website's functionality has been enhanced to include the ability for DAWE to subscribe to certain activities and areas of interest. The subscription mechanism for ensuring DAWE stays abreast of relevant assessments is embedded within the Administrative Arrangements.</div> <div>As above, it was noted that OPPs go through a significant review period offline prior to being made available on NOPSEMA's website, and that this includes notification to DAWE.</div> </div>
<div> <div>O-12</div> <div> <div>There may be further opportunities to examine the streamlining of conditions set for projects accepted prior to 28 February 2014.</div> </div> </div>	<div> <div>NOPSEMA reported that DAWE has sought advice from NOPSEMA in relation to a number of EPBC Act approval conditions. This has resulted in the majority of offshore developments having 'streamlined conditions'. Titleholders can then choose to seek clearance of conditions by way of an EP assessment and acceptance or continue to gain clearance via approval by DAWE/Minister (e.g. see A441867).</div> </div>

Source: ERM 2015 Endorsed Program Assessment, Deloitte analysis

Recommendation EPBC-R-3

In reference to the opportunities for improvement and observations from the 2015 Endorsed Program Assessment:

- NOPSEMA should update the *Environment Plan Content Requirements* N-04750-GN1344 (A339814) to reflect additional information on defining acceptable levels as currently provided in the *Offshore Project Proposal Content Requirements Guidance Note* N-04790-GN1663 (A473026)
- NOPSEMA should consider further transparency in the assessment process, including publication of assessment timeline and progress (e.g. the issue of Response to Request for Further Written Information)
- DAWE should consider options to make the process of identifying protected matters and related plans for management more efficient.

11.4.6 NOPSEMA's implementation of the Administrative Arrangements

To review the required actions of NOPSEMA specified under the Administrative Arrangements and provide advice on if all commitments are being met, we have considered whether:

- NOPSEMA successfully shares information with and advises DAWE on post approval matters and their approval conditions
- NOPSEMA and DAWE collaborate in an open and constructive manner
- NOPSEMA is meeting its agreed actions.

11.4.6.1 Context to the Administrative Arrangements

NOPSEMA must engage closely with two Commonwealth government departments on environmental policy issues: DISER for offshore resources environment matters and DAWE for select environment-related matters. DAWE continues to hold relevant policy responsibility for environmental protection matters, which NOPSEMA must comply with in its assessment processes.

An Administrative Arrangement was agreed between NOPSEMA and DAWE following the establishment of the Endorsed Program and subsequently updated in 2017. Among other matters, the Administrative Arrangements set out the information sharing and consultation arrangements between the parties.

The May 2017 update to the Administrative Arrangements was undertaken to reflect key learnings and current agency arrangements and practices for administering the Endorsed Program. At this time, NOPSEMA also published a guideline on *Environment Plan Decision-making* (see GL1721). The guideline explains how NOPSEMA makes an administrative decision to accept an EP under the OPGGS (Environment) Regulations and how NOPSEMA assesses the requirements for impacts on EPBC Act protected matters to be of an acceptable level.

NOPSEMA continues to report annually to the Minister for the Environment.

Based on the information we have examined, NOPSEMA is meeting its Administrative Arrangement commitments⁸⁹. NOPSEMA and DAWE have established robust and frequent mechanisms for engagement to ensure their respective obligations are fulfilled.

11.4.6.2 NOPSEMA's relationship with DAWE, including Parks Australia and the Australian Antarctic Division

Collaboration with DAWE is positive, with opportunities to work together to improve key resources

NOPSEMA's engagement with DAWE and portfolio agencies Parks Australia and the Australian Antarctic Division is generally positive and constructive, appropriately frequent, and proactive.

As part of the Administrative Arrangement, DAWE and NOPSEMA hold monthly meetings to discuss the pipeline of work and approvals under consideration as well as relevant guidelines or statutory instruments. The parties also hold frequent ad hoc meetings on specific approval matters as required.

NOPSEMA can only accept an EP if it meets the acceptance criteria outlined in the Environment Regulations and is not inconsistent with a relevant recovery plan or threat abatement plan for a listed species or ecological community (referred to as Recovery Plans). Recovery Plans are made or adopted under the EPBC Act and remain in force until the species is removed from the list. These plans are binding on the Australian government – once a plan is in place, all relevant Australian government agencies must act in accordance with the Recovery Plan. Therefore, it is essential that NOPSEMA has a clear view of upcoming Recovery Plans for endorsement to ensure they

⁸⁹ 2017 Administrative Arrangements commitments.

remain compliant. DAWE provides a weekly update to NOPSEMA on new Recovery Plans or updates to existing Recovery Plans. NOPSEMA has a dedicated resource monitoring notifications and ensuring they are effectively disseminated across NOPSEMA. This process has improved since its establishment in 2015 and is functioning well.

Recovery Plans are listed on the Species Profile and Threats (SPRAT) database, hosted by DAWE. NOPSEMA utilises the SPRAT database, and the NCVA amongst other information to inform assessments and provided advice to titleholders. The NCVA is an interactive mapping tool developed to support implementation of Marine Bioregional Plans. It incorporates a range of data on Australia's marine environment as well as specific information on the location and area of important marine habitats, ecological features, known breeding and feeding areas for protected species and other conservation values in the marine regions. It was raised in meetings with DAWE that there is an opportunity for improvement of the NCVA via enhancement of the functionality and timeliness of updates. This could be an opportunity for further collaboration between NOPSEMA and DAWE. There may also be additional opportunity for NOPSEMA to provide input to new or updated threatened marine species Recovery Plans, to better ensure that they are constructed in a way that allows industry to understand and interpret its responsibilities in submitting the relevant EP to NOPSEMA. We would encourage DAWE to continue to improve the Recovery Plans to be fit for purpose, and to engage closely with NOPSEMA in this process.

NOPSEMA cooperates effectively with Parks Australia and the Australian Antarctic Division

We heard from stakeholders that NOPSEMA and Parks Australia work collaboratively on issues of overlap and mutual interest.

Parks Australia are considered a 'relevant person' under the OPGGS Act, so will be notified directly when an EP has been assessed. Titleholders will also contact Parks Australia when they are entering a Marine Park to conduct specified activities, and NOPSEMA has a role in facilitating 'relevant persons' correspondence.

There is evidence of a collaborative relationship between NOPSEMA and Parks Australia. For example, NOPSEMA worked with Parks Australia to revise NOPSEMA's guidance note on petroleum activities within Commonwealth Marine Reserves to reflect contemporary expectations for titleholder consultation with the Director of National Parks (see GN1565)^{90 91}. NOPSEMA has also conducted a number of workshops for Parks Australia outlining the offshore petroleum environment regulation framework. This guideline also covers interactions with DAWE, in relation to the EPBC Act, the *Historic Shipwrecks Act 1976* and the *Environment Protection (Sea Dumping) Act 1981*, which also apply in the Commonwealth Marine Area.

Although outside the review period, we note that an MOU between Parks Australia and NOPSEMA was executed on 28 August 2020⁹². The MOU with Parks Australia is intended to outline arrangements for cooperation and collaboration between the parties in performing statutory functions regarding environmental management of offshore petroleum and GHG storage activities that may impact Australian Marine Parks.

The AAD is contracted by NOPSEMA to provide specialist advice on cetacean related matters. For instance, NOPSEMA and AAD also worked together to bring a proposal to the Australian Government Business Research and Innovation Initiative, to improve the detection and identification of whales during marine seismic surveys⁹³. We understand up to \$2.4 million may be available to support industry to conduct feasibility studies and build automated and integrated whale detection systems for vessels while conducting seismic surveys. Based on the information we examined, we consider the relationship between NOPSEMA and AAD to be effective and highlight the innovative approach adopted by the parties in supporting desired regulatory outcomes.

11.4.7 NOPSEMA's environment plan assessments

11.4.7.1 The assessment process

NOPSEMA's EP assessment process is an integral part of ensuring NOPSEMA adheres to its commitments and obligations under the Endorsed Program and the relevant Objects of regulations and legislation. To be effective, NOPSEMA's environment plan assessment process should be risk based, reliable, consistent, and integrated with other NOPSEMA monitoring, compliance, and enforcement processes. Additionally, the EP assessment processes should be efficient and streamlined relative to arrangements prior to the Endorsed Program being in effect. The following sections examine NOPSEMA's environment assessment process.

⁹⁰ NOPSEMA, 2020. See: <https://www.nopsema.gov.au/assets/Guidance-notes/A620236.pdf>

⁹¹ Consultation with Commonwealth agencies with responsibilities in the marine area – document number N-06800-GL1887 - A705589. See: <https://www.nopsema.gov.au/assets/Guidelines/A705589.pdf>

⁹² NOPSEMA, 2020. See: <https://www.nopsema.gov.au/assets/Corporate/A745685.pdf>

⁹³ Innovation grants available to help better protect whales. See: <https://www.nopsema.gov.au/news-and-publications/latest-news/news-announcement/2020/08/18/innovation-grants-available-to-help-better-protect-whales/>

The process for assessment via RMS relies on the operator submitting a safety case, or a titleholder submitting a WOMP or EP (relevantly here), to NOPSEMA for evaluation. When submitted, the documents are triaged, an assessment brief created, and review team assigned. NOPSEMA manages the process through RMS.

Upon receiving a permissioning document for assessment, NOPSEMA conducts a pre-assessment or a completeness check for completeness of information provided (i.e. that no critical information is missing). The pre-assessment or completeness check is a critical upfront component of the process, which is used to determine if there are any critical deficiencies in the documents submitted.

Once the responsible party has developed and formally submitted the permissioning document, the assessment process is conducted. If critical deficiencies are identified within the permissioning document, the assessment is aborted, findings captured, reviewed by the Lead Assessor, and then communicated back to the responsible party. NOPSEMA aborts the assessment where critical deficiencies are identified to enable the efficient and effective use of NOPSEMA resources – so as to not invest time in permissioning documents that do not meet minimum expectations. NOPSEMA also has powers to request further information to support a permissioning document assessment – however, these are generally limited to two requests for new permissioning documents and one for revised documents.

In exceptional circumstances, NOPSEMA may “conditionally accept” a permissioning document or apply limitations. If there is a decision to accept with conditions or limitations, the Representative of NOPSEMA (RON) escalates the decision for discussion and agreement with the Head of Division or the CEO for approval.

Safeguards are built into the NOPSEMA Permissioning Document Assessment Framework to protect the integrity of assessments

Safeguards are built into the NOPSEMA Permissioning Document Assessment Framework to deliver consistency and quality by means of oversight and assurance at important decision points by the Team Manager/RON, including:

- Review and approval of the assessment brief (team, scope) within RMS, including the variation to an assessment scope
- Involvement in abandoning assessments based on early general assessment of material outlined in the permissioning documents
- Issue of requests for further information or finalised assessment outcomes
- Review and approval of reports and involvement in titleholder feedback meetings.

In summary, our analysis shows that NOPSEMA has established a robust and better practice approach to assessing permissioning documents submitted by industry.

For further detail on NOPSEMA’s assessment process and an examination of its monitoring, compliance, and enforcement processes via RMS, please refer to **Section 6**.

11.4.7.2 The assessment process in practice: Case studies

There is a robust approach for undertaking assessment processes

We have considered the EP assessment process through discussions with NOPSEMA and our review of the *Environment Plan Assessment Procedure*⁹⁴. In addition, NOPSEMA provided assessment training packages that outlined the process undertaken by assessors to identify which protect matters are to be considered in their assessment.

NOPSEMA’s approach to assessment is to undertake both a general and topic-related assessment. The general assessment is undertaken to consider whether NOPSEMA should be reasonably satisfied that the EP submission, taken as a whole, meets the criteria set out under section 10A of the OPGGS (Environment) Regulations (criteria for acceptance).

The general assessment process involves an assessment of the whole EP, including:

- A critical assessment of the submission to determine whether, as a whole, the EP has appropriate systems, processes and methods applied to environmental impact, risk assessment and management. This critical assessment is made in the context of all acceptance criteria of the OPGGS (Environment) Regulations and the *Environment Plan Decision-making Guidelines* N-04750-GL1721 (see A524696)
- Consideration of public comments made in the course of the assessment and decision-making process as part of determining if acceptance criteria for an EP have been met (exploration EPs only)

⁹⁴ Document reference N-04750-SOP1369 Rev 16.

- Establishing whether there are appropriate environmental performance outcomes and standards and if these are consistent with the accepted OPP or EPBC Act requirements (where applicable).

Topic assessments consider the extent to which the EP meets the selected criteria under section 10A of the OPGGS (Environment) Regulations (criteria for acceptance) with respect to the topic. The topic assessment is undertaken by an assessor and should record the findings that support:

- A critical assessment of all parts of the EP relevant to the topic to determine whether all the selected acceptance criteria of the Environment Regulations, in the context of the *Environment Plan Decision-making Guidelines* N-04750-GL1721 (see A524696) and the EP assessment principles in the N04750-PL1347 – *Environment Plan Assessment Policy* (A343085), have broadly been met
- Consideration of public comments made in the course of the assessment and decision-making process as part of determining if selected acceptance criteria for an EP have been met (exploration EPs only)
- A critical assessment of the topic considering matters protected under the EPBC Act in the context of relevant Endorsed Program commitments
- Assist with informing the general assessment regarding application of appropriate systems, processes and methods to environmental impact/risk assessment and management.

NOPSEMA's assessment procedures state that the assessment team decide on the number of topics commensurate to the nature and scale of the activity. In making this decision, they consider:

- The scope, complexity, timing and location of the activities to be conducted
- The environmental impacts and risks of the activity
- Number and types of issues raised during consultation
- Uncertainty, use of innovative technology
- Relevant information from prior incidents, inspections, enforcement and assessments associated with the titleholder in question, similar activities or other activities undertaken by the same titleholder
- Current industry and regulatory issues.

It is not clear whether there are criteria for each of the decision factors above, and whether decisions are made consistently across assessors.

NOPSEMA considers that those activities which pose fewer or less severe risks and impacts should receive less 'regulatory attention' (including a smaller team, fewer technical topics). This is in contrast to those activities which are located near sensitive environmental features and have extensive impacts and risks. NOPSEMA's expectation is that titleholders complete an evaluation of impacts and risks appropriate to the nature and scale of each of the impacts and risks so that a greater evidence base/robust supporting information is applied in those activity circumstances with potential for significant environmental effects on sensitive environments. NOPSEMA reported during the review that this is a subjective judgement by the assessment team and decision-maker and could appear inconsistent to external audiences who may be attempting to compare EP assessment outcomes without fully assessing each EP.

Titleholders generally arrange a pre-submission meeting with NOPSEMA to introduce the activity, provide key information and to seek any advice NOPSEMA is able to provide outside of the formal assessment process.

We consider that there may be further opportunities, including:

- Pre-submission for alignment with NOPSEMA on key issues associated with an activity, and/or the development of decision criteria to enable increased transparency in the decisions made by assessment officers as to the topic and greater certainty in the required level of detail in the assessment
- To develop decision criteria that supports and enables consistent decisions between assessment officers as to the topic and level of detail in the assessment and provide more certainty for industry.

These opportunities are incorporated within **recommendation 3** (refer to **Section 6.1.4**).

Implementing these opportunities may provide more focused assessment on significant issues and reduce uncertainty and rates of EPs requiring resubmission.

Further to this, there may be identified topics of the assessment that are consistently lower risk or level of impact, which could be considered for processes to standardise. NOPSEMA reported to us that there is no single authoritative source of agreed defined

acceptable levels of environmental impacts and risks, but there are many sources that can be used to provide context and inform definitions.

NOPSEMA has also noted that it is the responsibility of titleholders to ensure that they have appropriately qualified and experienced environmental impact assessment practitioners and where necessary, technical specialists, in the same way that it is NOPSEMA's responsibility to ensure the appropriate qualifications of personnel. While we agree with this in principle, it has been reported by stakeholders that even the most experienced environmental impact assessment professionals find the assessment process challenging and carrying a high degree of uncertainty as to NOPSEMA's expectations. Our view is that NOPSEMA and industry must collaborate to address these challenges, which is also reflected in **recommendation 3** (refer to **Section 6.1.4**).

NOPSEMA noted in the review that their assessment system affords industry an opportunity to make their case based on particular activity circumstances for why potential impacts are considered acceptable. They raised that the alternative is a very high level of prescription relating to acceptable levels of impact which presents other challenges. We consider there are some instances when prescribed criteria are established prior to the submission of an EP may result in increased certainty and consistency.

Recommendation EPBC-R-4

NOPSEMA, in consultation with DAWE, should agree acceptable levels on particular sensitive receptors, or within a significant location (such as a BIA). This could support an outcome to improve cumulative impact assessments on key species at certain locations.

This recommendation should be read in conjunction with **recommendation EPBC-R-2**.

11.4.7.3 Stakeholder perspectives regarding NOPSEMA's environment assessments

Stakeholders have concerns with the complexity of permissioning documents, prescription in NOPSEMA's approach, and level of effort in the process

Feedback from industry and other stakeholders noted NOPSEMA's requirements for increasingly complex and lengthy EPs. Stakeholders provided feedback that NOPSEMA's assessment processes are perceived to have become lengthier, more resource intensive and requiring greater coordination across permissioning documents. For example, only 21% of stakeholders we surveyed agreed that the level of effort in demonstrating acceptability with regard to environmental impacts and risks was reasonable. Specific feedback was provided on Recovery Plans including information lacking specificity and not being fit for purpose for the industry being regulated. As DAWE has responsibility for Recovery Plans, this is an area where collaboration would be required to further enable continuous improvement.

Please see **Section 6** for a detailed assessment on all permissioning documents (i.e. EPs, safety cases and well operation management plans)⁹⁵. The challenges with permissioning documents cut across all permissioning documents, not just EPs, and must be addressed in a collaborative manner by NOPSEMA and industry.

11.4.7.4 Looking forward: opportunities for improvement

The National Conservation Values Atlas is a valuable resource in environmental assessments and consistency with other databases and Recovery Plans should be an area of focus

NOPSEMA refers titleholders to the NCVA, which is an interactive web-based tool designed to support implementation of the Marine Bioregional Plans⁹⁶. The NCVA incorporates national data on the marine environment as well as specific information on the locations of important marine habitats, ecological features, known breeding and feeding areas for protected species and other conservation values in the marine regions. This is one source of publicly available information that NOPSEMA advises industry to use as part of the EP preparation where it is relevant for a proposed activity.

The NCVA is described as presenting '*an interactive information base for all of Australia's marine regions. It is a source of data for people who wish to undertake new ocean-based developments as well as providing information for anyone who has a responsibility or interest in conserving marine habitats and species*'⁹⁷. We understand from DAWE that the NCVA was not intended to be used for environmental impact assessments, however it is currently the only spatial tool that shows the BIAs so that proponents can locate the BIA in reference to their proposed activities.

⁹⁵ This section contains our assessment of all of NOPSEMA's permissioning documents, including additional detail on stakeholder perceptions.

⁹⁶ DAWE. See: <https://www.environment.gov.au/topics/marine/marine-bioregional-plans/conservation-values-atlas>

⁹⁷ Ibid.

In the absence of another national database with this coverage and data, this is an important resource for NOPSEMA and proponents (e.g. please refer to the Pygmy blue whale example indicated previously (ref. CS006)).

BIAs were first identified using expert scientific knowledge about a species' distribution, abundance and behaviour, and how that relates to the marine environments' importance at particular stages of that species' lifecycle. As they are an important consideration in decision-making under the EPBC Act and, by extension, the OPGGS (Environment) Regulations, BIA's location and other information should be kept up to date with the latest available knowledge.

However, NOPSEMA indicated that there is some inconsistency within the NCVA and between the NCVA and other data sources held by DAWE. For example, the layers in the NCVA may not align with a threatened species Recovery Plan. While there are caveats in the NCVA application stating that it relates to BIA and not species distribution data, this can lead to confusion and complexity for titleholders and decision makers. NOPSEMA considered that the NCVA could become even more authoritative if it could also hold external, peer reviewed data. We also understand from NOPSEMA that the NCVA may not be continued in its current form due to the migration of relevant data to the "Digital Environmental Assessment Program" (DEAP).

The NCVA is an important resource, and we recommend that it is upgraded to be able to be utilised in environmental assessments, and that the information (e.g. from new threatened species plans) is updated as close to real time as possible.

Recommendation EPBC-R-5

DAWE, in consultation with NOPSEMA, should focus on ensuring Recovery Plans that are relevant to the offshore petroleum industry are unambiguous, contain contemporary information and fit for purpose. Further, DAWE, in consultation with NOPSEMA should upgrade interactive IT tools such as the NCVA (or a subsequent platform with relevant data) to be consistent with marine threatened species Recovery Plans. Information in those tools should be updated close to real time when the Recovery Plans are made or amended.

Stakeholders identified a number of risks and trends of relevance for NOPSEMA's regulation of environment matters

With a view to the future, key risks and trends identified by stakeholders in relation to the environment were:

- Climate change and increasing pressure to transition to lower carbon emissions
- Alternative offshore energy solutions
- Decommissioning impacts on the environment
- Potential risks from seismic activity.

Drivers for these risks were stated by stakeholders to be:

- A lack of agreement on ALARP and 'acceptability' criteria between stakeholder groups
- Societal expectations for a low carbon future
- Societal acceptance of petroleum activities.

Stakeholders viewed the implications of these drivers as:

- Leading to controversy, including policy gaps regarding how the industry can reduce emissions
- Potential reputational damage to industry and delays to projects.

Views from stakeholders as to how NOPSEMA could more effectively respond to risks and trends included:

- Addressing scientific research gaps or inconsistency between advice (for instance, by introducing a compulsory levy for research funding)
- Working on additional guidance for what 'ALARP' means, and communicate it more effectively with industry and other stakeholder groups
- Considering how issues with stakeholder fatigue could be addressed or how engagement could be more targeted and appropriate (e.g. relating to EPs which can be in the order of 500 pages)
- Increasing coordination in seeking stakeholder feedback (e.g. coordination between feedback on draft EPs where they geographically overlap)

- Considering the role of regulators in a low carbon future. Some stakeholders thought NOPSEMA should take a policy position on controversial issues, which as we note through our report, is not a role of the regulator
- Continuing to improve transparency and consider issues from the perspective of adjacent industries (e.g. other users of the marine estate, such as fisheries).

12 Strategic matters: Looking to the future industry

Key points

NOPSEMA's ability to manage decommissioning must meet the needs of the maturing industry

NOPSEMA will need to ensure capability and capacity is in place to meet the 'demand' of the industry in relation to decommissioning. A reliable forecast of decommissioning activity should be relied on for management planning. For existing financial capacity assurance, NOPSEMA will need to take a staged approach to this program of work. This should be risk-based and consider titleholder financial capacity across the full portfolio of a titleholder's assets.

Exploration of a unified model could be given but governance challenges in managing these purviews must be addressed

To manage an increasingly complex and maturing industry, greater collaboration and coordination across the regulatory system is required – as we discuss in relation to the concept of a 'One Government' approach in **Section 9**. A natural question is whether the current offshore model (i.e. NOPTA and NOPSEMA as separate entities) remains fit-for-purpose to deliver a cohesive approach to regulation and administration. We have not taken a position on the answer to this question – as it is beyond the scope of our review and requires further analysis – but there is merit in the concept being explored further.

NOPTA and NOPSEMA were established as separate entities to avoid actual or perceived conflicts of interest and to ensure there is a distinct separation between the administration and assessment of titles applications (NOPTA), the decision makers (the Joint Authorities), and the regulatory objectives for safety, well integrity and the environment (NOPSEMA). Among other matters, a unified model would need to determine how the independence of regulatory functions from titles administration functions would be maintained.

The energy transition from non-renewable to renewable sources of energy production will have implications for NOPSEMA if it takes on a role in this space

NOPSEMA may assume the role of offshore renewables safety and environment regulation but this is subject to formal agreement by the Government.

While the addition of offshore renewables to NOPSEMA's remit is a logical decision, it does present NOPSEMA with several management challenges, including the ability to manage competing and highly complex industries, different sets of technologies, and new and unfamiliar risks.

Should its remit be expanded, NOPSEMA will need to ensure it appropriately plans to build capabilities, utilising its relationships with regulators internationally (who oversee emergent renewables markets) for identification of lessons learned.

NOPSEMA should be given greater access to lead indicator data and make use of advanced technologies where it makes sense

NOPSEMA is limited in the data and lead indicators it receives, with the majority of data and metrics provided to NOPSEMA by industry relating to lag indicators of performance (e.g. accidents, injuries, or near misses).

The provision of lead indicators to be an essential aspect to effective regulation, particularly as the industry matures and becomes increasingly complex.

The application of advanced technologies (such as advanced analytics or remote operating vehicles) could be used to supplement (but not replace) existing inspections.

NOPSEMA is encouraged to apply an innovative mindset, even when it may not be possible or prudent to be at the 'leading edge' due to the high-risk nature of the activities NOPSEMA regulates.

Recommendations: [23](#), [24](#), [25](#), [26](#)

Opportunities: [21](#)

In this section we look to the future and seek to answer the question of how the facets of Australia’s offshore legislative framework might best position themselves to respond to the key risks and trends we have observed. We draw on our experience, industry knowledge, and findings and observations made across the review to inform these views.

We begin with a discussion on NOPSEMA’s oversight over a changing industry – specifically how it relates to decommissioning (**subsection 12.1**). We then discuss NOPSEMA’s hypothetical role as the offshore renewables regulator and the challenges this might bring (**subsection 12.2**). Next, we discuss whether there is merit considering the bringing together of the administrative and regulatory arms of the offshore legislative framework through the incorporation of NOPTA’s functions within NOPSEMA (**subsection 12.3**). Finally, we conclude with a look ahead to the ‘future of regulation’ and what opportunities there might be to apply newer technologies to assist in regulatory activities (**subsection 12.4**).

12.1 Overseeing a changing industry

NOPSEMA’s ability to manage decommissioning must meet the needs of the maturing industry

The 2015 Operational Review recommended that “NOPSEMA should prepare for increased decommissioning activity in the future by working with the Department of Industry and Science (now DISER), industry stakeholders and relevant parties to develop guidance notes on decommissioning.” We consider that progress has been made on this recommendation, but that renewed focus will be required to ensure capabilities across people, process, and technology support NOPSEMA in regulating the risks arising from future decommissioning activities.

At the time of writing this report, the draft policy framework for offshore decommissioning has not been released by DISER for consultation. The draft decommissioning framework will outline proposals for how decommissioning risks will be managed within the offshore legislative framework.

NOPSEMA, under its current powers and responsibilities within the OPGGS Act, will at minimum undertake ‘financial assurance’ over a titleholder’s financial capacity to fund an asset’s whole-of-life costs (including decommissioning activities). Where a titleholder is identified to have insufficient financial capacity, they would not be able to proceed with their proposed activities and, for existing assets, the asset(s) in question may have their permissioning document acceptance withdrawn by NOPSEMA.

To meet the needs of an evolving industry and apply the powers noted above, NOPSEMA will need to ensure it:

- Identifies a reliable source for forecasting decommissioning activities to enable it to anticipate regulatory capacity requirements and make management plans accordingly. While it is widely known that decommissioning activities will increase in future, it will be important for NOPSEMA to ascertain as best it can when significant decommissioning milestones might take place
- Works closely with titleholders in the lead up to these decommissioning milestones
- Considers the cumulative impact of decommissioning costs for a titleholder’s full portfolio of assets and the financial capacity of the titleholder to meet these commitments. That is, decommissioning costs should be considered in aggregate for a titleholder
- Allows for a suitable lag time for sourcing talent and building other organisational capabilities required, given that expertise for decommissioning is likely to be scarce and therefore challenging to source. NOPSEMA will need to have capabilities in place before decommissioning milestones occur
- Proactively ascertains titleholder financial capacity for existing assets in regard to decommissioning by applying a risk-based approach. NOPSEMA will be required to assess financial capacity of existing titleholder assets and so will need some degree of capability built in this area now. NOPSEMA’s operational bandwidth will require a staged approach to examining all existing titleholder’s financial capacity and the allocation of this work program should be risk-based (e.g. NOPSEMA could establish a set of criteria to ‘triage’)
- Coordinates and collaborates with NOPTA on opportunities to build shared capabilities to support the above, minimising duplication of effort and capability.

Given we make recommendations earlier regarding the building of capability in this area, our recommendation offered here relates to the planning for and execution of a work program.

Recommendation #23

NOPSEMA should develop a staged and risk-based work program for assessing existing titleholder financial capacity, applying a portfolio lens to these assessments.

It is also conceivable that NOPSEMA's relationship with industry will also undergo a shift with the more extensive application of their financial assurance powers. There may also be a role for NOPSEMA in helping administer other mechanisms (should they be proposed under the draft decommissioning framework), such as a 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.

12.2 Transition to a lower carbon energy future

The transition from non-renewable to renewable sources of energy production will have implications for NOPSEMA if it takes on a role in this space

NOPSEMA may assume the regulation of offshore renewables safety and environment, although this has yet to be decided by Government. Regulation of offshore renewables would be in addition to its current remit covering offshore petroleum and GHG storage regulation. The following discussion is based on the premise that NOPSEMA does inherit this function.

There is rationale for NOPSEMA assuming this role given its existing capabilities and investments made to support the offshore petroleum and GHG regulation, established processes and relationships with industry, and the benefits of a unified, nationally consistent regulatory framework spanning fossil fuels, GHG storage, and renewables.

While there is inherent logic in the addition of offshore renewables to NOPSEMA's remit, it would present NOPSEMA with several management challenges:

- **A dual focus with different needs.** NOPSEMA would be overseeing a set of industries each in distinct stages of their respective lifecycles. That is, offshore petroleum is an industry that will likely decline over the long-term but with increasing complexity (and therefore requirements for oversight) over the medium-term. Conversely, GHG storage and offshore renewables are burgeoning industries that will require careful cultivation in order to flourish. These industries, from a regulatory and policy standpoint, have different needs and the building of confidence, certainty and stability for investment is important
- **Competing industries.** Some, but not all, stakeholders may see renewables and petroleum industries as being in competition with one another. Stakeholders will likely be looking carefully for signs for perceived preferential treatment of one group over another. If anything, this will place even greater need on NOPSEMA for being transparent and consistent in its approach
- **Financial sustainability.** NOPSEMA's financial sustainability may be challenged as revenue streams from assessment fees decrease (in response to reduced exploration activity volumes and fewer greenfield developments) whilst the complexity of the regulatory environment will likely increase. In addition, there may be a risk that the requirement to invest in building capabilities to support the offshore renewables industry will likely occur ahead of the revenue streams from renewables fees and levies
- **An unfamiliar industry.** The need to build capabilities and manage risks (including OHS and environment related risks and supply chain risks) for an industry where Australia has relatively little experience – the ability to attract and retain the right and scarce talent will be a key challenge. In addition, the renewables industry itself is complex and could include a variety of technologies and solutions, each at different stages of development and maturity.

Going forward, if NOPSEMA assumes the functions of the offshore renewables safety and environment regulator, it will need to work closely with its partners, domestic and international, to identify capability requirements to support the emerging offshore renewables industry.

Opportunity #21

If the Government formally agrees to NOPSEMA assuming the role of regulator for offshore renewables, NOPSEMA would be encouraged to:

- Give sufficient emphasis in its strategic and operational planning to supporting emerging industries within its remit, given in many instances the presence of an established regulatory framework is a clear signal to potential market entrants of 'industry readiness' for investment
- Consider how it might transparently manage perceived conflicts of interest surrounding potentially competing industries (i.e. petroleum and renewables), particularly how governance mechanisms may be structured, and stakeholder confidence built in NOPSEMA's ability to manage potential conflicts in a transparent and effective manner
- As part of its financial scenario modelling processes, forecast its financial sustainability with regards to different industry activity scenarios (e.g. an increase in transactional activity). As part of this, specifically examine the impact of different cost recovery levy and fee structures and how volatility can be managed through different structures

- Avoid duplication of existing capabilities across people, processes and systems, wherever possible when preparing to inherit a new remit. However, in doing so care must be taken to evaluate whether the existing capabilities meet the needs of emerging industries as opposed to the well-established, mature petroleum industry they have been designed for
- Undertake a capability gap assessment, looking to regulators in select advanced offshore renewables markets to identify what capabilities (e.g. people, process, supply chain, technology) might be required vis-à-vis NOPSEMA's current capability maturity in these areas. NOPSEMA should leverage its existing international relationships to inform these capability assessments.

12.3 Considerations for a unified offshore resources regulator and administrator

The optimal structure of the offshore legislative framework was raised as an open question through the review process. Specifically, we heard concerns regarding the fitness-for-purpose of the separation of administrative (NOPTA) and regulatory functions (NOPSEMA)⁹⁸ of the regime with the respect to the ability for NOPTA and NOPSEMA to effectively and efficiently meet the needs of a more mature industry.

Delineation of safety and environment regulation and titles administration considerations is a well-established precedent

There were strong arguments as to why NOPTA and NOPSEMA were established as separate entities. The primary reason being to avoid actual or perceived conflicts of interest and ensure there is a distinct separation between the administration and assessment of titles applications (NOPTA), the decision makers (the Joint Authorities), and the regulatory objectives for safety, well integrity and the environment (NOPSEMA). These arguments are in line with the Hon Lord Cullen's recommendations from the United Kingdom's 1990 *Public Inquiry into the Piper Alpha Disaster*.

We observe the general international precedent for offshore petroleum regulatory frameworks to separate administration/licencing from health, safety, and environmental regulation (e.g. as in the United Kingdom and Norway). However, there are jurisdictions which operate what might be described as a 'unified model' (e.g. the Canadian C-NLOPB).

As an administrative and advice-giving arm of the offshore legislative framework, NOPTA is not a truly an independent entity, existing as a branch of DISER. Should it be accepted that NOPTA further pursue influential and proactive activities in relation to resources management – as we recommend in the *2020 Statutory Review of the National Offshore Petroleum Titles Administrator*, there will be a need to ensure appropriate levels of independence of these functions from regulatory functions.

There are drivers for revisiting whether the two-entity model remains fit-for-purpose

Drivers for bringing together the administrative and regulatory arms of the offshore legislative framework include⁹⁹:

- Minimising the regulatory burden on industry through more efficient and connected regulatory processes – better facilitating a 'One Government' approach to administration and regulation and ensuring clearer arrangements where multiple parties are involved
- Avoidance of duplication or the risk of conflicting decision-making by administration (NOPTA) and regulation (NOPSEMA) facets of the offshore legislative framework
- A likely increase in the number of industry transactions and areas of 'regulatory' overlap between NOPTA and NOPSEMA (both in relation to decommissioning and outside of decommissioning activities)
- Minimising inconsistencies in legislative requirements and decision-making
- Economic efficiency from making better use of scarce skillsets and specialist expertise and an opportunity to better share capabilities and learnings between regulators, including, for example, leveraging data and systems capabilities
- Greater coordination with regards to GHG storage and petroleum activities.

There are a number of options to consider when examining how greater collaboration and coordination might be achieved. Example options to consider include:

- **Option 1: Improved operational interaction.** Under this option, NOPTA and NOPSEMA would remain separate entities but with more formalised mechanisms for increasing the proximity and interaction of staff and processes. This most closely resembles the current state and the current legislative requirement that the entities cooperate. This ensures a seamless regime and is aimed at minimising 'silos'.

⁹⁸ Although we discuss NOPTA as an 'entity' here, it is important to reinforce that NOPTA exists as a branch of DISER.

⁹⁹ Productivity Commission Review.

- **Option 2: Applying a partnership approach.** Under this option, NOPTA and NOPSEMA would remain separate entities but have integrated project governance processes¹⁰⁰ on key issues, such as decommissioning. In practice this could result in the formation of cross-organisational teams tasked with addressing and coordinating on particular issues
- **Option 3: Establishment of a single independent offshore resources model.** Under this option, NOPTA would be moved from DISER and formally integrated into NOPSEMA, thus forming a single independent entity with the remit for the administration and regulation of offshore petroleum and GHG storage matters.

The question is whether the degree of coordination, cooperation, and collaboration required to support the next phase of Australia's offshore industry can be achieved through the current model (Options 1 and 2), particularly in light of as-yet unaddressed challenges in the effective and efficient sharing of information and data, as discussed in **Section 9**. It is noted that the establishment of a unified offshore regulatory model (Option 3) would align to the 2009 Productivity Commission Review, which recommended the establishment of a single national regulator for the offshore oil and gas industry in Commonwealth waters.

In developing our report, we have not taken a position on the question of whether a unified offshore resources model should be established – it requires analysis outside the scope of the current report. However, there is merit in the concept of NOPTA being moved into NOPSEMA being explored further. We also note that the balance of our recommendations have been made on the assumption that the status quo model remains in place.

For a unified model to be successful, at minimum, the following considerations or questions need to be satisfactorily addressed:

- **Independence and governance.** A unified model would need to determine how independence of safety, well integrity, and environmental regulatory functions from administrative functions would be maintained. A governance model in this context would need to maintain separation of these duties (e.g. through mechanisms such as 'ring-fencing' and appropriate internal controls)
- **Coordination and collaboration with the policy arm.** As we have outlined above, the ability for the administrative and policy arms of the offshore legislative framework to collaborate and coordinate effectively will remain essential. A unified model must consider how these outcomes will be achieved
- **Dual focus.** Assurance must be gained that a unified model is able to give sufficient focus to both NOPTA's and NOPSEMA's respective functions – that is, the fulfilment of the regulatory role, does not detract from the fulfilment of the administrative role and vice versa
- **Degree of actual conflicts of interest present.** Consideration should be given to the degree of actual conflict of interest present between NOPTA's objectives and NOPSEMA's safety and environmental objectives. Consideration needs to be given as to whether, should NOPTA take a more proactive and influential role in industry (with greater decision-making powers as we recommend), this would exacerbate any actual or perceived conflicts of interest if a unified model were established
- **Stakeholder perceptions.** Community and industry confidence in the offshore legislative framework is paramount for retaining a 'social licence to regulate'. A unified model would need to be able to transparently demonstrate independence of mind and appearance of its functions and not detract from stakeholder confidence
- **Joint Authority decision-making.** Understanding the role and functions of the Joint Authorities under such an arrangement to ensure oversight and policy input by ministerial decision-makers as appropriate
- **Impact assessment for policy, legislation, regulations, and operating documents.** Consideration would need to be given to the degree of change (if any) to the existing legislative and regulatory framework to establish a unified model. The costs and timescale to effect this change would also need to be examined
- **Reducing regulatory burden: areas of synergy and cost efficiencies.** An evaluation of the actual areas of capability overlap (either in people, processes, or technology) to determine cost saving efficiencies (if present)
- **Strategic benefits.** Consider if there are other strategic benefits from a unified model, such as greater coordination and collaboration helping enable a 'One Government' approach to offshore resource regulation or benefits in making shared use of scarce technical capabilities or sharing of data to inform regulatory activities.

Recommendation #24

The Government should, in consultation with other stakeholders as appropriate, consider if there should be a single offshore resources regulator covering:

- Offshore petroleum, GHG storage and titles administration

¹⁰⁰ For the avoidance of doubt, this is not referring to the sharing of organisational governance models.

- Regulation of safety and environmental matters for offshore petroleum and GHG storage.

In undertaking this recommendation, there should be regard for:

- The relative merits of alternative options, such as retaining the current model
- Governance models for such an entity, with reference to how governance structures can ensure the appropriate involvement of the Joint Authorities, maintenance of regulatory independence by NOPSEMA, and independence between titles administration activities and safety and environmental management regulation.

12.4 Future of regulation

Having an organisational culture that exhibits innovation and processes to support continuous improvement are key ingredients for finding efficiency improvements and reducing regulatory burden.

12.4.1 NOPSEMA initiatives

NOPSEMA has delivered or are delivering a number of initiatives which are expected to have operational improvement benefits. For instance, NOPSEMA: is moving key systems to the cloud to reduce long-term ICT costs and improve NOPSEMA's digital capabilities; has implemented the procure-to-pay module in TechnologyOne (NOPSEMA's finance management system) and implementation of the enterprise budgeting model (underway), and; implemented 'stretch cost reduction targets' of 3.5% during 2019-20.

Stakeholder perceptions of NOPSEMA's innovation, seeking of feedback, and use of leading practice were mixed

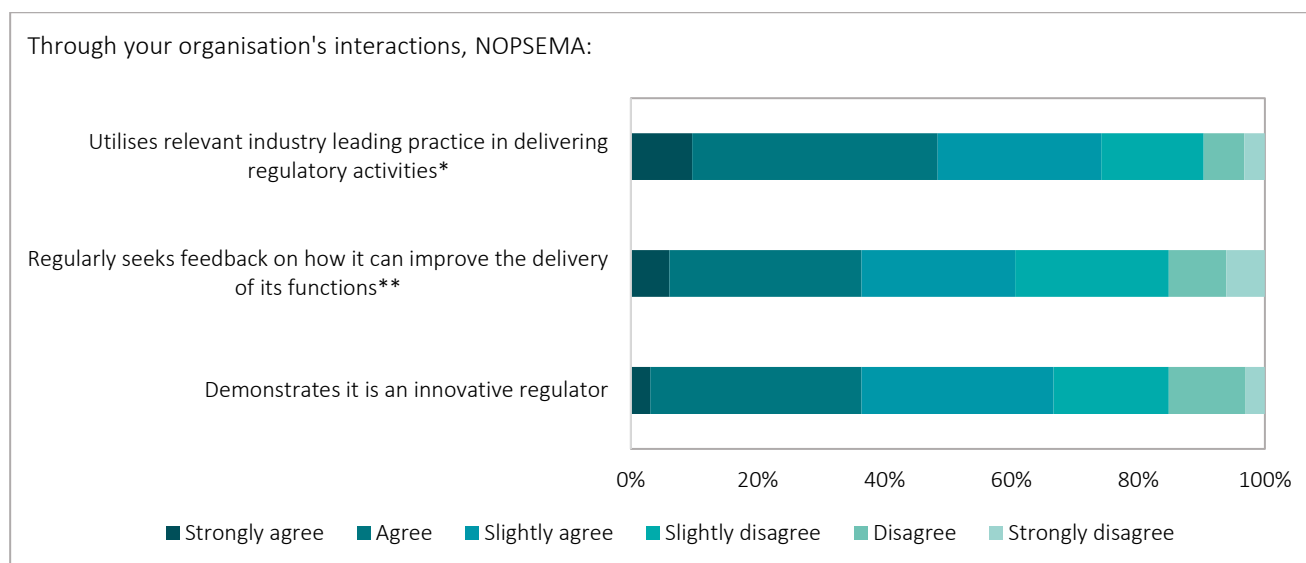
International regulators have positive perceptions of NOPSEMA's innovation and approach to continuous improvement. For example, international peers noted, based on their interactions with NOPSEMA through forums such as the IRF, NOPSEMA appears to apply leading practice, with several noting that NOPSEMA were their 'first port of call' if seeking advice on issues within their jurisdiction.

In contrast, stakeholders domestically had less favourable perspectives. Referring to **Figure 12.1**:

- Only 36% of stakeholders surveyed 'strongly agreed' or 'agreed' that NOPSEMA demonstrates it is an innovative regulator and regularly seeks feedback on how it can improve the delivery of its functions
- Similarly, only 48% of stakeholders surveyed 'strongly agreed' or 'agreed' that NOPSEMA utilises relevant industry leading practice in delivering regulatory activities.

The overall sentiment was that NOPSEMA take a conservative approach to innovation and continuous improvement.

Figure 12.1: Survey responses to NOPSEMA's innovation and continuous improvement



*NOTE: leading practice could refer to utilising a new technology, technique, process, practice, or other innovation

**NOTE: feedback could be through a survey, meeting, or other form of interaction

Source: Deloitte Stakeholder Survey, Deloitte analysis

NOPSEMA should not be expected to be at the ‘leading edge’ of innovation given the scope of NOPSEMA’s regulatory remit and the potential risks of utilising unproven methods – it could be a close follower. We encourage NOPSEMA look to advances in regulatory practices in adjacent industries (such as logistics) and to other jurisdiction for identifying potential efficiency and effectiveness improvements. For example, a number of regulators globally are making use of technologies like augmented reality and drones to carry out remote inspections. While these should not be a substitute for in-person inspections, they could be used to supplement an inspection program.

12.4.2 Future opportunities

The future of NOPSEMA’s regulatory activities should be underpinned by access to and use of data to drive decisions and technologies enabling remote inspections

Technological advancements are resulting in change for the regulatory environment and are posing significant challenges for regulators who strive to maintain a balance between achieving regulatory objectives, fostering innovation, and addressing the potential unintended consequences of disruption. A key focus of NOPSEMA should be on identifying opportunities to more effectively and efficiently deliver its functions through more powerful digital capabilities.

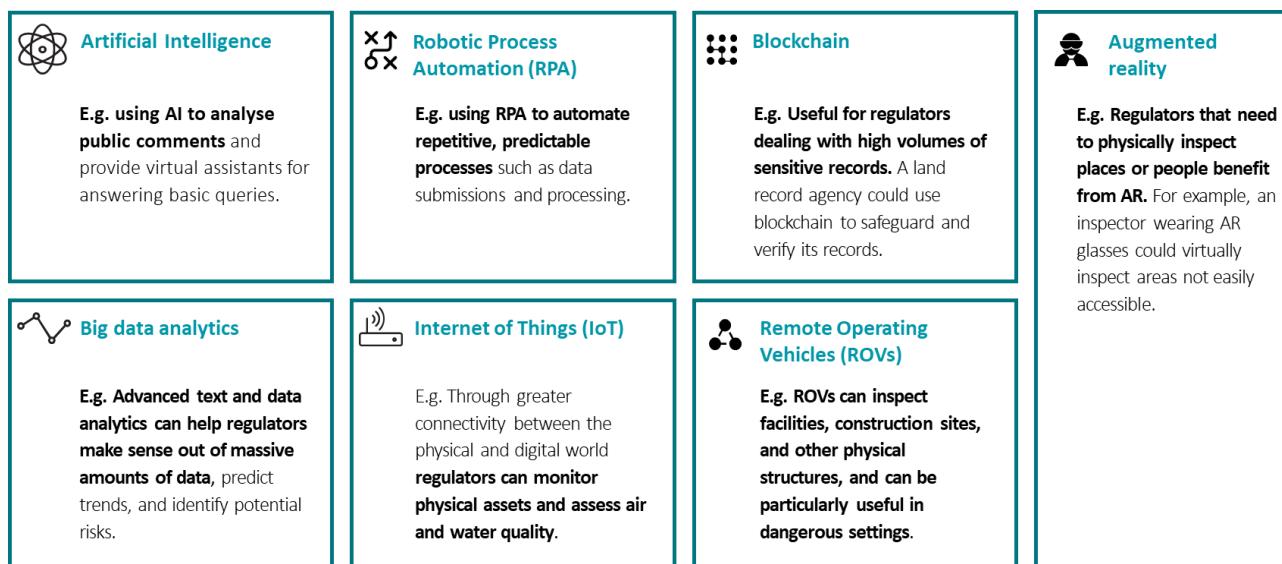
There are three areas where technological advancements could be applied:

- Reducing regulatory burden, particularly in the area of regulatory compliance
- Increasing internal efficiency to improve regulatory throughput and decision-making speed
- Improving regulatory effectiveness through data-driven decision-making and technology-enabled regulatory activity delivery.

Example technologies being applied by regulators globally are shown in **Figure 12.2**. We have outlined several case studies of successful applications of these technologies by regulators globally below¹⁰¹:

- **Remote Operating Vehicles (ROVs).** ROVs can be steered from a remote location and controlled with built-in navigation systems that maintain location, altitude, and direction. ROVs can be used to inspect decommissioned facilities (where it may be difficult or hazardous for in-person inspections)
- **AI.** A New Zealand government unit has pioneered “legislation by code” by taking the “rules” or components of legislation – its logic, requirements, and exemptions – and rewriting them as software code. When legislation changes, a machine can automatically understand the changes, with no need for a human expert or lawyer to complete the job.

Figure 12.2: Example technologies being applied by regulators globally



Source: Deloitte Regulator’s New Toolkit

¹⁰¹ Deloitte, Regulator’s New Toolkit.

Recommendation #25

NOPSEMA, in collaboration with other stakeholders as required, should identify areas where advanced technologies could be applied, particularly for augmenting in-person inspection processes or permissioning document assessments.

In considering this recommendation, NOPSEMA may wish to identify and prioritise specific use cases that present an optimal value-ease of implementation trade-off. An example use case could be unmanned aerial vehicles (**UAVs**) – Supporting the inspection of decommissioned facilities or elements of facilities unable to be inspected in person.

12.4.3 Provision of data and lead indicators to NOPSEMA

Predictive analytics and the monitoring of lead indicators should inform NOPSEMA's approach to regulation – enabling a greater focus on emergent risks. We discuss in **Section 6** the need for NOPSEMA to apply a greater risk-based approach to regulation.

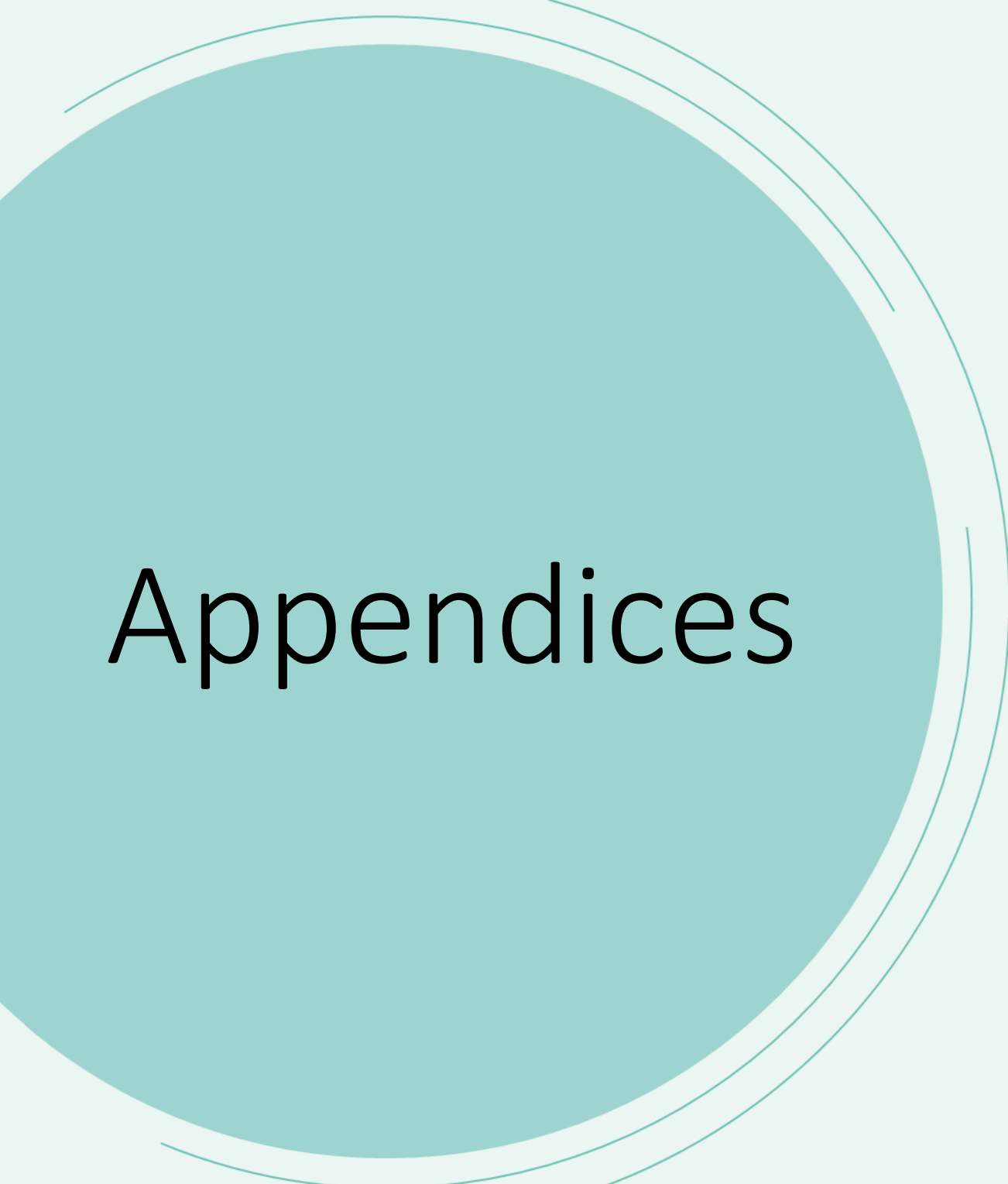
However, currently, NOPSEMA is limited in the data and lead indicators it receives, with the majority of data and metrics provided to NOPSEMA by industry relating to lag indicators of performance (e.g. accidents, injuries, or near misses). We understand from NOPSEMA there was an initiative early in the review period with industry to address barriers to providing lead indicators of process safety, but that progress was limited. We consider the provision of lead indicators to be an essential aspect to effective regulation, particularly as the industry matures and becomes increasingly complex.

There are barriers to address in the consistency of the various data standards and metric definitions across a high fragmented industry. Nevertheless, we see considerable risk in a 'do nothing' scenario (and conversely, great benefit in the provision of further data to NOPSEMA by industry). The addressing of barriers may be assisted, in part, by looking to other jurisdictions where global operators provide such metrics and data to the equivalent regulator.

Recommendation #26

NOPSEMA (with the support of DISER as required) in consultation with industry, should explore mechanisms to enable NOPSEMA to gather relevant data from duty holders on safety, well integrity, and environment related matters outside of current incident or accident reporting parameters to inform trends and predictive analytics. Mechanisms in this context may include any necessary legislative and/or regulatory change to section 699 of the OPGGS Act or other sections as applicable.

In implementing this recommendation consideration should be given, among other matters, to consistent definitions and data standards and the provision of a consistent set of key lead indicators of performance (e.g. process safety) for the above domains. In delivering this recommendation, NOPSEMA and DISER may wish to examine reporting frameworks in other jurisdictions. Consideration may also be given to extending this recommendation to cover renewables in time, if deemed appropriate.

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Appendices

Appendix A: Terms of Reference

1. In accordance with section 695(1) of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the **Act**), the 2020 review of operations of NOPSEMA must include an assessment of the effectiveness of NOPSEMA in bringing about improvements in:
 - The occupational health and safety of persons engaged in offshore petroleum operations or offshore greenhouse gas storage operations
 - The structural integrity of facilities, wells, and well-related equipment
 - Offshore petroleum environmental management
 - Offshore greenhouse gas storage environmental management.

In the context of the Act and regulations, including the legislated functions of NOPSEMA, this review will consider, assess and provide recommendations in relation to:

2. NOPSEMA's progress in achieving the objective of the Endorsed Program Report under the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**) of ensuring all offshore petroleum and greenhouse gas storage activities are carried out in a manner consistent with the Object of the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009*.
3. Review the actions of both parties required under the 2017 Program Administrative Arrangements and provide advice on if all commitments are being met.
4. The effectiveness of NOPSEMA's compliance, monitoring, and enforcement activities. This should consider:
 - The process for reporting related matters to the Responsible Commonwealth Minister (where relevant), and the Joint Authorities (where relevant)
 - The appropriateness and effectiveness of NOPSEMA's internal arrangements concerning compliance.
5. The effectiveness of NOPSEMA in co-operating with NOPTA, as well as other Commonwealth, state and Northern Territory agencies on matters related to the administration and enforcement of the Act and its associated regulations.
6. The effectiveness of the Australian Government's accepted and implemented recommendations from the 2015 review of NOPSEMA's operations.
7. The role of the NOPSEMA Board and its efficiency and effectiveness in performing its functions, as outlined in section 654 of the Act, to contribute to the performance of NOPSEMA in carrying out its functions.
 - This should consider the recent ANAO recommendations on improving the effectiveness of government boards.
8. The effectiveness, management, and performance of NOPSEMA in:
 - Making information publicly available to meet community expectations and the ease of use and access to the information
 - Contributing to and maintaining community confidence that appropriate regulatory oversight is in place through transparent assessment and enforcement activities
 - Providing timely information and advice to the Minister in responding to community concerns and other matters as they arise.
9. NOPSEMA's engagement and relationships with external parties, including federal, State and Territory government bodies, industry, other stakeholders and the NOPSEMA Board, to improve regulatory outcomes in an objectives-based regulatory environment. This should also consider the level of international engagement by NOPSEMA.
10. The current cost recovery arrangements, commensurate with the functions of NOPSEMA and size of the industry.
11. An assessment of the capacity and capability of NOPSEMA, including current staffing arrangements and its structure, commensurate with its functions, to respond to varying levels of industry activity and to new technologies and other emerging issues.
12. Identify potential opportunities where NOPSEMA can reduce operating costs and streamline corporate functions, to reduce the financial and regulatory burden on industry.

Appendix B: NOPSEMA personnel interviewed

#	Role*
1.	A/g Lead OHS Regulatory Specialist, Assessment and Inspection, Platforms, Pipelines and Diving
2.	A/g Well Integrity Specialist (Lead)
3.	A/Manager Environmental Effects**
4.	Assistant Manager, Specialist – Legislative and Regulatory Affairs, Legislative Change, Communications & Stakeholder Relations Team**
5.	Chief Environmental Scientist - Environmental Effects Manager**
6.	Chief Executive Officer**
7.	Chief Financial Officer
8.	Communications and Stakeholder Relations Manager**
9.	Environment Officer, Assessment and Inspection, Drilling and Developments**
10.	Environment Specialist, Spill Risk
11.	Environmental Specialist, Environmental Effects**
12.	Head of Division – Environment**
13.	Head of Division – Regulatory Support**
14.	Head of Division – Safety & Integrity
15.	Human Resources Manager
16.	Manager, Assessment and Inspection (Drilling and Developments)
17.	Manager, Assessment and Inspection (Platforms, Pipelines and Diving Team)
18.	Manager, Assessment and Inspection (Vessel Facility Team)
19.	Manager, Regulatory Reform
20.	Environment Manager – Spill Risk**
21.	Manager, Well Integrity
22.	NOPSEMA Advisory Board
23.	Regulatory Specialist, Investigations
24.	Senior Legal Counsel
25.	Strategic Compliance Manager, Risk, Planning and Improvement
26.	Well Integrity Specialist

*For several of the NOPSEMA personnel interviewed, multiple interviews were held across various terms of reference areas.

** Denotes NOPSEMA personnel interviewed as part of the 2020 Endorsed Program Assessment.

Appendix C: External parties consulted

Organisation	Survey	Interview	Workshop
Austral Fisheries			✓
Australian Council of Trade Unions		✓	✓
Australian Manufacturing Workers Union	✓		
Australian Marine Oil Spill Centre			✓
Australian Maritime Safety Authority		✓	✓
Australian Petroleum Production and Exploration Association	✓	✓	✓
Australian Workers' Union	✓		✓
Aventus Consulting	✓		
Bhagwan Marine	✓		
BHP Petroleum	✓		
Bight Petroleum	✓		
BP Australia	✓		
Chevron Australia	✓	✓	✓
CO2CRC	✓		
Cooper Energy	✓		
Department of Agriculture, Water and the Environment	✓	✓	
Department of Industry, Science, Energy and Resources	✓	✓	
Department of Mines, Industry Regulation and Safety (Western Australia)		✓	
Electrical Trades Union of Australia	✓	✓	
Equinor Australia			✓
Esso Australia (ExxonMobil)		✓	✓
FAR Ltd	✓		
INPEX Australia		✓	
International Regulators Forum		✓	
Jadestone Energy	✓		
Klarite	✓		
KUFPEC Australia	✓		
Labrador Petro-Management Pty	✓		
Lloyds Register			✓
Maritime Union of Australia	✓	✓	✓
McDermott Australia	✓		✓
Mitsui E&P Australia	✓		
MODEC Management Services	✓		✓
Molyneux Advisors	✓		

Organisation	Survey	Interview	Workshop
Monadelphous		✓	✓
National Energy Resources Australia	✓		✓
National Offshore Petroleum Titles Administrator (DISER)	✓	✓	
Northern Territory Seafood Council			✓
Offshore Petroleum Regulator for Environment and Decommissioning		✓	
PTTEP Australia	✓		
RPS Group	✓		
S2 Services	✓		
Safer Together	✓		
Santos Limited		✓	
Sapura Energy – OMV	✓		
Seafood Industry Victoria	✓		
South East Trawl Fishing Industry Association	✓		
Subsea 7 Australia	✓		
Technip Oceania	✓		
The CarbonNet Project, Victorian Department of Jobs, Precincts & Regions	✓		
The Wilderness Society	✓	✓	✓
Upstream Production Solutions	✓		
Victorian Rock Lobster Association	✓		
Western Australian Fishing Industry Council		✓	✓
Woodside Energy	✓	✓	✓
Xodus Group	✓		✓

* Organisations ordered alphabetically. Note some organisation include multiple participants.

** Responses include partially completed surveys. The representation of stakeholders consulted by category excludes all 'NA' responses

*** Some stakeholders were unable to stay for the full workshop. We have included all stakeholders who attended the workshop in full or in part.

Appendix D: Key NOPSEMA documentation examined

#	Document
1.	NOPSEMA Corporate Plan 2020-2025
2.	NOPSEMA Safety Case Assessment Policy and Procedure
3.	NOPSEMA Well Operations Management Plan Procedure
4.	Various NOPSEMA Policies across Assessment, Enforcement, Inspection and Investigation domains
5.	NOPSEMA Information and Complaint Handling Procedure
6.	NOPSEMA Investigation Level Determination Tool
7.	NOPSEMA Level 2, 3 and 4 Investigation Procedures and Investigation Element Checklist
8.	Commonwealth Minister Statement of Expectations 2019
9.	NOPSEMA Communications Strategy 2019-2020
10.	Selection of NOPSEMA National Quarterly Performance Report Q3 and Q4, 2019
11.	Worksheet - Environment levy calculation model and Fee for service calculation model
12.	Financial Information Summary FY15 – FY20 incl. Budget FY21
13.	Cost recovery implementation statement 2018-19
14.	NOPSEMA Organisational Chart – Internal
15.	OHS Regulatory Specialist – Assessment and Inspection position description
16.	Regulatory Assistant – Well Integrity
17.	Statement – Workforce Analysis
18.	Performance Management (Employee Performance Management Standard Operating Procedure)
19.	NOPSEMA Competency Framework
20.	NOPSEMA 2019 APS Census data
21.	Strategic Human Resources Plan 2018 - 2022
22.	Statement – 2019 APS Census – Action Plan
23.	NOPSEMA Workforce Planning output
24.	Managing Underperformance Policy and Procedure
25.	Resolving Workplace Issues
26.	Promoting Respect in the Workplace
27.	NOPSEMA Code of Conduct
28.	NOPSEMA Recruitment, Selection and Engagement Policy and Procedure
29.	NOPSEMA Remuneration Policy
30.	NOPSEMA Environment Specialist Capability Matrix
31.	NOPSEMA Register – Safety & Integrity Division - Cumulative Regulatory Competencies 2020
32.	Offshore Project Proposal Content Requirements Guidance Note N-04790-GN1663*

#	Document
33.	MOU between AMSA and NOPSEMA*
34.	National Plan for Maritime Environmental Emergencies*
35.	Operating protocols for offshore petroleum Joint Authorities and supporting institutions (2011 - updated 2015)*
36.	2015 Endorsed Program (https://www.environment.gov.au/system/files/pages/06872cd4-b755-4ecf-a4e7-dd16145e1384/files/offshore-program-report.pdf)*
37.	EPBC Streamlining review report – August 2015 prepared by ERM (https://www.nopsema.gov.au/assets/Corporate/EPBC-Streamlining-review-report-August-2015.pdf)*
38.	2017 Administrative Arrangements between NOPSEMA and DAWE*
39.	Environment Plan Content Requirements N04750-GN1344 and Decision-Making Guideline*
40.	Seismic Survey information paper (acoustic impact assessments)*
41.	NOPSEMA's environment inspection policy*
42.	Work Orders in relation to regulatory advice on assessments under Part 9 of EPBC Act*
43.	Australian Marine Parks guidance note*
44.	Guidance note on Principles of Ecologically Sustainable Development*
45.	NOPSEMA Advisory Board Meetings 31 – 34 - Quarterly Operational Report
46.	NOPSEMA Case Studies 2020
47.	NOPSEMA Procedure - Managing Stakeholder Complaints and Feedback
48.	NOPSEMA File Note – Safety & Integrity Division Stakeholder Engagement
49.	NOPSEMA Stakeholder Register - Liaison Meetings - current (<i>consolidated from 2011</i>)
50.	NOPSEMA Annual Report 2014-15 to 2019-20
51.	NOPSEMA Cost Effectiveness Report 2014-15 to 2018-19
52.	FTE and Expense Analysis and Payroll Time and Motion Study
53.	NOPSEMA Information, Communications and Technology Strategy 2019 - 2022

Note: This should not be considered an exhaustive list of materials reviewed. There are other materials considered and referenced throughout the report as appropriate. We also considered a range of publicly available information on the NOPTA, NOPSEMA, and DISER websites where relevant.

* Denotes NOPSEMA personnel interviewed as part of the 2020 Endorsed Program Assessment.

Appendix E: Status of NOPSEMA's 2015 statutory review recommendations

As part of the assessment, we have assessed the current status taken by NOPSEMA and DISER to address recommendations identified in the 2015 operational review conducted by Noetic. In summary, NOPSEMA and DISER have largely addressed the recommendations, with some actions still pending.

#	2015 recommendation	Australian Government response	Current status
1	NOPSEMA should emphasise in its published documents the role it undertakes in the prevention of major accident events.	<p>Accepted</p> <p>The major accident events that have shaped the Australian offshore petroleum regulatory regime, including Piper Alpha, the Montara oil spill and the Macondo blowout have all contributed to a regulatory focus on preventing major accident events. The role of the regulator in driving process safety improvements in the offshore petroleum sector cannot be under-estimated. Major accident event prevention has been emphasised in recent NOPSEMA publications, as recognised and supported by the Operational Review panel. The Government supports this trend.</p> <p>Implementation of this recommendation is the responsibility of the Chief Executive Officer of NOPSEMA.</p>	<p>NOPSEMA status:</p> <p>Complete.</p> <p>Deloitte comments:</p> <p>No issues noted.</p>
2	NOPSEMA should further analyse and publish trends based on data gathered on process safety to encourage greater emphasis on process safety, including major accident events	<p>Accepted</p> <p>Gathering data through the use of leading and lagging performance indicators (where legislation permits), and quantifying and publishing trends in process safety, provides the regulator, industry, governments and community stakeholders with an understanding of the safety performance of the offshore petroleum sector over time.</p> <p>Implementation of this recommendation is the responsibility of the Chief Executive Officer of NOPSEMA.</p>	<p>NOPSEMA status:</p> <p>In progress.</p> <p>Deloitte comments:</p> <p>No issues noted. However, we do raise the general finding that NOPSEMA currently has limited access to lead indicator data. We make an associated recommendation in Section 12.</p>
3	NOPSEMA should consider developing or using lead indicators of major accident events performance such as those being developed by the International Association of Oil and Gas Producers (IOGP).	<p>Accepted</p> <p>NOPSEMA will continue to use its membership of the International Regulators Forum to leverage internationally recognised lead indicators to ensure Australia's offshore petroleum sector can be benchmarked against international safety trends. There is an opportunity to work with the Australian Petroleum Production and Exploration Association to ensure indicators developed internationally are appropriate for the Australian offshore petroleum regulatory environment.</p> <p>Implementation of this recommendation is the responsibility of the Chief Executive Officer of NOPSEMA.</p>	<p>NOPSEMA status:</p> <p>Complete.</p> <p>Deloitte comments:</p> <p>NOPSEMA does not have sufficient data on lead indicator performance. We recommend NOPSEMA be provided the mechanism (legislative or otherwise) to gather lead indicator data.</p>

#	2015 recommendation	Australian Government response	Current status
4	NOPSEMA should continue to invest in and improve the communications capability of its staff, with an emphasis on personnel who engage directly with stakeholders.	Accepted The communications capability of regulatory personnel is a key element of the operational capability required of NOPSEMA in the complex stakeholder environment in which it operates. NOPSEMA has been investing in its communication capability to support its engagement with government, industry, community and other interest groups, while preserving the independence of its regulatory decision making. Implementation of this recommendation is the responsibility of the Chief Executive Officer of NOPSEMA.	NOPSEMA status: Complete. Deloitte comments: This should continue to be a focus of NOPSEMA. Feedback we received through our review process indicated varying levels of stakeholder engagement capability across NOPSEMA's organisational layers (although excellence of stakeholder engagement capabilities is noted at the executive level).
5	NOPSEMA should continue to identify and implement cost effective and tailored/targeted education activities that improve its capacity to engage with stakeholders in order to share lessons, provide guidance and share new information.	Accepted The Government notes that integration of the environmental regulations has highlighted a need for effective engagement with industry, the community and other stakeholders to build a shared understanding of the offshore petroleum regime. An example is the engagement program undertaken by NOPSEMA's environmental division. The environment division has undertaken a series of consultative initiatives, including hosting information sessions with industry and the community addressing NOPSEMA's current work program on environmental management consultation and transparency of decision-making processes. The review panel also noted consultative examples relating to performance standards. Implementation of this recommendation is the responsibility of the Chief Executive Officer of NOPSEMA.	NOPSEMA status: Complete. Deloitte comments: No issues noted.
6	NOPSEMA should review adequacy of guidance notes and improve communication of the assessment process to ensure industry understands the importance of nature and scale within the risk assessment process. NOPSEMA should also workshop actual examples of high risks, assessed impacts and agreed controls and mitigations to demonstrate how the process works in reality and best practices.	Accepted A shared understanding of the nature and scale of risks will ensure that environment plans are fit for purpose and that high order impacts and risks receive proportionate focus in environment plans. NOPSEMA will continue to work with industry to clarify expectations on risk assessment processes for environmental approvals to ensure that industry has sufficient ownership and recognition of the correct application. Implementation of this recommendation is the responsibility of the Chief Executive Officer of NOPSEMA.	NOPSEMA status: Complete. Deloitte comments: No issues noted.

#	2015 recommendation	Australian Government response	Current status
7	NOPSEMA should review relevant guidelines in conjunction with relevant stakeholders (e.g. APPEA) to clarify the activities which require environment plans and oil pollution emergency plans.	<p>Accepted</p> <p>NOPSEMA's guidance material provides an important resource for industry, particularly in their understanding of activities which will require interaction with the regulator, for example, the development of draft environment and oil pollution emergency plans. The Government supports NOPSEMA working with industry and other stakeholders to clarify expectations on approval processes for environmental approvals and oil pollution emergency plans.</p> <p>Implementation of this recommendation is the responsibility of the Chief Executive Officer of NOPSEMA.</p>	<p>NOPSEMA status:</p> <p>Complete.</p> <p>Deloitte comments:</p> <p>No issues noted.</p>
8	Department of Industry and Science (now the Department of Industry, Innovation and Science) should continue to review the scope of powers and authority that NOPSEMA requires for regulating activities associated with greenhouse gas storage.	<p>Accepted</p> <p>Australia is one of the first countries in the world to have a legislative framework to regulate offshore greenhouse gas injection and storage. The creation of NOPSEMA post-dated the commencement of the greenhouse gas legislative framework. The Department of Industry, Innovation and Science, as the policy agency with responsibility for the OPGGS Act and NOPSEMA will continue to work to ensure the regulatory regime for greenhouse gas operations is robust and consistent with current governance and institutional arrangements under the OPGGS Act.</p> <p>Implementation of this recommendation is the responsibility of the Department of Industry, Innovation and Science working with the Chief Executive Officer of NOPSEMA.</p>	<p>NOPSEMA/DISER status:</p> <p>Complete.</p> <p>Deloitte comments:</p> <p>No issues noted.</p>
9	The Department of Industry and Science (now the Department of Industry, Innovation and Science) should develop regulations regarding the Design Notification Scheme in collaboration with NOPSEMA and appropriate stakeholders.	<p>Accepted</p> <p>The Department of Industry, Innovation and Science is currently working with NOPSEMA to develop and implement a Design Notification Scheme appropriate for the Australian offshore petroleum sector. It is anticipated that the Design Notification Scheme will commence from 1 July 2016.</p> <p>Implementation of this recommendation is the responsibility of the Department of Industry, Innovation and Science, working with the Chief Executive Officer of NOPSEMA.</p>	<p>DISER/NOPSEMA status:</p> <p>In progress. A Design Notification Scheme had commenced but was paused in 2017 due to competing priorities. DISER's ongoing Offshore Safety Review proposes to establish the Scheme. DISER is currently working with NOPSEMA on the key elements of the proposed Scheme.</p> <p>Deloitte comments:</p> <p>No issues noted further to the above status.</p>

#	2015 recommendation	Australian Government response	Current status
10	NOPSEMA should prepare for increased decommissioning activity in the future by working with the Department of Industry and Science (now the Department of Industry, Innovation and Science), industry stakeholders and relevant parties to develop guidance notes on decommissioning.	<p>Accepted</p> <p>The Offshore Petroleum Resource Management Review found that the offshore petroleum sector requires clarity regarding the Government's policy and requirements for the decommissioning of offshore facilities post-production. The Department of Industry, Innovation and Science has commenced the development of an offshore petroleum decommissioning policy framework. The framework will clarify Government policy and expectations for the decommissioning of offshore petroleum facilities and ensure the regulatory regime for decommissioning strikes the right balance between environmental and safety outcomes, community expectations and productivity improvements for the offshore petroleum sector.</p> <p>In July 2015, NOPSEMA released an information brochure clarifying the existing safety, well integrity and environment regulatory requirements regarding decommissioning. DISER will continue to work with NOPSEMA, in consultation with the offshore petroleum sector, to develop a decommissioning policy position and associated administrative arrangements and guidance material. Implementation of this recommendation is the responsibility of the Department of Industry, Innovation and Science working with the Chief Executive Officer of NOPSEMA, in consultation with the offshore petroleum sector and other stakeholders.</p>	<p>DISER status:</p> <p>In progress. DISER is currently undertaking a comprehensive review of Australia's offshore policy and legislative frameworks for decommissioning. The review will propose an enhanced framework for consideration by the government. If the review is accepted by government, implementation will commence in 2021.</p> <p>Deloitte comments:</p> <p>We make a number of associated observations and recommendations in relation to NOPSEMA's future role in decommissioning through our review.</p>
11	The Department of Industry and Science (now the Department of Industry, Innovation and Science) should clarify the appropriate mechanism to allow NOPSEMA to vary legacy environmental conditions and associated approvals granted prior to 1 January 2012 where appropriate.	<p>Accepted</p> <p>The Department of Industry, Innovation and Science will work with the Department of the Environment to clarify the processes and mechanism where legacy environmental conditions provided under the Environmental Protection and Biodiversity Act 1999 prior to 1 January 2012 apply and where reconsideration of those conditions is appropriate.</p> <p>Implementation of this recommendation is the responsibility of the Department of Industry, Innovation and Science.</p>	<p>DISER status:</p> <p>In progress – as above.</p> <p>Deloitte comments:</p> <p>No issues noted.</p>
12	NOPSEMA and AMSA should refresh their Memorandum of Understanding and in doing so seek clarity on their commitments and responsibilities under their respective Acts.	<p>Accepted</p> <p>The Government notes the Review Panel's finding that NOPSEMA and AMSA cooperate well at the operational level and supports the agencies' establishing a documented process for collaboration and consultation. This could take the form of a refreshed Memorandum of Understanding, or exchange of letters. Regardless, the document should be reviewed annually to ensure it remains relevant and there is a shared contemporary understanding of each party's regulatory remit and approach. In line with the Ministerial Statement of Expectations for NOPSEMA this should also include a collaborative approach to enhance coordination of emergency response arrangements.</p> <p>Implementation of this recommendation is the responsibility of the Chief Executive Officer of NOPSEMA.</p>	<p>NOPSEMA status:</p> <p>Complete.</p> <p>Deloitte comments:</p> <p>No issues noted.</p>

#	2015 recommendation	Australian Government response	Current status
13	NOPSEMA should develop a mechanism to provide greater transparency of decision making and assessments to stakeholders.	Accepted NOPSEMA has commenced the development of improvements to the transparency of environment plan assessment and decision-making in consultation with stakeholders and industry. NOPSEMA will work with the Department of Industry, Innovation and Science where any associated amendments to legislation are required. Any changes will be managed through the existing legislative change process. Implementation of this recommendation is the responsibility of the Chief Executive Officer of NOPSEMA working with the Department of Industry, Innovation and Science.	NOPSEMA/DISER status: Complete. Deloitte comments: We make a number of associated observations and recommendations in relation to NOPSEMA's transparency over its decision-making.
14	NOPSEMA should continue to seek expert advice from the Board, when necessary.	Accepted The Government notes that the NOPSEMA Advisory Board forms a critical knowledge base from which the NOPSEMA Chief Executive Officer, the responsible Commonwealth Minister and the relevant State and Territory Ministers can seek advice regarding the effectiveness and performance of NOPSEMA with regard to its functions and operational policy and strategic matters. Implementation of this recommendation is the responsibility of the Chief Executive Officer of NOPSEMA.	NOPSEMA status: Complete. Deloitte comments: We make a number of associated observations and recommendations in relation to NOPSEMA's Advisory Board taking a more active role in setting NOPSEMA's strategic direction.
15	NOPTA and NOPSEMA should develop a mechanism (for example an MOU or charter of engagement) to identify the interfacing points, cooperation and responsibilities.	Noted The Government notes that the 2015 Review found that NOPSEMA and NOPTA have improved their inter-agency cooperation since the initial period of operations when engagement was almost by necessity focused on discharging their new responsibilities. Legislative change has since enabled better sharing of information which provides opportunities for further cooperation. Both organisations have demonstrated the capacity to work cooperatively on matters relating to the regulation of offshore petroleum titles and greenhouse gas operations, the Government does not consider a formal instrument of engagement between NOPSEMA and NOPTA is necessary provided the areas of co-operation and consultation are documented and updated to ensure currency. Implementation of this recommendation is the responsibility of the Chief Executive Officer of NOPSEMA and the National Offshore Petroleum Titles Administrator	NOPSEMA status: Ongoing – NOPSEMA and NOPTA maintain agreed ways of working. NOPSEMA CEO and the Titles Administrator regularly meet. Deloitte comments: No issues noted.
16	NOPSEMA should provide more engagement mechanisms to collaborate with the workforce and health and safety representatives.	Accepted The Government supports the Review Panel's view that positive engagement with the workforce, health and safety representatives and workforce representatives is essential for ongoing improvements to safety in particular. As the Review Panel noted, building trust with key stakeholders is an essential element of NOPSEMA's social licence to regulate. NOPSEMA will explore mechanisms to supplement the existing substantial communication with health and safety representatives and the ongoing participation in relevant conferences organised by the Australian Council of Trade Unions and APPEA. Implementation of this recommendation is the responsibility of the Chief Executive Officer of NOPSEMA.	NOPSEMA status: Complete. Deloitte comments: We did observe some stakeholders within the supporting services industry felt NOPSEMA's engagement with their HSRs could be further improved. We identified an associated opportunity (opportunity 14) in Section 9 .

Appendix F: ANAO board governance recommendations and analysis

#	ANAO insight
1	<p>Establish a board charter</p> <p>A board charter can support board members by providing a single reference point that clearly sets out the functions, powers and membership of the board, as well as roles, responsibilities and accountabilities, consistent with relevant legislative requirements. Including key behavioural and cultural expectations for board members can assist in articulating the desired culture of the board. The charter should be a living document, subject to thoughtful consideration and periodic review. The charter can also assist a board to formally set expectations for reporting to it by management.</p>
2	<p>Periodically evaluate board performance</p> <p>Periodically evaluating board performance can enable a board to reflect on its operations and assess whether it has effectively met its purpose, objectives and obligations. Lessons learned from this process can assist the board in setting priorities and goals and contribute to enhancing overall board and organisational effectiveness. Documenting the process, performance criteria and outcomes — as well as any actions taken in response to issues identified — can also assist in ensuring accountability and transparency. Boards could also consider reporting in their governed entities' annual report that a performance evaluation has been undertaken, insights it has gained from the evaluation and any governance changes it has made as a result.</p>
3	<p>Actively consider current and future board skill requirements</p> <p>Actively engaging with the portfolio department and minister in relation to the skills requirements for future board appointments and providing advice accordingly to the relevant decision-maker, can assist in achieving the optimum skill mix.</p>
4	<p>Recognise and manage conflicts of interest</p> <p>Including conflicts of interest as a standing agenda item supports board members in focusing attention on this key issue. This can include having board members verbally declare conflicts of interest at each meeting. Including details of each board member's interests in board papers, including paid and unpaid external engagements, can also assist board members to ensure that all their interests are actively considered. Disclosure also increases board member awareness of the previously declared interests of fellow board members. Members should be clear on their obligations relating to gifts and hospitality, such as through codes of conduct, board charters, and gifts and hospitality policies. Gifts and hospitality registers can be useful in improving transparency in cases where gifts and hospitality are accepted.</p>
5	<p>Retain adequate documentation and records of decisions and actions</p> <p>Keeping sufficient evidence of decision-making processes and outcomes is fundamental to effective governance, accountability, and transparency. It also contributes to efficient practice, the utilisation of evidence and enabling a learning organisation. Board members and entities should be mindful of the need to ensure that information relating to the entity is handled and maintained in accordance with applicable Commonwealth information-security and record-keeping requirements. These requirements also apply to communication channels such as emails, as these are official records.</p>
6	<p>Actively question and challenge management</p> <p>Board members must hold management to account. Setting expectations for management reporting to the board can assist in ensuring that the board and management have a shared understanding of the board's requirements and can assist the board in meeting its obligations as the accountable authority. This series of audits observed that members of the selected boards displayed a willingness to challenge management.</p>

#	ANAO insight
7	<p>Review key strategic risks in corporate risk registers and set risk appetite</p> <p>Maintaining a strategic focus on risk can assist a board in ensuring the risk management framework is appropriate and the entity is operating within its risk appetite, as well as enhancing the board's understanding of the strategic context and enabling it to govern more effectively. Including risk management as a standard agenda item for board meetings encourages the regular consideration of risk.</p>
8	<p>Ensure that the audit committee and its operating arrangements support the board obtaining the external advice and assurance it requires</p> <p>In establishing an audit committee, boards need to consider the structure, composition, size, skills and independence of members to enable the committee to be effective. Having the board establish, approve and periodically review its audit committee charter can assist the board in ensuring it is receiving the desired external advice and assurance. An audit committee charter can reflect the desired culture and set out such things as the committee's roles and responsibilities, authority, composition, membership requirements, structure and processes. Board oversight of audit committees should involve regular reporting from the committee, including on internal audit findings, the implementation of ANAO and parliamentary recommendations and regular review of the audit committee charter and work plan.</p>
9	<p>Approve and periodically review key policies and frameworks particularly those that relate to the duties of an accountable authority</p> <p>Board approval of key policies and frameworks such as financial delegations, risk management, work health and safety, and fraud, can assist board members to gain assurance that they are effectively discharging their duties as the accountable authority, by setting the framework for compliance with relevant legislation.</p> <p>Having the board approve policies such as the code of conduct, remuneration and key quality assurance frameworks (if applicable) enables boards to influence behaviour and can be an important mechanism in communicating the desired culture within the entity. Recent reviews such as the 2018 APRA Prudential Review and the 2019 Hayne Royal Commission have highlighted that boards need to be cognisant of how incentives and controls in organisations can drive behaviours and culture. Monitoring when policies are due for review, such as through the audit committee, can assist this process.</p>
10	<p>Provide appropriate induction to assist board members' understanding of their obligations</p> <p>Induction processes should include details of members' legal responsibilities as part of the accountable authority and other legislative requirements. It is also important that board members receive all key policies and procedures related to their role as the accountable authority.</p>
11	<p>Seek management assurance regarding internal controls and compliance</p> <p>Obtaining assurance from management regarding internal controls and compliance with relevant legislation and government policies can assist a board directly, or through its audit committee, gain assurance of compliance. Maintaining a register of compliance breaches and providing board members with details of the nature of assurance mechanisms used within the entity can further assist board members.</p>
12	<p>Seek consolidated progress reports on results against all performance targets in the corporate plan</p> <p>Receiving regular reporting on progress against corporate plan performance criteria can assist board members in their ongoing oversight of entity performance. This can also support board member assurance over annual performance statement reporting.</p>

Appendix G: Summary of stakeholder feedback

As part of our review, we undertook an extensive stakeholder engagement program which has been used to inform our findings. A summary of the stakeholder engagement program and key sentiments from stakeholders is outlined below. We have applied Deloitte’s Regulatory Assessment Model as the basis for examining stakeholder perceptions of NOPSEMA. For further information, refer to our review approach and method in [Section 3](#).



1 Results from stakeholder survey

- **Relevant to industry** – NOPSEMA’s strategic direction is generally seen to be relevant to the industry they regulate
- **Direction not clear** – NOPSEMA’s strategic direction is perceived to be lacking transparency and clarity, with several stakeholders noting the difference between ‘strategic direction’ and a corporate plan
- **Inflexible and rigid** – NOPSEMA is perceived by a number of stakeholders to be inflexible/rigid in the manner in which it regulates. NOPSEMA’s agility and adaptiveness may be constrained by the current legislative framework.
- **Understands industry risks** – NOPSEMA is generally seen to understand key/critical risks faced by the offshore petroleum industry
- **Approach not risk-based** – NOPSEMA is perceived to be taking an increasingly compliance-driven/prescriptive approach to risk management, particularly with regards to environment-related approvals
- **Insufficient consultation** – NOPSEMA is not seen to sufficiently consult on the best ways to manage key/critical risks.
- **Open and responsive** – NOPSEMA is seen to be open and responsive to stakeholders including those from outside the offshore petroleum industry
- **Transparency improving** – NOPSEMA’s transparency is seen to have generally improved since the previous operational review. However, the perception is that more needs to be done
- **Understand industry needs** – NOPSEMA is seen to have a good understanding of their primary stakeholders. However, there is a view that NOPSEMA could better understand the potential broader impacts of oil and gas activities on adjacent industries.
- **Cost recovery reasonableness** – NOPSEMA’s cost recovery scheme has mixed views from stakeholders. The reasonableness of specific fees/levies in the face of declining industry activity was a primary concern
- **Improving decision-making** – NOPSEMA’s decision-making is seen as an area of improvement, with key challenges cited by stakeholders as being poor clarity on the definitions of ‘As Low as Reasonably Practicable’ (ALARP) and ‘acceptability’ as well as inconsistency in decisions made
- **High level of effort** – NOPSEMA’s assessment processes are viewed as becoming increasingly lengthy, resource-intensive and requiring greater coordination across permissioning documents. A key area of concern is the Environment Plan (EP) assessment processes.



1 Results from stakeholder survey

Source: Deloitte analysis

- **Strong capabilities** – NOPSEMA's technical capabilities are generally viewed positively by stakeholders. Although, some stakeholders stated that NOPSEMA's Environment Division is becoming more 'academic' and less 'pragmatic' in its approach
- **Misunderstood role** – NOPSEMA's role is generally not well understood by stakeholders. There is some confusion over NOPSEMA's legislative functions under the OPGS Act
- **Insufficient enforcement** – NOPSEMA's scope of regulatory powers tend to be viewed positively, although several stakeholders viewed NOPSEMA as not making sufficient and transparent use of their powers in a consistent manner.
- **Adherence to values** – NOPSEMA staff are viewed by the majority of stakeholders to reflect professionalism and NOPSEMA values. However, there were limited instances where stakeholders claimed that certain NOPSEMA staff were seen to have acted contrary to NOPSEMA's values.
- **Positive safety culture** – NOPSEMA is viewed to have made a positive contribution towards fostering a strong safety culture, although there are some opposing views to this sentiment from some stakeholders
- **Community confidence** – NOPSEMA is viewed to have increased its level of community engagement over the years, however some stakeholders do not see engagement translating into improved community confidence.
- **Challenge to innovate** – NOPSEMA's approach to innovation and continuous improvement has been met with mixed sentiment from stakeholders, with the general perception being that NOPSEMA demonstrates limited innovation
- **Strong global standing** – NOPSEMA is seen as a strong/leading regulator from a global perspective and the first point of contact for international peer regulators on many issues
- **Future focus** – NOPSEMA, from the perspective of stakeholders, could develop an agile culture, increase cross-industry collaboration and take a more risk-based approach to regulation.