5 August 2019

Environment Safety and Security Section, Offshore Resources Branch
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Submission made online@:

Offshore petroleum safety regime review

I am pleased to provide the Australian Petroleum Production and Exploration Association (APPEA) submission in response to the Department of Industry, Innovation and Science’s (DIIS) discussion paper, as part of a broader offshore petroleum safety regime review (the review).

APPEA notes the review aims to ensure that the Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009 (the Regulations) and the associated parts of the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPGGS Act):

i. provide an effective framework for securing the occupational health and safety of persons engaged in offshore petroleum or greenhouse gas storage operations in Commonwealth waters of Australia, and

ii. represent leading practice that promotes and delivers safe offshore petroleum and greenhouse gas storage activities.

APPEA welcomes the opportunity to continue to work with our key stakeholders including DIIS, during the policy development process; and we note that the feedback provided on the discussion paper will inform future stakeholder engagement; and the drafting of evidence-based policy options (to be articulated within the proposed policy framework).

Should you have any queries regarding the APPEA submission please contact Jason Medd, Director – Environment, Health and Safety on (08) 9426 7208 or jmedd@appea.com.au.

Yours sincerely

Andrew McConville
Chief Executive
Department of Industry, Innovation and Science’s offshore petroleum safety review
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The offshore oil and gas industry is an industry leader in safety across Australia.

Stability, simplicity and consistency of the regulatory framework is fundamental to providing industry with the platform it needs to continue to pursue continuous improvement in the management of safety risks associated with its activities.

An objective-based regulatory regime provides the flexibility for the offshore industry to drive continuous improvement in risk management.

In the past, the global oil and gas industry has undertaken significant ‘step changes’ towards improving its management of safety to reduce the rate of incidents. This has resulted in improved engineering; improved health and safety management systems; and attention on the interaction of people with their workplace.

The ability for industry to assess its performance, identify potential options and pursue innovative solutions is facilitated by regulatory frameworks which focus on the safety outcome rather than prescribed minimum standards.

APPEA’s priority is to ensure that the regulatory framework for the offshore petroleum industry recognises the prevention of (low likelihood; high consequence) major accident events (MAE) as the overriding objective of safety legislation.

The offshore regime in Australia, regulated by the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), is aligned with this approach and has been independently validated on a number of occasions as being mature and robust.

Performance data for the industry shows a long-term increase in hours worked and decline in fatal accidents, illustrating the effectiveness of the industry’s efforts to improve safety. The trend data also demonstrates reductions in recordable injury frequency rates, dangerous occurrence rates and reliability / availability of safety critical equipment / elements.
The Australian Petroleum Production and Exploration Association (APPEA) welcomes the opportunity to comment on the Department of Industry, Innovation and Science’s (DIIS) discussion paper as part of a broader offshore petroleum safety regime review (the review).

APPEA notes the review aims to ensure that the Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009 (the Regulations) and the associated parts of the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPGGS Act):

i. provide an effective framework for securing the occupational health and safety of persons engaged in offshore petroleum or greenhouse gas storage operations in Commonwealth waters of Australia, and

ii. represent leading practice that promotes and delivers safe offshore petroleum and greenhouse gas storage activities.

We note the Regulations are due to sunset on 1 April 2020. Through this lens, and as expressed in the published Terms of Reference1, APPEA supports a review that ensures the Regulations are efficient and effective; consistent with leading practice; and where possible identifies options to improve administrative operation. Any changes to regulation must be critically assessed to ensure they complement and improve overall safety outcomes.

Despite the dissenting report2, APPEA has considered the findings and recommendations of the Senate Inquiry Standing Committees on Education and Employment – Inquiry into work health and safety in the offshore petroleum industry. Attachment 2 provides an APPEA response to the recommendations from the Senate Inquiry.

Stakeholders have discussed other contemporary reviews of health and safety laws in Australia including the Review of the model Work Health and Safety laws (2018), for Safe Work Australia, by Marie Boland (Boland Review). Attachment 3 demonstrates how relevant recommendations from the Boland Review have been incorporated into the discussion paper for examination.

We note the discussion paper has raised important questions about the regulatory regime. Attachment 4 provides APPEA’s responses to the summary of questions detailed in the discussion paper.

Attachment 5 provides further operational context from APPEA member subject matter experts (SME). APPEA tables this attachment verbatim to preserve SME meaning.

APPEA will continue to collaborate with DIIS during the policy development process; and we note that the feedback provided on the discussion paper will inform future stakeholder engagement; and the drafting of evidence-based policy options (to be articulated within the proposed policy framework).

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About APPEA

APPEA is the peak national body representing Australia’s oil and gas exploration and production industry. APPEA has 60 full members operating in both onshore and offshore environments and 130 associate members providing services to the industry. Our member companies account for a large majority of petroleum exploration activity and around 98 per cent of total oil and gas production in Australia.

The petroleum industry is a major and growing contributor to the Australian economy. A wave of almost $200 billion was recently invested in Australia, most of which constituted seven major liquefied natural gas (LNG) export projects.4

By 2020, the sector’s economic contribution to the national economy is set to more than double to $65 billion per annum. Associated taxation paid is projected to rise from $8.8 billion (an estimated $4.9 billion in corporate taxes and $3.8 billion in production-based taxes) to reach almost $13 billion.

While this level of investment provides significant opportunities, it also presents challenges and the industry has recently placed a high level of focus on managing safety in line with a substantial increase in work hours across projects.

Many of Australia’s major oil and gas projects have transitioned from construction into production operations. This transition necessitates an evolution in the industry’s safety focus, beyond construction of infrastructure and towards the risks associated with production of hydrocarbons.

APPEA health and safety

Australia’s oil and gas industry is a world leader in safety; and APPEA continues to work with members and stakeholders to support the basic objective that every worker goes home safe and uninjured.

APPEA’s priority is to ensure that the regulatory framework for the offshore petroleum industry recognises the prevention of (low likelihood; high consequence) major accident events (MAE) as the overriding objective of safety legislation.

The industry’s pursuit of continuous improvement in safety is facilitated by objective-based regulatory frameworks, which focus on achieving the best outcome rather than the prescription of minimum standards. This flexibility has provided the framework for industry to self-identify potential safety risks and the relevant mitigation strategy, resulting in a safety journey over decades which has seen a long time decline in injuries.

Collaborative approaches to industry safety – Safer Together

Safer Together is an industry collaboration hub with more than 170 member companies (operators and contractors), across Australia.\(^5\)

As the petroleum industry matures a need was recognised to engage senior leaders of both operators and contractors to build workplace cultures that foster continual safety improvements.\(^6\)

Safer Together are not-for-profit, member-led organisations of operating companies and contract partner companies committed to creating the leadership and collaboration needed to build a strong and consistent safety culture in our rapidly evolving industry.\(^7\)

Collaboration activities – Safer Together and APPEA:

- APPEA is an integral part of the Safer Together Operating Model\(^8\)
- APPEA is allocated a position on the Safety Leaders Group (SLG) of each Safer Together Chapter
- Members of the APPEA Board serve on the Qld SLG
- Members of the APPEA Qld Industry Leaders Group serve on the Qld SLG
- A member of the APPEA EHS Committee serves on the WA/NT SLG
- Members of the APPEA Qld HSO Committee serve as Observers on the Qld SLG and Safer Together Qld Working Groups.

Historic safety competency programs\(^9\)

Historically, APPEA has played a key role in developing and rolling out major safety competency and safety culture initiatives for the oil and gas industry.

Common Safety Training Program (CSTP)

CSTP aimed to ensure that all new and existing offshore employees have the same core foundation of safety skills. It applies to workers on offshore production and drilling facilities and requires demonstration and assessment of defined safety behaviours in the workplace.


Safe Supervisor Competence Program (SSCP)

A sister competency program, the Safe Supervisor Competence Program (SSCP), defines competency standards for offshore oil and gas construction supervisors.

Stand Together for Safety (STFS)

APPEA’s STFS Working Group was formed in 2012 by some of the region’s most senior leadership (APPEA’s CEO forum) to focus on the prevention of major accident events. In 2016, STFS produced the Process Safety - A Good Practice Guide\(^\text{10}\)

The role of health and safety representatives (HSRs)

APPEA recognises that HSRs play a pivotal role in representing the offshore workforce on matters relating to health and safety; and sharing their views and concerns to duty holders or regulators.

HSRs are employees within the offshore oil and gas industry who have been selected or elected to represent a designated work group. HSRs play a valuable role in building safety awareness and help to reduce risks to offshore workers.

APPEA supports working environments and cultures where individuals can take on leadership responsibilities from any position. APPEA members share a strong level of support for HSRs, including providing communication channels through to the most senior levels of companies.

Companies have reported that HSRs indicate they generally feel supported by their colleagues and management to undertake their role. The work force and HSRs have reached a level of confidence in processes and culture that they feel empowered to raise issues with management.

While contractor turn over may present challenges for HSR retention; feedback from operators suggests that attracting HSRs is not a prevalent industry issue.

The OPGGS Act sets out the roles, functions and duties of HSRs. APPEA notes in their supplementary submission to the Senate inquiry into work health and safety of workers in the offshore petroleum industry (submission 7\(^\text{11}\)) – the department corrected assertions made to HSRs, specifically in respect to:

- Comparisons to the WHS regime
- HSR training; and
- The process for HSR selection.

APPEA notes that there is a wealth of guidance available to assist HSRs to fulfil their role.\(^\text{12}\)


A tripartite HSR forum was held on 12-13 June 2019, at the Perth Conference and Exhibition Centre. The forum was organised by a committee with collaboration from industry, unions and government representatives, including NOPSEMA.

More than 70 HSR’s attended the forum, demonstrating a clear commitment to keeping their fellow oil and gas industry workers safe.

The first day of the forum was a pilot HSR refresher training while the second day provided the opportunity for HSRs to network; to workshop case studies; and to discuss challenges and opportunities.

Safer Together has made in principle commitment to continue the HSR Forum.

Australia’s offshore petroleum regulatory framework

Offshore petroleum operations occur in challenging and potentially dangerous working environments.

The development of the regulatory framework in Australia has been informed by other international jurisdictions such as the United Kingdom, Norway and the United States.

Attachment 1 provides a detailed summary of the history and evolution of the offshore petroleum safety regime.

Shared principles of safety regulation

Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009 (Safety Regulations)

A core principle in environmental, safety and well integrity regulation under the regime is that the offshore resources company is responsible for evaluating risk and achieving fit for purpose design that reduces risk to ‘as low as reasonably practicable’ (ALARP). This allows offshore resources companies to adopt practices and technologies best suited to individual circumstances, activities and locations, maximising safety outcomes in this technically complex environment.

Genuine, quality worker involvement and consultation on health and safety issues is of key importance to achieving positive safety outcomes.

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Under the offshore OHS regime, the involvement of members of the workforce is essential to the development of safety cases and operators must demonstrate effective consultation with and participation by the workforce in the preparation of safety cases.

**Safety case**

In line with international leading practice, Australia has adopted the use of safety cases – a structured argument, supported by a body of evidence that provides a compelling, comprehensible and valid case that a system (facility and operation) is safe and risks have been suitably managed. Petroleum operators are responsible for preparing safety cases for all offshore petroleum facilities, which must be assessed and accepted by the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA).

**Areas for regulatory improvement**

Attachments 4 and 5 highlight areas of regulatory improvement from a policy and SME point of view.

APPEA will continue to collaborate with the department during the policy development process; and we note that the feedback provided on the discussion paper will inform future stakeholder engagement; and the drafting of evidence-based policy options (to be articulated within the proposed policy framework).

**Conferral of powers to NOPSEMA**

Page 76-77 of the discussion paper briefly touches on the conferral of powers. APPEA supports the conferral of regulatory powers in Western Australia state offshore waters to NOPSEMA, through an applied law scheme. Further, APPEA considers that the technical resourcing of the WA Department of Mines, Industry Regulation and Safety (including petroleum safety, well integrity and petroleum environment staff/ functions) could be transferred to NOPSEMA.

More broadly, APPEA believes that conferral of regulatory responsibility for petroleum activities in State Waters to the National Offshore Petroleum Safety and Environment Management Authority (NOPSEMA) has broad benefits and should be supported.

For industry, conferral would simplify the regulatory system with the potential to replace four Commonwealth and State regulators with a single regulator. Streamlining regulation would reduce compliance costs, enhance Australia’s reputation and deliver seamless environmental and safety management.

For State and Territory governments, conferral would allow a greater focus on activities solely within terrestrial, jurisdictional boundaries.

The benefits of a national regulator for all waters seaward of the low tide water mark were first mooted by the Productivity Commission. In 2004, the Commonwealth streamlined arrangements within its waters, delivering an estimated annual saving to industry and the community of about $120 million.

### Industry safety performance

**IOGP data**

The IOGP’s safety performance indicators 2018 data (June 2019) – provides a sample supplied by 15 participating companies (from offshore and onshore jurisdictions).

In 2018, there were a total of 85 million hours worked (note – offshore and onshore); and the Australian IOGP data suggests:

- Total recordable injury rate (TRIR) – rising from 2016 and 2017 levels (1.5-2.0);
- Lost time injury frequency rate (LTIF) below offshore average but constant (0.20—0.28).

The five-year rolling average trends for fatal accident rates, TRIR and LTIF in Australasia are declining.

**International Regulators’ Forum (IRF) Country Performance Measures 2017**

The Australian offshore petroleum industry is one of the safest in the world.

According to the IRF, in 2017, Australia had no offshore fatalities and lower major injury rate (million hours worked) compared to Brazil, Netherlands, Norway and the UK.

Key statistics reported include:

- Major injury rate of 0.31;
- Injuries greater than three days (LTI and RWI) / million hours worked of 0.86; and

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17 IOGP - Safety performance indicators – 2018 data (June 2019)
Injuries of 1 or less than or equal to three days / million hours work of 0.55.

NOPSEMA data

NOPSEMA’s latest annual offshore performance report provides a summary of safety and environmental performance of Australia’s offshore petroleum industry for 2018. ¹⁹

The data suggests that 16.9 million hours were worked offshore in 2018; which is the highest number reported since NOPSEMA began recording data. The 2018 hours represent a 31 per cent increase on the 12.8 million hours reported in 2017.

NOPSEMA reported no fatalities in 2018 (for the sixth consecutive year in a row); and an incident rate– 3.48 injuries per million hours worked. This is the lowest recorded injury level to date, and continues a reassuring downtrend in the recordable injury rate in recent years.

Industry sector comparisons

The discussion paper provides up to date IRF data and comparisons between international jurisdictions and local selected industries. However further examination of Safe Work Australia data warrants further examination below.

Safe Work Australia – Serious Claims ²⁰

Safe Work Australia collects data on workplace occupational safety performance across all states and territories.

In its summary - Work-related injury and disease - Key WHS statistics Australia 2018 - Safe Work Australia provide a comparison of industry sector performance.

Trend data suggests that the rates of serious claims are in decline (nearly 30 per cent from 2006-07 to 2015-16). The average frequency rate for serious claims is 5.6 per million hours worked.

Trends in the rates of serious claims, 2016-17p*

<table>
<thead>
<tr>
<th>Year</th>
<th>Incidence rate (serious claims per 1,000 employees)</th>
<th>Frequency rate (serious claims per million hours worked)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003-04</td>
<td>18</td>
<td>15</td>
</tr>
<tr>
<td>2004-05</td>
<td>16</td>
<td>13</td>
</tr>
<tr>
<td>2005-06</td>
<td>13</td>
<td>12</td>
</tr>
<tr>
<td>2006-07</td>
<td>12</td>
<td>11</td>
</tr>
<tr>
<td>2007-08</td>
<td>11</td>
<td>10</td>
</tr>
<tr>
<td>2008-09</td>
<td>10</td>
<td>9</td>
</tr>
<tr>
<td>2009-10</td>
<td>9</td>
<td>8</td>
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<td>2010-11</td>
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<td>2012-13</td>
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<td>2013-14</td>
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<td>2014-15</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>2015-16</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>2016-17</td>
<td>2</td>
<td>1</td>
</tr>
</tbody>
</table>

*preliminary data subject to revision in subsequent years as further claims are finalised.

Serious claims by industry, 2016-17p*

- **Agriculture, forestry and fishing**: 9.5 serious claims per million hours worked
- **Construction**: 8.1 serious claims per million hours worked
- **Manufacturing**: 8.0 serious claims per million hours worked

*preliminary data subject to revision in subsequent years as further claims are finalised.
Serious claims by industry, 2016-17p*21

<table>
<thead>
<tr>
<th>Industry</th>
<th>Number of claims</th>
<th>Frequency rate (serious claims per million hours worked)</th>
<th>Incidence rate (serious claims per 1,000 employees)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture, forestry and fishing</td>
<td>3,620</td>
<td>9.5</td>
<td>18.7</td>
</tr>
<tr>
<td>Construction</td>
<td>13,280</td>
<td>8.1</td>
<td>16.0</td>
</tr>
<tr>
<td>Arts and recreation services</td>
<td>2,190</td>
<td>8.0</td>
<td>10.2</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>12,860</td>
<td>8.0</td>
<td>15.1</td>
</tr>
<tr>
<td>Transport, postal and warehousing</td>
<td>8,330</td>
<td>8.0</td>
<td>15.0</td>
</tr>
<tr>
<td>Health care and social assistance</td>
<td>17,190</td>
<td>7.8</td>
<td>11.1</td>
</tr>
<tr>
<td>Wholesale trade</td>
<td>4,500</td>
<td>6.6</td>
<td>12.4</td>
</tr>
<tr>
<td>Administrative and support services</td>
<td>4,730</td>
<td>6.3</td>
<td>10.0</td>
</tr>
<tr>
<td>Public administration and safety</td>
<td>7,710</td>
<td>5.9</td>
<td>9.6</td>
</tr>
<tr>
<td>Accommodation and food services</td>
<td>6,175</td>
<td>5.6</td>
<td>7.1</td>
</tr>
<tr>
<td>Retail trade</td>
<td>8,490</td>
<td>5.0</td>
<td>7.0</td>
</tr>
<tr>
<td>Electricity, gas, water and waste services</td>
<td>1,210</td>
<td>4.7</td>
<td>9.2</td>
</tr>
<tr>
<td>Other services</td>
<td>3,065</td>
<td>4.6</td>
<td>7.6</td>
</tr>
<tr>
<td>Education and training</td>
<td>6,850</td>
<td>4.4</td>
<td>6.8</td>
</tr>
<tr>
<td>Mining</td>
<td>2,030</td>
<td>4.2</td>
<td>9.3</td>
</tr>
<tr>
<td>Rental, hiring and real estate services</td>
<td>970</td>
<td>2.6</td>
<td>4.7</td>
</tr>
<tr>
<td>Information media and telecommunications</td>
<td>590</td>
<td>1.6</td>
<td>2.8</td>
</tr>
<tr>
<td>Professional, scientific and technical services</td>
<td>1,795</td>
<td>1.1</td>
<td>1.9</td>
</tr>
<tr>
<td>Financial and insurance services</td>
<td>585</td>
<td>0.7</td>
<td>1.4</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>106,260</strong></td>
<td><strong>5.6</strong></td>
<td><strong>9.3</strong></td>
</tr>
</tbody>
</table>

This table provides national workers’ compensation statistics from data provided by the relevant authorities in each state and territory.

The ‘serious claims’ information reflects lost time incidents of more than one-week duration. The serious claims frequency rate can therefore be directly compared with the LTI Frequency Rate information for offshore oil and gas activity (0.20—0.28 -IOGP), noting the more conservative nature of the latter metric (which includes all incidents of any duration).

In APPEA’s view this demonstrates how effective the OPGGS Act has been in supporting duty holders to deliver superior performance under the regime regulated by NOSPEMA.

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*preliminary data subject to revision in subsequent years as further claims are finalised.
**claim numbers are rounded to the nearest five. Claims where the industry was unknown are not included separately, but are included in the total.
Conclusion

In conclusion, APPEA supports regulatory reforms that achieve improved safety performance / outcomes.

APPEA asserts that an objective / risk-based regime, underpinned by the safety case, is internationally recognised as best practice. The safety performance data collected by IOGP and NOPSEMA provides a solid evidence base to demonstrate that the OPGGS Act and Regulations are securing the health and safety of members of the workforce at or near facilities and offshore places.

APPEA welcomes the opportunity to continue to work with key stakeholders including the department, during the policy development process; and NOPSEMA to improve offshore safety outcomes.

Should you have any queries regarding the APPEA submission please contact Jason Medd, Director – Environment, Health and Safety on (08) 9426 7208 or jmedd@appea.com.au.
Offshore petroleum activities have been a common feature of our modern economy for decades, often taking place in challenging environments.

Petroleum facilities are designed and operated to withstand extreme weather, sea conditions and also importantly, the temperatures and pressures associated with producing and processing hydrocarbons. Many of these same facilities also provide living quarters for the workforce in a relatively restricted space.

These challenges are not specific to Australia and global regulatory regimes have evolved to manage these challenges. In this regard, a significant development was the introduction of the ‘safety case’ approach to regulation for the offshore petroleum industry, which occurred three decades ago. This was heavily influenced by the outcomes of two Inquiries by the United Kingdom Government:

- 1972 Lord Robens’ Report on the regulation of workplace safety and health across all industries in the UK; and
- 1988 Lord Cullen Inquiry findings into the Piper Alpha disaster in the North Sea.

Australia’s safety regime has been further refined by the outcomes of inquiries into the Varanus Island gas pipeline rupture (2008), the Montara uncontrolled hydrocarbon release (2009) and the Macondo oil spill in the Gulf of Mexico (2010). The reviews into the two Australian incidents are discussed in further detail below.

United Kingdom Government Inquiries (Robens and Cullen Inquiries)

**Robens Committee of Inquiry**

The Robens’ Committee of Inquiry was established by the British Government in 1970. Its role was to investigate concerns that the traditional system of safety regulation, based upon the framework of the nineteenth century British Factory Acts, was too rigid and complex and unable to keep pace with social, economic and technological change.

Following review of the ‘mass’ of safety legislation, the Committee concluded that this framework had not led to a significant reduction in the incidents of fatalities and injuries at work. The Robens’ Inquiry identified three main issues with the existing prescriptive approach to safety regulation:

- There was too much prescriptive law relating to health and safety at work which had the effect of persuading people that health and safety was purely a matter of government regulation and not of individual responsibility;
- Too much of the existing law was irrelevant to real problems; and
There was a major disadvantage in attempting to address the problem of health and safety with the wide array of administrative agencies with responsibilities.

The Robens’ Inquiry concluded that:

“[t]here are severe practical limits on the extent to which progressively better standards of safety and health at work can be brought about through negative regulation by external agencies. We need a more effectively self-regulating system. This calls for the acceptance and exercise of appropriate responsibilities at all levels within industry and commerce. It calls for better systems of safety organisation, for more management initiatives, and for more involvement of work people themselves. The objectives of future policy must therefore include not only increasing the effectiveness of the state’s contribution to health and safety at work but also, and more importantly, creating conditions for more effective self-regulation.”

Recognising that the weaknesses identified by Robens existed within Australia, most Australian jurisdictions enacted new occupational health and safety (OHS) statutes based, to varying degrees, on the model proposed by Robens. Each of the Australian OHS statutes adopted the tiered approach recommended by the Robens’ Committee.

The first tier is the Act and includes broad, overarching general duties for those who influence or exercise control over OHS in workplaces. This also includes consultation and representation provisions, and provisions to help enforce the Act.

A second tier contains more detailed provisions, obligations and requirements within regulations, which is complemented by guidance on how to comply with the Act and regulations. Recent developments with national harmonisation and workplace health and safety legislation remain fundamentally aligned with the Robens approach, although have changed over time in line with the structure of workplace arrangements (for example, contract structures).

Safety regulation of the Australian petroleum industry has gone further than these improvements, and adopted the safety case approach while also retaining the OHS general duty of care provisions.

This design has the benefit of addressing two interrelated aspects of safety. The first aspect is protection of the safety and health of the workforce (traditionally referred to as personal safety). Fundamentally, this requirement exists for any industry or workplace in Australia. Petroleum safety regulation at this level generally reflects Lord Robens’ findings and is consistent with developments in general workplace health and safety regulation across Australia.

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The safety case regime applying to petroleum operations also addresses a second critical aspect - the prevention and mitigation of catastrophic events that could result in multiple casualties/fatalities and significant damage to assets and the environment.

In Australia’s offshore petroleum regulatory regimes these events are often referred to as major accident events or MAEs. These MAEs are low-probability but high-consequence events. Potential MAEs in the petroleum industry include for example, well blowouts, loss of containment of hydrocarbons (ignited or non-ignited), explosions, fires and collisions.

**CULLEN INQUIRY**

The 1988 Piper Alpha disaster in the North Sea, and subsequent investigation and report by Lord Cullen, played a major role in Australia adopting a ‘safety case’ approach to the regulation of these low-probability but high-consequence events in the petroleum industry.

The Cullen report found that in complex, dynamic and high-risk activity such as hydrocarbon processing facilities, it is essential that the responsibility for managing the risks lies at the point of operations.24

As a result, the UK moved away from prescriptive regulation, with minimum compliance standards, towards an objective-based approach. In this regime, the onus is placed on the operator, not the regulator, to demonstrate through a safety case that they have reduced the risks associated with their operations to as low as reasonably practicable (ALARP).

**History of petroleum ‘safety case’ regulation in Australia**

Following the 1988 Piper Alpha disaster, Australia introduced a safety case obligation to strengthen the implementation of the Robens’-style duty of care regime.

As noted in the Explanatory Memorandum to the Petroleum (Submerged Lands) Amendment Bill 2003:

“The term ‘safety case’ is used to describe a sophisticated, comprehensive, integrated risk management system. This is characterised by an acceptance that the direct responsibility for the ongoing management of safety on individual facilities is the responsibility of the operators and not the regulator.”25

The primary objective of a safety case is the prevention of MAE’s, with the fundamental driver of ‘continuous improvement’ (in relation to pursuit of new technologies, technical knowledge and experience) rather than minimum compliance.

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In 1999, the Commonwealth Government commissioned a review of offshore petroleum safety in Australia, in response to concerns over the adequacy of existing regulatory arrangements. At the time, the States and Northern Territory (NT) oversaw day to day offshore regulation using a combination of the safety case approach and prescriptive legislative rules.

The review included an evaluation of the structure and implementation of Australia’s offshore petroleum safety management, undertaken by an Independent Review Team (IRT) of offshore safety experts. The review included substantial and broad engagement with operators of facilities, executives and line management, workforce representatives, State/NT regulators and Federal officials.

The final report, Future Arrangements for Regulation of Offshore Petroleum Safety was published in 2001. The report identified a number of shortcomings in the legislative and administrative structures for regulating safety. It recommended revision of laws and a restructure of the regulatory system through establishment of a national petroleum safety regulatory authority.

Key findings of the IRT\(^\text{26}\) were:

- the Australian legal and administrative framework and its day-to-day application for the regulation of health, safety and environment was complex and insufficient to ensure appropriate and cost-efficient regulation of the offshore petroleum industry;
- there were too many acts, directions and regulations for offshore petroleum activities, with unclear boundaries and inconsistent application;
- the role of the Designated Authorities was unclear and undefined;
- the regulators appeared to have inconsistent philosophies, procedures and approaches to regulation, both in regard to the discharge of their role in safety case development and assessment, and in regard to auditing activities; and
- resourcing all of the regulators with competent and experienced personnel to work with what are often complex work activities was a real concern, and salary levels made it difficult to recruit and retain a critical mass.

On 13 September 2002, the Ministerial Council on Mineral and Petroleum Resources (MCMPR) reconfirmed their priority for improving safety in Australia’s offshore petroleum industry. The MCMPR, comprising State/Territory and Federal Ministers with a responsibility for petroleum activities from across Australia, endorsed the formation of an independent national offshore safety authority.

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MCMPR agreed that a new National Offshore Petroleum Safety Authority (NOPSA) would not only regulate federal waters, as the IRT recommended, but regulate both Federal and State/NT waters. This was to ensure a consistent regulatory approach for industry across all jurisdictions. NOPSA was accountable to the Commonwealth, State and NT Ministers.

NOPSA began operations on 1 January 2005. However, the original intent of the ministerial agreement, which was for the maintenance of one offshore petroleum safety regulator, is still yet to be achieved.

The safety regime for offshore petroleum operations is set out by Schedule 3 to the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPGGS Act) and its associated regulations for Commonwealth waters. Similar provisions apply in designated coastal waters but only where States and the Northern Territory have made legislation that mirrors Commonwealth legislation.

Further evolution of the HSR regulatory environment

Safety regulation of the offshore operations of Australia’s oil and gas industry has been subject to numerous and regular reviews over decades. These have repeatedly confirmed the appropriateness of the safety case regime and presented opportunities for further improvement streamlining of administrative arrangements.

PRODUCTIVITY COMMISSION REVIEW OF REGULATORY BURDEN

In March 2008, the Council of Australian Governments (COAG) announced the Productivity Commission (PC) Review of the regulatory burden on the upstream petroleum (oil and gas) sector.27

This focussed on Australia’s framework for upstream petroleum regulation and opportunities for streamlining regulatory approvals, providing clearer timeframes and removing duplication between jurisdictions.

Recommendation 10.3 from this review, outlined below, identified the need for States and Territories to maintain consistency with the Commonwealth requirements for safety regulation of the offshore petroleum industry.

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RECOMMENDATION 10.3:

- Separate policy and regulatory; objective-based legislation; statutory timeframes; increased transparency in reporting requirements and timeframes.

- Governments should review and update all existing legislation to ensure it is consistent with the features of best practice regulation and good regulatory design. In particular, updated legislation and its administration should:
  - Separate policy advice from regulation where practicable - where not practicable, for example due to scale particularly in smaller jurisdictions, reliance on appropriate checks and balances and transparency in policy and regulation making processes will be increasingly important.
  - Promote the use of objective-based legislation where feasible.
  - Ensure approval processes are best practice and clearly defined.
  - Set statutory timelines for individual regulatory decisions (any decision should include a ‘stop the clock’ mechanism). There should be two timelines: one excluding periods when the ‘clock’ is stopped and one including all time elapsed. There should also be disclosure of reasons for regulators requesting additional information, and measurement and public disclosure of their performance against these targets.
  - Measure and report overall timelines taking into account all stages of key regulatory processes (including scoping, advising, consultation and decisions).
  - Be consistent with the definitions, format and approach of the updated Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cwlth).
  - Provide clear guidelines where feasible on information requirements to assist proponents in efficiently providing the necessary information to allow timely regulatory decisions.
  - Ensure reporting requirements are clear, justified, and avoid duplication and overlap with other mandatory reporting requirements.

The Australian Government’s response to the PC review, Montara Inquiry and other reports (see sections below) culminated in the expansion of Australia’s offshore petroleum regulator in Commonwealth waters.

The National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) is now responsible for the regulation of the three critical and interrelated areas of safety, well integrity and environmental management in Commonwealth waters through the Offshore Petroleum and Greenhouse Gas Storage Act 2006 and supporting Regulations.
In 2009, an expert panel investigating the Varanus Island gas pipeline rupture and explosion endorsed an augmented duty of care/safety case regime as appropriate for regulation of complex, high hazard industries such as offshore petroleum. The ‘augmented’ component was to include regulation of ‘integrity’ (wells) into the Commonwealth offshore petroleum safety regime. This was implemented in 2011.

The panel also found that the various offshore regulatory regimes produced a complex framework of jurisdictional legal process and regulatory interfaces which were an impediment to positive safety outcomes. Recommendations were made to simplify, streamline and strengthen regulation and administrative approaches by regulators.

A number of those recommendations were implemented in the Australian Government’s Final Response to the Montara Commission of Inquiry, discussed further below.

The June 2010 Report of the Montara Commission of Inquiry (the Report) made 105 recommendations with implications for governments, regulators and the operational procedures and practices of the offshore petroleum industry. In the Final Government Response, the Government accepted 92 recommendations and noted 10.

Implementation of the Government’s response included a suite of initiatives, such as amendments to legislation and improvements to strengthen institutional arrangements. The most significant of which was the expansion of NOPSA into the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), through amendment of the Offshore Petroleum and Greenhouse Gas Storage Act 2006. These amendments provided NOPSEMA responsibility for regulating safety, well integrity and environmental aspects of petroleum activities.

Further amendments included:

- the introduction of a civil penalty regime, which will provide the regulator with an alternative enforcement tool aimed at improving compliance outcomes;
- increasing the current criminal penalty levels under the Offshore Petroleum and Greenhouse Storage Act 2006 (the Act) to bring them in line with other major hazard industry legislation;
- harmonisation of OHS offence penalties with the Work Health and Safety Act 2011 to reflect the greater consequence involved in a major hazard industry;
- redrafting of the Act to allow for the future triggering of the standard monitoring and investigation powers in the proposed Regulatory Powers (Standard Provisions) Bill 2012 (the Regulatory Powers Bill), which will enable NOPSEMA inspectors to use the

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monitoring and investigation powers in the Regulatory Powers Bill to monitor and investigate compliance with all obligations of persons under the Act and associated regulations; and

- enabling the parties responsible for administering the Act to share information in appropriate circumstances.

- implementing a range of alternative enforcement mechanisms, such as infringement notices, adverse publicity orders, injunctions and continuing penalties;

- enabling NOPSEMA inspectors to issue environmental prohibition notices and environmental improvement notices to require petroleum titleholders to take action where required to remove significant threats to the environment;

- requiring NOPSEMA to publish OH&S and environment improvement notices and prohibition notices on its website;

- implementing an express polluter pays obligation in the OPGGS Act and a third-party cost recovery mechanism. This includes providing State and Northern Territory governments with a statutory course of action against titleholders in the event the government(s) incur clean-up costs in their coastal waters or onshore; and

- clarifying financial assurance requirements in the OPGGS Act.
<table>
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<tr>
<th>Recommendation</th>
<th>Notes</th>
<th>APPEA position and response</th>
<th>Discussion paper reference</th>
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| 3.44 The committee recommends that the Offshore Petroleum and Greenhouse Gas Storage Act 2006 be amended to provide for consistency with the Work Health and Safety Act 2011 in regard to the rights, powers and entitlements of Health and Safety Representatives (HSRs), including but not limited to matters identified in paragraph 3.27 of this report[^1] | Paragraph 3.27 of the report – refers to the ACTU’s submission, which lists:  
(a) The WHS Act allows for workers to autonomously determine the manner in which they elect an HSR. The OPGGS Act does not.  
(b) The WHS Act requires that an HSR be a member of the health and safety committee, if he or she consents. The OPGGS Act does not contain an equivalent provision.  
(c) The WHS Act requires that the person conducting the business or undertaking (PCBU) prepare and maintain a list of HSRs for each group of workers carrying out work. The list must be displayed in a manner that is readily accessible to the relevant workers, and must also be provided to the regulator as soon as practicable after it is prepared. While the OPGGS Act requires the operator of a facility to prepare and maintain such a list and ensure that it is available to the workforce and inspectors, there is no requirement for it to be provided to NOPSEMA.  
(d) The Work Health and Safety Regulations 2011 (WHS Regulations) entitle an HSR to an initial training course in WHS of up to five days, and up to one day’s refresher training each year. The OPGGS Act contains no equivalent prescription for the period of initial or refresher training.  
(e) The WHS Act allows an HSR to choose the approved HSR training course that they undertake (in consultation with the PCBU), and requires the PCBU pay the course fees and other reasonable costs associated with attendance at the training. The OPGGS Act contains no equivalent provisions allowing an HSR to choose their course, nor requiring the operator to cover reasonable costs.  
(f) Section 70(1) of the WHS Act requires that the PCBU provide an HSR with certain rights and benefits to assist and support them in performing their role. The equivalent provision of the OPGGS Act, Section 40(1), is comparatively deficient in some respects. For example, s 70(1) of the WHS Act provides for flexibility for workforces to control the process of HSR selection. The caveats on the process are that HSRs must be members of the workforce and that they are either unanimously agreed or elected. In direct response to the Paragraph 3.27 of the report:  
(a) APPEA notes that Schedule 3 of the OPGGS Act provides for the selection, election, resignation and disqualification of HSRs and deputy HSRs and sets out the suite of powers of HSRs and assistance that may be given by a consultant.  
(b) APPEA notes that the model WHS Act cast health and safety committee membership on a voluntary basis; this approach could be suitably / flexibly applied to the nature and scale of an offshore facility and respective HSR work group.  
(c) Schedule 3 - of the OPGGS Act requires the operator of a facility to prepare and maintain an up to date list of HSRs at all reasonable times.  
(d) The safety case must describe in detail the means by which the operator will ensure that, as far as reasonably practicable ... the person who occupies each office or position ... has the necessary skills, training and ability to perform the functions of the office or position. Competency (and training), while not prescriptive, extends to routine and non-routine tasks (in varying conditions) and includes emergencies. APPEA notes that all facilities are different and does not support prescriptive training courses.  
(e) The specific duties under Part 2 of the OPGGS Act, provide for necessary training to members of the workforce to ensure work may be carried out in a manner that is safe and without risk to health. Division 3 of the PPGGS Act provides that a HSR must undertake a training course approved by NOPSEMA; and the HRS is permitted by the operator to attend the training without loss of remuneration or entitlements.  
(f) An object of Schedule 3 of the OPGGS Act is to ensure that expert advice is available on occupational health and safety matters in relation to those facilities.  
(g) APPEA would consider provisions used to disqualify a HSR, are reserve powers within the OPGGS regime, which provide discretion to NOPSEMA as a last resort. | Part 5: Workplace arrangements (pages 42-52) |

facilities and other assistance afforded to HSRs, which s 40(1) of the OPGGS Act does not contain.

(g) Under the WHS Act, only a court can disqualify an HSR. Under the OPGGS Act, NOPSEMA may disqualify an HSR. Although under the WHS Act a court can disqualify an HSR indefinitely, under the OPGGS Act, NOPSEMA can only disqualify an HSR for a period not exceeding five years.

The committee recommends that the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) be required to maintain a register of offshore Health and Safety Representatives which includes:

- the HSR’s name, position and contact details;
- the details of the training the HSR has undertaken in the previous 12 months;
- the employer of the HSR; and
- the work group the HSR represents.

Sch. 3 - 27 of the OPGGSA provides that the operator of a facility must:

- prepare and keep up to date a list of all the health and safety representatives of designated work groups comprising members of the workforce working at the facility; and
- ensure that the list is available for inspection, at all reasonable times, by:
  - the members of the workforce at the facility; and
  - OHS inspectors

Sch. 3 -30 of the OPGGSA details the requirements for training of health and safety representatives:

1. A health and safety representative for a designated work group must undertake a course of training relating to occupational health and safety that is accredited by NOPSEMA for the purposes of this clause.

2. The operator of the facility concerned must permit the representative to take such time off work, without loss of remuneration or other entitlements, as is necessary to undertake the training.

3. If a person other than the operator is the employer of the representative, that person must permit the representative to take such time off work, without loss of remuneration or other entitlements, as is necessary to undertake the training.

APPEA have investigated the context for this recommendation which is detailed further in the ACTU’s submission to the Senate Inquiry:

‘better training for HSRs based on HSR courses accredited by the NOPSEMA after a tripartite panel of key stakeholders, including unions, has assessed the merits of proposed training programs and providers (consistent with the current approach to approving training under the Seacare and Comcare regimes).’

APPEA notes that operators (as duty holders) are required to maintain HSR lists and details of training and competency – these details are subject to audit / inspection.

It is unclear why NOPSEMA should administratively duplicate these obligations.

In regards to training, APPEA is supportive of flexible and fit for purpose training courses that are accredited by NOPSEMA.

APPEA will continue to work with its members and NOPSEMA to ensure that HSR training (including refresher training) and networking opportunities are made available.

The committee recommends the Offshore Petroleum and Greenhouse Gas Storage Act 2006 be amended to provide for:

- a requirement for consultation with the relevant unions in the development of the initial safety case;
- a requirement of a review of the safety case to take place with the workforce once hired (and

The objects of the OPGGS Act lists the specific duties, as follows:

The powers under the OPGGS Act allow for HSRs to make requests to NOPSEMA; and where supported by NOPSEMA get required assistance from a consultant (clauses 34 and 35).

The requirement for effective consultation is the same (under regulation 2.11 OPGGS (Safety) Regulations).

Regulation - 2.11 - Involvement of members of the workforce, provides:

APPEA considers that effective consultation mechanisms exist and that the offshore regime adequately reflects the intent of this recommendation, with members of the workforce.

APPEA notes that one of the key features of Robens Report was its emphasis on the need to involve workers in improving workplace safety, with this in mind the regulatory framework, the industry and NOPSEMA are demonstrating this.

The specific duties under Schedule 3 of the OPGGS Act (Clause 9) contemplate workforce representation; and there is scope for members of the workforce – to request a workforce representative be involved in the formulation of policy/ policies with measures to promote OHS.

Part 5: Workplace arrangements (Pages 47-49)
before the commencement of operations, where possible;  
- a requirement for HSRs to be provided with a copy of the safety case; including by remote online access; and  
- an ability for an HSR to trigger a review and revision of the safety case in certain circumstances.

| 4 | 3.73 The committee recommends that a right of entry for work health and safety purposes be established under the Offshore Petroleum and Greenhouse Gas Storage Act 2006, requiring:  
  - the operator of the facility to, as soon as reasonably possible, facilitate transport for the permit holder for right of entry purposes;  
  - the cost of transport for the permit holder for right of entry | (1) The operator of a facility must demonstrate to NOPSEMA, to the reasonable satisfaction of NOPSEMA, that:  
  - (a) in the development or revision of the safety case for the facility, there has been effective consultation with, and participation of, members of the workforce; and  
  - (b) the safety case provides adequately for effective consultation with, and the effective participation of, the members of the workforce, so that they are able to arrive at informed opinions about the risks and hazards to which they may be exposed on the facility.  

   2. A demonstration for paragraph (1)(a) must be supported by adequate documentation.  

   3. In subregulation (1): members of the workforce include members of the workforce who are:  
  - (a) identifiable before the safety case is developed; and  
  - (b) working, or likely to be working, on the relevant facility.  

Note: Part 3 of Schedule 3 to the Act sets out the broad consultative provisions that apply, including provisions for the establishment of designated workgroups, the election of health and safety representatives and the establishment of OHS committees. The arrangements under these consultative provisions should be used for consultation with members of the workforce about the development, preparation and revision of the safety case.  

Revision of a safety case is based on certain circumstances or at NOPSEMA discretion) requires involvement of members of the workforce. Regulation 2.31 provides an established and procedurally fair process for the revision of safety case. | In direct response to the bullet points under recommendation 3 – APPEA observes:  
- The Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations include provisions for consultation in relation to the development, preparation and revision to the safety case. Consultation should occur with members of the workforce, which typically includes significant involvement from HSRs. Specific consultation procedures are guided by the local Health and Safety Committee (defined under Part 3 of Schedule 3 to the Act). Existing consultation provisions appropriately focus on health and safety matters; there is no safety reason to require union review. Consultation in relation to development of a facility’s safety case is focused on the work force and HSR's.  
- The OPGGS Act already describes duties of various parties in relation to occupational health and safety. These essentially require members of the workforce to be provided access to the safety case and for the Operator to ensure the workforce understands the hazards associated with working at the facility, and their own regulatory requirements. There is no safety reason to add a further expectation into the Act.  
- Safety case documents are made available to personnel working on the facility, given the detailed nature of these documents they may contain company proprietary information and are therefore not suitable for public circulation. Remote / soft copy access to the safety case may impact information provisions under OPGGS Act regime– (where there is a statutory duty to protect legal professional privilege / medical information).  
- HSRs have specific responsibilities to raise concerns, including those that might require safety case revision.  

In addition to internal issue resolution processes, APPEA would hope HSR’s feel empowered to raise unresolved concerns to NOPSEMA. |  

Part 5: Workplace arrangements (Pages 55-57)
purposes to be recovered from industry by a levy revenue to NOPSEMA; and

- an ability for the permit holder to exercise entry for the purposes of inquiring into multiple suspected contraventions of the Offshore Petroleum and Greenhouse Gas Storage Act 2006, including additional contraventions identified during the course of the entry.

(e) to foster a consultative relationship between all relevant persons concerning the health, safety and welfare of members of the workforce at those facilities.

Alternatively, APPEA supports positive workplace cultures where members of the workforce are empowered to raise health and safety concerns.

APPEA consider it important to note that multiple contraventions of the OPGGS Act would elicit a regulatory response from NOPSEMA, NOPTA and or the Minister.

The committee recommends that Offshore Petroleum and Greenhouse Gas Storage Act 2006 be amended to provide for consistency with the Work Health and Safety Act 2011 in regard to a licensing system for workers performing high risk work.

The OPGGS (Safety) Regulations have a permit to work system for safe performance of various tasks. The system is comprehensive and forms part of the safety management system in the safety case.

Prescriptive licensing systems presents challenges where different facilities utilise different plant; and assets of different ages. Conversely, the flexibility provided by an objective based regime supports innovation and technological advancement – ultimately improving safety performance through control measures (hierarchy of controls – e.g. remote work).

The benefit of aligning to the model WHS Act and other (onshore) industry sectors is unclear.

APPEA notes that safety cases already incorporate competency and training requirements in a non-prescriptive manner for workers; with regular NOPSEMA inspections to verify compliance.

The OPGGS Act requires Operators to take all reasonably practicable steps to provide all members of the workforce, in appropriate languages, with the information, instruction, training and supervision necessary for them to carry out their activities in a manner that does not adversely affect the health and safety of persons at the facility.

Training and competency is facility specific (not directly comparable to WHS industry sectors); and is therefore most appropriately managed under the safety case to ensure all members of the workforce are suitably trained and competent.

The Commonwealth Minister endorses the Board membership; and members are appointed for three years as recommended by COAG, through the Energy Council.

In their submission to the Education and Employment References Committee, the NOPSEMA Board clarified their purpose, functions, competencies and experience.

'The Act provides for individual members to be appointed by the Commonwealth Minister and makes no provision for stakeholder representation on the Board. Board members are not intended to represent any particular stakeholder group or interest, they are appointed for their extensive industry and Government expertise so they may provide advice to the Government

APPEA does not support this recommendation because the NOPSEMA Advisory Board need vast industry experience with relevant expertise in safety, environment and well integrity.

APPEA is supportive of the current process for appointing nominees to the NOPSEMA Board through COAG, with demonstration against the required skills matrix, to perform legislated functions under the OPGGS Act.

Section 655 of the OPGGS Act provides the NOPSEMA Board with sufficient powers to perform their functions. Furthermore, section 695 of the OPGGS Act, provides that the responsible Minister (in Commonwealth or State / Territory jurisdiction) may cause, or request, a review, the operation of NOPSEMA, but must include an assessment of the effectiveness ... in bringing about improvements in:

a) the occupational health and safety of persons engaged in offshore petroleum operations or offshore greenhouse gas storage operations; and

b) the structural integrity of facilities, wells and well-related equipment; and

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b) the structural integrity of facilities, wells and well-related equipment; and

Part 4: Duties, training, competency and mental health

Part 5: Workplace arrangements

31 https://www.aph.gov.au/DocumentStore.ashx?id=ac6ab0f9.3f6d.4e4c.847a.34f1da7c7578subbid=564395
The NOPSEMA Board also described the way they interact with key stakeholders and the mix of competencies required in respect to their functions.

'Board members individually and collectively interact with a range of national and international stakeholders on a continuous basis. This engagement ensures members keep abreast of industry developments and understand a range of stakeholder views.'

'Current Board members demonstrate a broad mix of competencies including:

- detailed knowledge of the petroleum industry
- extensive legal knowledge of legislation and the operations of regulatory organisations
- an understanding of the safety case approach in regulating major hazard industries
- senior operational experience in a major hazard industry (onshore or offshore)
- an understanding of the political environment within which NOPSEMA operates, in particular the importance of its relationship with the COAG Energy Council.'

7 4.56 - The committee recommends that NOPSEMA carry out regular, unannounced inspections as part of its standard inspection regime.

APPEA notes that NOPSEMA typically undertakes over 100 OHS inspections per annum, with a minimum frequency for inspecting production facilities and mobile offshore drilling units of typically twice per year.

APPEA supports compliance and enforcement frameworks that are consistent with the Organisation for Economic Co-operation and Development's Best Practice Principles for Regulatory Policy.

APPEA notes that targeted and proportionate inspections are crucial to leading practice compliance and enforcement regimes. However, unannounced inspections are logistically challenging in remote offshore environments; and shouldn’t be compared to unannounced inspections in onshore places like construction sites under the model WHS act.

Operators are required to take all reasonable steps to ensure that the facility is safe and without risk to the health of any person at or near the facility (OPGGs Act – general and specific duties relating to OHS).

These general and specific duties also extend to accommodating inspectors from NOPSEMA in regards to facility inductions, safety / emergency briefings and training (Helicopter Underwater Escape Training) etc.

NOPSEMA may require a duty holder to provide reasonable assistance and facilities in relation to an inspection that is conducted offshore. This may include, but is not limited to,
<table>
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<th>8</th>
<th>4.57 - The committee recommends NOPSEMA and facility operators ensure that HSRs are present and fully engaged when NOPSEMA carries out its inspections by: • requiring HSRs to accompany NOPSEMA inspectors on their inspections; and • requiring NOPSEMA inspectors to meet separately and privately with HSRs during inspections.</th>
<th>Offshore travel to a facility and the provision of work space, accommodation and meals during the inspection.</th>
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<td>Under Schedule 3 of the OPGGS Act (clause 34) provides for HSR to make requests and accompany an inspector (whether or not the inspection is based on a request). NOPSEMA have published detailed guidance on their website to assist HSRs. NOPSEMA have also issued a guideline on the role of workforce and operator in OHS inspection.</td>
<td>APPEA is supportive of HSRs having involvement in inspections, including any decision-making regarding inspection findings or conclusions (this process is already provided for under Subdivision B of the OPGGS Act – Powers of health and safety representatives).</td>
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<td></td>
<td>The committee recommends that the penalties in the Offshore Petroleum and Greenhouse Gas Storage Act 2006 be significantly increased to bring them into line with best practice responsive regulation.</td>
<td>Part 2: Background and Part 5: Workplace arrangements (pages 14, 44-52)</td>
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<td>9</td>
<td>4.77 - The committee recommends that the penalties in the Offshore Petroleum and Greenhouse Gas Storage Act 2006 be significantly increased to bring them into line with best practice responsive regulation.</td>
<td>The OPGGS Act and regulations provides for different types of compliance measures (preventative, persuasive, compulsory and punitive measures). The discussion paper describes how the maximum penalty provisions were determined for the 2013 amendments (including comparison of WHS Act and the EPBC Act). This legislative design aimed to ensure that the penalty provisions could be scaled to a level that served as an effective deterrent. The Department’s supplementary submission to the Senate inquiry into work health and safety of workers in the offshore petroleum industry Submission 7 also clarified the penalty provisions under the OPGGS Act. Specifically, the OPGGS regime contains offences for recklessness and negligence, when a person, subject to a health and safety requirement, omits to do an act and breaches the requirement. The penalty for recklessness is 3,500 penalty units and negligence 1,750 penalty units, which currently equates to $735,000 and $367,500 respectively for an individual. For a body corporate these equate to $3,675,000 for recklessness and $1,837,500 for negligence. APPEA notes that the enforcement tools available to government are wide-ranging and not limited to Schedule 3 of the OPGGS Act and / or the safety regulations. APPEA is in principle supportive of enforcement actions that identify and rectify root causes. More broadly APPEA supports compliance strategies underpinned by education and awareness. Stakeholder feedback on NOPSEMA’s compliance strategy considered ‘enforcement pressure’. NOPSEMA found that the ‘the use of advice to promote (compliance) functions to achieve a no-blame approach’ (may be beneficial) … to secure broader industry compliance.</td>
</tr>
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According to the Victorian Government submission, under the Victorian OHS Act, the maximum penalty is 1800 penalty units ($285,426) for an individual and 9000 penalty units ($1,427,130) for a body corporate. By comparison, in the UK, pursuant to Section 45 (5) of the Energy Act 2016 - Section 45 limits the amount of the financial penalty to £1 million. The Secretary of State may by regulations amend that limit to an amount not exceeding £5 million.²⁶

### 4.78 - The committee recommends that NOPSEMA’s Enforcement Policy be amended so that its response escalates for each instance of non-compliance by the same organisation or in respect of the same facility.

Under the OPGGS Act, non-compliances can have wide reaching consequences on the petroleum title (not just operations). NOPSEMA’s enforcement policy discusses proportionality and past performance.²⁸

See APPEA response to recommendation 7:

APPEA supports compliance and enforcement frameworks that are consistent with the Organisation for Economic Co-operation and Development’s Best Practice Principles for Regulatory Policy.

APPEA is supportive of enforcement actions, as described in the purpose statement of NOPSEMA’s enforcement policy, that are outcome focused, proportionate, responsive, well informed, targeted and aligned with principles of procedural fairness.²⁹

### 4.79 The committee recommends that NOPSEMA be directed to comply with the Enforcement Policy in respect of taking prosecution action where there has been repeated non-compliance with the legislation.

See APPEA response to recommendations 9 and 10 above.

### 4.91 The committee recommends the Commonwealth Government conduct a comprehensive assessment of coverage of Australian safety regulation, including offshore petroleum, in order to develop a coherent legislative reform package.

Noted.

APPEA welcomes the opportunity to continue to work with key stakeholders including the department during the policy development process and NOPSEMA to improve offshore safety outcomes.

### 4.92 The committee recommends that NOPSEMA and Australian Maritime Safety Authority update their Memorandum of Understanding (MoU), with a particular focus on achieving clarity on the touch points between the two agencies will be beneficial, however a clear demarcation of each agency’s jurisdiction is essential to prevent regulatory duplication / overlap.

APPEA notes that the MoU has been updated and the objectives have been revised.

APPEA is supportive of streamlining approvals and compliance processes across the OPGGS Act, particularly in regards to areas that do not correlate to improved (safety, environment well integrity / resource management) outcomes.

| on the common areas and interactions between the two agencies and their legislations. | A number of producing vessels are registered to a foreign Flag State for which marine class oversight is provided by a class society such as Lloyds Register.  

AMSA jurisdiction is limited to a Port state control agency responsible for marine safety compliance. AMSA’s compliance checks can and should remain delegated to the class society.  

If AMSA’s responsibilities were delegated to NOPSEMA (instead of a class society) they would not be recognised by the vessel’s Flag State. This would add duplication to marine systems compliance.  

There is a significant difference between the skill sets required to regulate marine systems compared to those required to regulate oil and gas processing facilities. Hence the requirement for two separate regulators  

AMSA and NOPSEMA responsibilities and skill sets are very different and will reduce the number of qualified inspectors available that would be able to do both; |
Other matters raised during consultation through the Safety Stakeholders Group

Stakeholders have discussed other contemporary reviews of health and safety laws in Australia, including the *Review of the model Work Health and Safety laws (2018)*, for Safe Work Australia, by Marie Boland (Boland Review).

Several recommendations from the Boland Review, have been incorporated into the Discussion Paper; for further examination, for example:

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Part 3: Objects, safety cases and diving safety management systems

The objects of the OPGGS Act capture:

- the general duty/ absolute need to secure the health safety and welfare of persons at or near facilities to as low as reasonably practicable (ALARP);
- that evidence-based expertise is available on OSH matters in relation to facilities (linked to safety performance and outcomes);
- the promotion of a dynamic culture of continuous improvement (kaizen);
- the fostering of meaningful consultation / engagement.

The OPGGS (Safety) Regulations reflect the objects of the OPGGS Act by ensuring that the safety case regime, and diving safety management system is:

- applied over the lifecycle of a petroleum project; and
- supported by a systems-based ALARP approach (to drive continuous improvement).

Comparisons to the model WHS Act

APPEA considers the objects of the OPGGS Act are adequate and consistent with the model WHS regime. The model WHS Act objects include:

- protecting workers from harm (and hazards) to ALARP— which includes physical and psychological harm;
- Consultative and collaborative approach – linked to safety outcomes;
- Compliance and enforcement measures
- Framework for continuous improvement.

While the model WHS regime reflects Robens style regulation 41 underpinned by general duties within the statute; and further detail contained in regulation; offshore petroleum policy makers and regulators must look internationally to benchmark against leading practice.

41 Cited in Boland Review - common term used to describe an approach to regulating WHS established under Lord Robens’ Report of the Committee on Safety and Health at Work (UK) in 1972. Key features of the Robens model include a unified and integrated system of general duties and self-regulation through greater consultation between workers and PCBUs.
What are your views on the current objects in the OPGGS Act and Safety Regulations as they relate to OHS? Do you have suggestions for changes to the objects, or how they are defined?

APPEA considers that the objects of the OPGGS Act and Safety Regulations are appropriate and fit for purpose.

Do you think the objects in the OPGGS Act should include specific reference to the role of unions and employer organisations, or is the current requirement to foster a consultative relationship with all relevant persons sufficient? Why/why not?

No.

APPEA considers the current requirement to foster a consultative relationship is sufficient.

This objective (and the consultative approach) is reflected in Regulation 2.11 of the Safety Regulations which requires the operator of a facility (as the duty holder) to demonstrate to the reasonable satisfaction of the regulator that there has been, and will be ongoing, effective consultation with members of the workforce in the development, implementation and revision of the safety case.

The general principle of this regulation item is that those who are directly exposed to hazards in the workplace are consulted when it comes to risk assessment and control measures. Union representatives are not exposed to these workplace hazards.

What are your views on the current regulatory approach to design and installation of a facility, including the process for early engagement with the regulator?

APPEA is supportive of an early engagement document during front end engineering and design (FEED).

APPEA notes that there is some debate on whether such a document should be voluntary or mandatory and whether there is an associated acceptance or approval from regulators.

Notwithstanding above, APPEA considers that such a document could set policy and direction including: design intent, objectives, engineering processes and design life (while protecting commercial proprietary information that would otherwise not be released under the statute or freedom of information).

Titleholders could be encouraged to undertake early engagement with regulators and key stakeholders they identify, as a non-prescriptive condition on their respective retention lease.

Early engagement during the retention lease phase could be considered to reflect ‘proper and workmanlike manner and be in accordance with good oilfield practice’.
Should early engagement with the regulator be voluntary or mandatory? Why?

APPEA notes that there is some debate on whether such a document should be voluntary or mandatory and whether there is an associated acceptance or approval from regulators.

While a mandatory process may actually de-risk project feasibility / economics (towards final investment decision). APPEA considers that voluntary early engagement with a regulator may best demonstrate a clear commitment to the earliest possible development of a discovery.

What are your views on the current OPGGS provisions relating to how and when safety case revisions occur?

APPEA notes that the currency of the safety case (five years) and the revision requirements (based on significance risk or request for revision), under the Safety Regulations, are consistent with the other permissioning documents across the OPGGS Act regulatory framework.

The Safety Regulations contain a procedurally fair process for withdrawal of a permissioning document approval (seen as a last resort in terms of enforcement) is described under clause 6.7 of NOPSEMA’s Enforcement Policy.42

APPEA is aware of operational issues relating to revisions versus management of change. Some of these issues are explored in Attachment 5 below.

APPEA notes that NOPSEMA have expressed concern about misuse of ‘management of change’43 and the ‘concept of reverse ALARP’.

APPEA is supportive of improved legislative clarity or guidance on the use of management of change, especially in regards to acceptable risk tolerance, for changes, to non-safety critical equipment.

What are your views on the ability of a HSR to trigger a review of a safety management-related document, including a safety case?

Regulation 2.11 of the Safety Regulations notes that the ‘consultative provisions should be used for consultation with members of the workforce about the development, preparation and revision of the safety case.’

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Excerpts from the NOPSEMA’s HSR Handbook\textsuperscript{44} clarify this process:

‘The operator must also demonstrate to NOPSEMA that there has been effective consultation with and participation of members of the workforce in the development or revision of the safety case, and must show that there are systems for members of the workforce to arrive at informed opinions about the risks and hazards they may be exposed to.

Therefore, the workforce must be involved in the development and revision of the safety case. They must also be consulted and informed to the extent that they understand the hazards and risks that exist. A HSR may be involved in the safety case development and review, or consulted by the operator about the involvement of others.’

Further, when assessing a new safety cases, safety case revisions or DSMS, NOPSEMA can look for evidence and descriptions on workforce consultation, including viewing the details of how the operator responds to safety issues raised by the workforce.

What are your views on the current requirements for a DSMS and DPP, including the content requirements, approval and training and certification processes?

Diving is extremely dangerous and APPEA supports robust regulatory provisions to secure health and safety of offshore divers as provided under Chapter 4 of the Safety Regulations.

The DSMS currently provides the flexibility to cite appropriate standards or codes, with the regulatory discretion / protection that NOPSEMA must reject a DSMS in it does not comply with Regulation 4.4 (where NOPSEMA isn’t reasonably satisfied).

The reason the Safety Regulations do not prescribe Australian or New Zealand standards is because offshore diving (saturation diving) is a niche occupation, relying on divers that work around the world.

‘Diving Operations involve a unique combination of occupational health and safety issues performed in an unforgiving environment where errors can quickly develop into fatal accidents.’\textsuperscript{45}

\textsuperscript{44} https://www.nopsema.gov.au/assets/Publications/A501590.pdf

\textsuperscript{45} https://www.iogp.org/oil-and-gas-safety/diving/
In October last year, IMO members endorsed a proposal from IOGP and IMCA to make amendments to IMO codes. APPEA considers it most important that the Australian offshore regime maintains flexibility to apply innovative international codes / standards.

What are your views on the consultation requirements for a DSMS and DPP?

Consultation requirements under the Safety Regulations are more comprehensive and explicit than the model WHS regulations in respect to diving work.

NOPSEMA diving guidelines 2018

The diving contractor is required to document in the DSMS the details of the consultation that has taken place. This should include the details of:

a) the members of the workforce consulted and their relevance to the DSMS
b) details of any submissions or substantive comments relevant to the development of the DSMS made during the process
c) any changes (including the addition of new material) made to the DSMS as a result of the consultation.

Public access to DSMS (regulation 4.9) also ensures transparency between the operator and diving contractor.

Do you think the OPGGS regime requirement for offshore divers to hold an ADAS qualification leads to optimal safety outcomes?

Yes. ADAS training programs are designed specifically to conform to the requirements of national and international regulatory and industry requirements, this enables ADAS licence holders to work in various countries around the world.

Should the offshore regulatory regime for safety impose additional requirements or recognise other qualifications? Why/why not?

APPEA supports an objective based regime, based on competency. This approach is preferable over listing prescriptive qualifications.

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49 https://adas.org.au/training/
Part 4: Duties, training, competency and mental health

The ALARP principle recognises that ‘as low as reasonably practicable’ is generally the point where the sacrifice required to reduce the risks of an activity any further would be extraordinarily disproportionate to the benefit gained and may not be practically feasible. It is not possible to eliminate some risks entirely, but ALARP aims to demonstrate that the risk of an activity has been reduced to a level acceptable to stakeholders.

Australia’s offshore petroleum activities are regulated using an objective-based regime. This approach sets high-level requirements that must be achieved, but does not prescribe how those requirements must be met. Australia’s objective-based regime maintains clarity of responsibility, where the onus is on the industry (the duty holder) to identify and evaluate risk, and achieve fit-for-purpose design to prove to the regulator, NOPSEMA that their offshore petroleum activities are safe and risks have been reduced to ALARP. In all cases, no activity can proceed until NOPSEMA has accepted the relevant permissioning documents.

Key components of objective-based regulation for offshore resources activities include:

- The duty holder’s risk management can be tailored to the impacts and risks unique to the specific activity and location.
- Responsibility for managing risks rests with the duty holder, who is best placed to identify and manage the impacts and risks of their activity to ALARP and acceptable levels, and to set appropriate performance measures (outcomes and standards).
- The duty holder has the flexibility to implement new technologies to meet and exceed the performance outcomes and standards they have set for the activity, promoting continuous improvement.

The outcome of an objective-based regime is that costs and implications to health, safety and the environment are considered as part of a company’s investment decisions. In this regard, objective-based regulation encourages continuous improvement to achieve appropriate health and safety and environmental outcomes. It ensures flexibility in operational matters to meet the unique nature of different activities, and avoids a ‘one size fits all’ approach to regulation, allowing industry to determine the most effective and efficient way to operate.

Duties

In Australia’s offshore petroleum regime, general duties are imposed on duty holders (titleholders and operators of facilities), other contractors, suppliers and all those who work at or near facilities.

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Duty holders are responsible for evaluating and managing risks and demonstrating to NOPSEMA that risks are reduced to ALARP. For OHS, the operator of the facility bears the principal duty in the OHS regime, whereby it is responsible for taking all reasonably practicable steps to ensure the facility and its activities are safe and without risk to health.

Safety Regulations is to ensure risks to the health and safety of persons at facilities are reduced to ALARP. It does this by setting high-level requirements for risk management plans, including facility safety cases and diving safety management systems. The Safety Regulations also include specific provisions regarding exposure to hazardous substances, fatigue management, possession or control of drugs or intoxicants and exposure to noise.

Training / competency

Training and competency is facility specific (not directly comparable to WHS industry sectors); and is therefore most appropriately managed under the safety case to ensure all members of the workforce are suitably trained and competent.

NOPSEMA has developed detailed guidance for HSR training for the offshore oil and gas industry. The guidance includes course/ curriculum content and a suggested outline for registered training organisations.

Mental health

A mentally healthy workplace is one in which workers and management collaborate to protect and promote the health, safety and wellbeing of all by considering and addressing health, safety and wellbeing concerns due to the work environment, including the organisation and design of work and workplace culture as well as the physical environment and facilities provided. The focus is on finding ways to protect and promote the health of workers. Developing a mentally healthy workplace means preventing or mitigating harm by:

- promoting positive practices at work that support mental health and wellbeing
- identifying then eliminating or minimising work-related psychosocial hazards by managing their associated risks
- intervening early to support effective coping strategies when individuals or groups of workers are showing signs of distress
- facilitating access to appropriate services and health management options such as recovery at work or return-to-work support


Do you think the OHS duties of care under the OPGGS regime are clear and effective? If not, what do you think could be improved?

Yes, the general and specific duties under Schedule 3 of the OPGGS Act and the Safety Regulations are clear and effective. These duties vertically integrate – operators, supervisors, employees, manufacturers, suppliers contractors etc.

What are your views on the effectiveness of the OPGGS permit to work system? If you believe there are deficiencies, what are they and how should they be addressed?

The permit to work system ensures that members of the workforce are competent in application and the system must be assessed and accepted by NOPSEMA through the safety case.

What are the benefits and challenges of implementing a licencing system for high risk work, similar to that under the WHS Act and WHS Regulations, in the offshore oil and gas industry?

APPEA considers the challenges are that different facilities utilise different plant / assets of different ages. The regime must cater for new and existing assets; and encourage innovation and technological advances (which may challenge traditional roles and risk management hierarchy of controls – e.g. remote work).

What are your views on the training of offshore oil and gas participants more broadly?

Do you think current provisions under the OPGGS regime adequately provide for training of all participants?

APPEA supports an objective based regime, based on competency (where training courses are not prescribed).

Do you think the current provisions in the OPGGS Act effectively promote and support positive mental wellbeing workplaces in the offshore oil and gas industry?

Yes, the OPGGS Act provides the flexibility to apply a risk management process to identify psychosocial hazards and risk factors in the workplace (organisation or environmental factors), and help protect mental health on or near facilities.

Can you suggest strategies or measures to further promote and support positive mental wellbeing workplaces in the offshore oil and gas industry?

The WA Government’s mentally healthy workplaces for fly-in fly-out (FIFO) workers in the resources and construction sectors (2019)53, includes strategies and control measures that may assist in developing and maintaining mentally healthy workplaces.

The WA Code defines such hazards as follows:

‘Workplace psychosocial hazards are related to the psychological and social conditions of the workplace rather than just the physical conditions. These include stress, fatigue, bullying, violence, aggression, harassment and burnout, which can be harmful to the health of workers and compromise their wellbeing.

There are also risk factors (e.g. misuse of alcohol or other drugs, poor change management) that increase the risk or susceptibility for harm to health from exposure to a hazard.’

APPEA notes that the WA Code found that the best ways to reduce the stigma associated with mental ill health was through demonstrable leadership commitments and training and education.

References in respect to mentally healthy workplaces include:

AMMA – Mental Health Working Group

AMMA\(^54\) facilitates a Mental Health Working Group, comprising various members committed to best practice when it comes to mental health in the Australian resources and energy industry.

Safer Together – Health Matters\(^55\)\(^56\)

Health Matters is a place where you can find help to address health and mental health issues. It’s also a place where you can help your work mates by sharing what you’re doing to manage health and mental health issues in your workplace.

APPEA Journal - Industry partnerships in addressing mental health\(^57\)

‘Workplaces are ideally placed to prevent mental health problems, promote mental health, and support a person with mental illness. Investing in strategies to support

\(^57\) https://www.publish.csiro.au/AJ/AJ15043
mental health in the workplace has been associated with improvements in productivity, job satisfaction and significant returns on investment.’

‘Research suggests multi-component mental health programs / strategies are most effective when they aim to promote:

- mental health awareness to employees;
- a peer-based support model;
- education to supervisors regarding the management of staff experiencing mental health problems; and,
- a review of organisational policy.’

Safe Work Australia 58

Safe Work Australia also have important resources from onshore jurisdictions to assist workplaces identify hazard or factors that may adversely affect mental health.

Part 5: Workplace arrangements

Schedule 3 to the OPGGS Act outlines workplace arrangements and also requires the operator:

- to enter into consultations to establish designated work groups in relation to the members of the workforce at the facility, where requested. These requests may be made by any member of the workforce (or their workforce representative on their behalf if they so request) or be initiated by the operator and provides for requests for variations to be made to any existing designated work groups
- to notify members of the workforce of the establishment of the designated work group in accordance with the outcome of consultations
- to prepare, keep up to date and make available a list of all the health and safety representatives (HSRs) of a designated work group
- to notify members of a designated work group in relation to HSR vacancies and appointments
- to permit the HSR to take leave without the loss of remuneration or other entitlements, to undertake training.

Schedule 3 also provides for the selection, election, resignation and disqualification of HSRs and deputy HSRs and sets out the suite of powers of HSRs and assistance that may be given by a consultant.

What are your views on the current selection and election requirements of HSRs under the OPGGS regime? Why?

Do you think the current requirements sufficiently provide for workers to autonomously determine the manner in which they elect a HSR? If no, why not, and how do you think the election process should be determined?

APPEA considers the OPGGS regime provides the flexibility for workforces to control the process of HSR selection. The caveats on the process are that HSRs must be members of the workforce and that they are either unanimously agreed or elected.

APPEA notes that Schedule 3 of the OPGGS Act provides for the selection, election, resignation and disqualification of HSRs and deputy HSRs and sets out the suite of powers of HSRs and assistance that may be given by a consultant.
What are your views on the disqualification process of a HSR under the OPGGS regime? Why?

APPEA would consider provisions used to disqualify a HSR, are reserve powers within the OPGGS regime, which provide discretion to NOPSEMA as a last resort.

Only NOPSEMA can disqualify a HSR, and can only do so if satisfied that the HSR has acted in an improper manner.

Do you think the current provisions under the OPGGS regime on the powers and protections for HSRs are effective? and What evidence can you provide to support your views?

Yes, but the powers and protections might not be well known.

NOPSEMA has developed detailed guidance for HSR training for the offshore oil and gas industry. The guidance includes course / curriculum content and a suggested outline for registered training organisations.

Are there any other powers of and protections for HSRs that should be provided for? If so, what are they and why do you think they are needed?

No. The powers and protections are currently sufficient and are balanced against the duty of employees / person at a facility.

Are there any other operator duties and obligations to HSRs that should be provided for? If so, what are they and why do you think they are needed?

No.

What are your views on aligning the HSR training provisions under the OPGGS Act with the WHS Act?

APPEA supports flexible training provisions that are ultimately approved by NOPSEMA.

Historically APPEA has been involved in training and competency programs; however, there is inherent difficulty in providing training programs that cater for different facility types and styles of learning.

Registered training providers and industry led collaborative approaches such as Safer Together are best placed to identify training needs. To support this dynamic process – the regulatory framework must be flexible and predictable.
What would be the benefits or risks of increased alignment of HSR training provisions with the WHS Act?

Alignment is less important than delivering the best safety outcomes.

APPEA notes training must be acceptable to NOPSEMA.

What are your views on whether additional types of learning opportunities should be considered as ‘appropriate training’ for HSRs under the OPGGS regime?

This is difficult to legislate – APPEA support learning opportunities, if applied on case by case basis, ideally where duty holders have discretion to decide what is appropriate / reasonable.

Is there a need to specify in the legislation that a HSR is guaranteed a place on the HSC if they consent? Why/why not?

APPEA recommends that policymakers and regulators questions whether health and safety committee’s improve safety outcomes in the offshore domain.

APPEA notes that the model WHS Act cast health and safety committee membership on a voluntary basis.

Do you think the current legislative provisions for engagement between HSRs and NOPSEMA are effective?

The provisions are effective; however, there may be opportunities for improved communication between HSRs and NOPSEMA during facility audits and inspections.

Anecdotally, APPEA is aware there have been misunderstandings on site when NOPSEMA’s environment inspectors have audited facilities leaving HSRs feeling neglected.

Do you think proposed amendments to the provisions regarding HSR lists, and mandating that HSRs accompany and meet with NOPSEMA inspectors (as outlined above), would improve engagement?

The Department of Industry Innovation and Science (DIIS) supplementary submission to the Senate Committee clarified59

‘the OPGGS regime does not require the operator to provide updated lists of HSRs to the regulator, the department notes that the model WHS laws were amended on 21 March 2016, with a focus on reducing regulatory burden and streamlining or simplifying without compromising safety outcomes. As part of this, the Council of Australian Governments (COAG) WHS Ministers agreed to remove the requirement for persons conducting the

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business or undertaking to provide a list of HSRs to the regulator. The OPGGS Act is thus now consistent with the WHS model laws in this respect.’

Can you suggest further strategies (legislative or non-legislative) to improve engagement between NOPSEMA and HSRs?

In addition to raising awareness of the resources available to assist HSRs, APPEA considers networking opportunities and networking platforms may be beneficial to connect / link HSRs from across Australia.

What are your views on the current consultation provisions provided under the OPGGS regime?

APPEA are supportive of provisions which facilitate effective cooperation between the operator and members of the workforce in managing occupational health and safety on the facility.

Which consultation provisions are working well?

Schedule 3 (Part 3) of the OPGGS Act sets out the broad consultative provisions that apply, including provisions for the establishment of designated workgroups, the election of health and safety representatives and the establishment of OHS committees. The arrangements under these consultative provisions should be used for consultation with members of the workforce about the development, preparation and revision of the safety case.

Regulation 2.11 – operator of a facility – must demonstrate to the reasonable satisfaction of the regulator that there has been effective consultation with members of the workforce – in the development or revision of the safety case.

APPEA considers the risk-based, outcomes focused approaches to consultation are working well with members of the workforce – when workforces can contribute to risk management processes including positively influencing control measures for petroleum operations.

Which consultation provisions could be further improved?

Provisions that encourage optional early engagement during front end engineering and design (FEED) – are under consideration.

Such provisions are strategic rather than transactional – to set policy and direction – includes design intent, objectives, engineering processes and design life.

Would you support the introduction of a right of entry provision for the offshore petroleum industry, similar to that of the WHS Act? Would this provision lead to improved safety outcomes for the workforce?

No, APPEA strongly opposes third party right of entry provisions similar to the model WHS Act. Right of entry is for NOPSEMA inspectors, as an independent regulator; it is unclear how union right of entry would improve safety outcomes for offshore members of the workforce.

There are significant safety, security and logistical issues associated with allowing individuals access to petroleum facilities. It is worth noting that certain offshore facilities are unionised sites whereby members of the workforce have indirect union representation.

In their submission to the Senate Education and Employment References Committee, the Australian Resources and Energy Group (AMMA) provide compelling evidence of unions abusing entry powers under WHS laws.

13. AMMA notes that the OPGGS Act clearly deals with the appropriate parties to enter offshore petroleum and greenhouse gas storage facilities for OHS inspections, being only inspectors from the relevant government authority NOPSEMA. AMMA further notes that the Act clearly deals with and limits what role there is for workplace representatives under the Act in relation to work undertaken at these facilities.

14. AMMA submits that the OPGGS Act should not be amended to include union right of entry provisions as contained in the model WHS Act and that third-party entry to the workplace should be limited to those independent government regulators and inspectors as is currently clearly defined in the OPGGS Act.

15. AMMA is concerned that the frequent misuse of safety as an industrial weapon ... would infect the offshore petroleum industry both through areas of direct union coverage and through indirect disruption.

17. Employees can continue to exercise their right to be represented by their union. A union representative that reasonably suspects a contravention of the model Act can notify the employer and/or the regulator without entering the site, in order to seek resolution of the safety issue. This poses no increased safety risk to workers.

The Chamber of Minerals and Energy in Western Australia (CME) have also provided extensive commentary on the model WHS Act:

the legislative intent of the Model WHS Law is clearly to encourage consultation and sharing of safety concerns. Promoting the involvement of a third party through inclusion of union right of entry provisions in WHS legislation can impede industry efforts to foster effective consultation by making the process unnecessarily adversarial. This impacts safety outcomes.

HSRs engaged with unions on safety issues and failed to follow the employer’s procedures in respect to reporting and escalating safety matters. This approach completely bypassed internal processes specifically designed to resolve WHS issues, created significant disruption to the workplace and most importantly negatively impacted the organisation’s ability to effectively address WHS issues in a timely manner. Multiple members have approached CME with similar comments.

Managing and responding to union right of entry requests creates a logistical, administrative and supervisory burden, detracting from productivity, presenting WHS risks and creating disruption to the workplace. To respond to right of entry requests from a third-party union, company resources are naturally redirected accordingly when the focus should be on updating the regulator, if appropriate, and dealing directly with employees to resolve safety concerns.

What are your views on the current provisions for information sharing?

APPEA supports members of the workforce having the power to access information under the control of the facility operator (OPGGS Act Schedule 3, clause 34(1)(d)).

As described in Attachment 2 above, safety case documents are made available to personnel working on the facility, given the detailed nature of these documents they may contain company proprietary information and are therefore not suitable for public circulation. Remote / soft copy access to the safety case may impact information provisions under OPGGS Act regime— (where there is a statutory duty to protect legal professional privilege / medical information).

Do you think there is a need for increased transparency in relation to the regulation of health and safety? If so, what specific changes do you think should be made?

APPEA notes that commercial and proprietary information (that should be protected under statute) – present challenges to implementing broader transparency reforms across the safety and resource management regimes.
More broadly, there’s opportunity to consider what information, in permissioning documents/plans, is most relevant to the public interest and how to best distil that information to build understanding and confidence in the regulatory regime.

e.g. through the environment plan, safety case or well operations management plan.

What are your views on the current provisions for workforce participation in governance arrangements?

This is a primarily a matter for the NOPSEMA Board and the Council of Agreed Governments.

APPEA is supportive of the current process for appointing nominees to the NOPSEMA Board through COAG, with demonstration against the required skills matrix, to perform legislated functions.

Do you think the OPGGS Act should be amended to require representation of the workforce on the NOPSEMA Board?

No, section 655 of the OPGGS Act provides the NOPSEMA Board with sufficient powers to perform their functions.

Furthermore, section 695 of the OPGGS Act, provides that the responsible Minister (in Commonwealth or State / Territory jurisdiction) may cause, or request, a review, the operation of NOPSEMA, but must include an assessment of the effectiveness … in bringing about improvements in:

a) the occupational health and safety of persons engaged in offshore petroleum operations or offshore greenhouse gas storage operations; and

b) the structural integrity of facilities, wells and well-related equipment; and

b) offshore petroleum environmental management; and

d) offshore greenhouse gas storage environmental management

In their submission to the Education and Employment References Committee, the NOPSEMA Board clarified their purpose, functions, competencies and experience.

‘The Act provides for individual members to be appointed by the Commonwealth Minister and makes no provision for stakeholder representation on the Board...
Board members are not intended to represent any particular stakeholder group or interest, they are appointed for their extensive industry and Government expertise so they may provide advice to the Government on strategies to improve safety and environmental management performance of the industry.

The NOPSEMA Board also described the way they interact with key stakeholders and the mix of competencies required in respect to their functions.

‘Board members individually and collectively interact with a range of national and international stakeholders on a continuous basis. This engagement ensures members keep abreast of industry developments and understand a range of stakeholder views.’

‘Current Board members demonstrate a broad mix of competencies including:

- detailed knowledge of the petroleum industry
- extensive legal knowledge of legislation and the operations of regulatory organisations
- an understanding of the safety case approach in regulating major hazard industries
- senior operational experience in a major hazard industry (onshore or offshore)
- an understanding of the political environment within which NOPSEMA operates, in particular the importance of its relationship with the COAG Energy Council.’

What are your views on the effectiveness of the provisions relating to the protection of workers who are involved in or raise workplace health and safety issues, or who take on a representative role and raise health and safety issues? Do you have any suggestions for improvements?

APPEA considers this largely a matter of workplace culture.

APPEA will continue to work with Safer Together to strengthen safety cultures. As stated above, APPEA considers merit in facilitating networking opportunities, or platforms for HSRs

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63 Safer Together – Safety Culture Toolkit
Do you think the current provisions for issue resolution of health and safety issues, such as the use of HSRs, HSCs and other consultative mechanisms, are effective? If not, what changes do you suggest?

APPEA supports provisions for issue resolution in line with the general principles described in the existing NOPSEMA Policy\(^{64}\) – Consideration of HSR Requests for Consultant Assistance.

The Policy is underpinned by a process of - Internal and external (expert) review; with NOPSEMA as the umpire.

Part 6: Compliance and enforcement

APPEA supports compliance and enforcement frameworks that are consistent with the Organisation for Economic Co-operation and Development’s Best Practice Principles for Regulatory Policy.

NOPSEMA’s Compliance Strategy and supporting documentation is publicly available. The Strategy is consistent with the principles identified by the OECD.

What are your views on the provisions for inspector powers and inspection process under the OPGGS regime?

The provisions under the regime are comprehensive and provide inspectors with the power to secure compliance with the OPGGS Act and Safety Regulations.

Do you think that unannounced inspections are necessary on offshore facilities, and if so, why?

APPEA notes that targeted and proportionate inspections are crucial to leading practice compliance and enforcement regimes. Targeted and proportionate inspections are welcomed by the oil and gas industry, as they represent an opportunity to demonstrate petroleum operations are being undertaken in line with permissioning documentation / approvals.

Unannounced inspections are logistically challenging in remote offshore environments; and shouldn’t be compared to unannounced inspections in onshore places like construction sites under the model WHS act.

Operators are required to take all reasonable steps to ensure that the facility is safe and without risk to the health of any person at or near the facility (OPGGs Act – general and specific duties relating to OHS).

These general and specific duties also extend to accommodating inspectors from NOPSEMA in regards to facility inductions, safety / emergency briefings and training (Helicopter Underwater Escape Training) etc.

NOPSEMA may require a duty holder to provide reasonable assistance and facilities in relation to an inspection that is conducted offshore. This may include, but is not limited to, offshore travel to a facility and the provision of work space, accommodation and meals during the inspection.

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APPEA notes that NOPSEMA typically undertakes over 100 OHS inspections per annum, with a minimum frequency for inspecting production facilities and mobile offshore drilling units of typically twice per year.

What are your views on how compliance is monitored at vessel facilities?

See responses under Part 7 – Jurisdictional coverage.

Should the regime provide for any additional or different requirements for compliance monitoring?

See responses under Part 7 – Jurisdictional coverage; and Attachment 5.

Can you suggest ways (both regulatory and non-regulatory) in which monitoring compliance at vessel facilities could be enhanced?

See responses under Part 7 – Jurisdictional coverage.

What are your views on the current enforcement provisions under the OPGGS regime?

APPEA notes that the enforcement tools available to government are wide-ranging and not limited to Schedule 3 of the OPGGS Act and / or direct penalties under the Safety Regulations.

APPEA is, in principle, supportive of enforcement actions that identify and rectify root causes.

Stakeholder feedback on NOPSEMA’s compliance strategy considered ‘enforcement pressure’ to find that the ‘the use of advice to promote functions to achieve a no-blame approach’ (may be beneficial) … to secure broader industry compliance”68.

Do you think they provide sufficient and effective mechanisms and options to be utilised by the regulator? If not, how could they be improved?

The discussion paper describes the 2013 amendments to the OPGGS Act, which strengthened the compliance, monitoring, investigation and enforcement powers/ measures, specifically the:

- Introduction of a civil penalty regime;
- increased criminal penalty levels under the OPGGS Act, consistent with major hazard industry legislation and
- harmonised with the WHS Act, or made greater, the penalties, including custodial penalties, for OHS offences under the OPGGS Act to reflect the greater consequences in a major hazard industry.

What are your views on the penalty provisions under the current OPGGS regime?

The discussion paper also describes how the maximum penalty provisions were determined for the 2013 amendments (including comparison of WHS Act and the EPBC Act). This legislative design aimed to ensure that the penalty provisions could be scaled to a level that served as an effective deterrent.

The Department’s supplementary submission to the Senate inquiry into work health and safety of workers in the offshore petroleum industry Submission 769—also clarified the penalty provisions under the OPGGSA.

Specifically, the OPGGS regime contains offences for recklessness and negligence, when a person, subject to a health and safety requirement, omits to do an act and breaches the requirement. The penalty for recklessness is 3,500 penalty units and negligence 1,750 penalty units, which currently equates to $735,000 and $367,500 respectively for an individual. For a body corporate these equate to $3,675,000 for recklessness and $1,837,500 for negligence.

According to the Victorian Government submission, under the Victorian OHS Act, the maximum penalty is 1800 penalty units ($285,426) for an individual and 9000 penalty units ($1,427,130) for a body corporate.

By comparison, in the UK, pursuant to Section 45 (5) of the Energy Act 2016 - Section 45 limits the amount of the financial penalty to £1 million. The Secretary of State may by regulations amend that limit to an amount not exceeding £5 million.70

Do the provisions provide effective incentive to comply with the regime? What evidence can you provide to support your comments?

APPEA believes that the provisions when complemented with an appropriate compliance strategy provide the right incentives to secure compliance. Similarly, the amended penalty provisions serve to have the desired dissuasive effect.

APPEA notes that the costs, to facility operators, of shutdowns far exceed the cost of punitive penalty provisions.71

69 https://www.aph.gov.au/DocumentStore.ashx?id=caff7f00-a21e-4c3c-9098-d33521b39f4c&subId=564521
Industrial manslaughter

APPEA acknowledges that state and territory jurisdiction regulators are moving towards harmonising legislation in line with the model WHS Act.

Safe Work Australia has noted in their Consultation Regulatory Impact Statement\(^{72}\) that ‘the inclusion of industrial manslaughter provisions are complex for implementation.’

APPEA notes that the penalties under the OPGGS Act are stronger than the model WHS Act. For this reason, APPEA does not support the inclusion of industrial manslaughter provisions in the OPGGS Act. Our view is also consistent with other business / industry groups in that our criminal justice system provides that individuals may be prosecuted for recklessness / gross negligence leading to a workplace death.

Do you consider the current notification and reporting requirements for both duty holders and other entities under the OPGGS regime to be effective? If not, how could they be improved?

APPEA notes the discussion paper recognises the potential duplication of reporting deaths and injuries (monthly frequency) in addition to the notification and reporting of dangerous occurrences.

APPEA considers that the offshore safety review (and the Safety Stakeholders Group) provides an ideal forum / opportunity to engage with key stakeholders to evaluate lagging and leading indicators, metrics and benchmarking\(^{73}\) across the offshore regulatory framework.


Part 7: Jurisdictional coverage

Do you think the current definitions of key terminology such as facility, offshore associated place, offshore petroleum operations, offshore greenhouse gas storage operations and other definitions are fit for purpose? Are any amendments or clarifications needed?

APPEA supports streamlining of approvals and compliance processes across jurisdiction and the removal of duplicative / confusing provisions within the regulatory framework.

The discussion paper refers to the multiple points at which persons and vessels transition from each jurisdiction; and the need for consistent interpretation of legislative requirements.

To assist with clearer interpretation, APPEA considers that terminology / defined terms have the potential to cause perceived or real regulatory conflict. Such definitions include:

- **facility** and offshore petroleum place under Schedule 3 Clause 3 of the OPGGS Act and exemptions provided under regulation 1.6 and 1.7 of the OPGGS (Safety) Regulations.

- **Offshore petroleum operation** and concept of **stage in life of a facility** under Part 6.9 of the OPGGS Act.

The department and NOPSEMA are best placed to investigate how often the exemptions are being requested from operators; and whether the **stage in life of facility** concept is being adequately reflected in safety case submissions, revisions or following requests for further information.

The discussion paper flags the unintended operational consequences of the exclusion under Regulation 1.6 and 1.7 of the OPGGS Safety Regulations.

Attachment 5 hereunder, supplied by a working group of APPEA members, provides several examples which challenge the effective management of safety onboard vessels.

Does the disapplication of the Navigation Act under the OPGGS Act, and the international conventions it implements, affect offshore safety outcomes? Please provide evidence to support your views.

APPEA would support closer collaboration between Commonwealth regulators that would minimise duplicative safety processes that currently apply to some offshore production assets. APPEA would also note that a recent review and release of draft Marine Order 47 and this safety regulatory review seem to be parallel processes independent of one another.
Are there any issues relating to the jurisdictional coverage and interaction of the OPGGS Act, Navigation Act and OHS(MI) Act that require clarification? & If so, is the issue one of legislative coverage or could it be addressed through communication and engagement between stakeholders?

APPEA notes that while the legislative intent is relatively clear, there are perceived / real operational tensions between the different jurisdictions, as described above and within Attachment 5.

Would increased collaboration between NOPSEMA and other OHS regulators, including Safe Work Australia, improve safety outcomes?

Perhaps, with other OHS regulators and Safe Work Australia also benefitting from sharing learnings and experiences from the offshore petroleum regime.

APPEA considers that the NOPSEMA Board may be best placed to provide such functions, per section 654 of the OPGGS Act, without the need for legislative amendment.

What evidence can you provide to support this?

For example - The discussion paper cites the Code of Practice drafted in Western Australia - Mentally healthy workplaces for fly-in fly-out (FIFO) workers in the resources and construction sectors. Safe Work Australia have undertaken a major body of work in regards to mental health in the workplace.

Safe Work Australia are best placed to inform NOPSEMA of emerging trends in workers compensation etc.

How should this collaboration be undertaken and what mechanisms are required to facilitate and support it?

The NOPSEMA Board could consider the interface with other OHS regulators and Safe Work Australia and provide recommendations to the NOPSEMA CEO and department for consideration.


75 https://www.safeworkaustralia.gov.au/topic/mental-health#overview
Can you suggest any mechanisms (regulatory or non-regulatory) to further enhance collaboration between AMSA and NOPSEMA?

Page 84 of the discussion paper describes the governance arrangements and collaboration mechanisms between AMSA and NOPSEMA.

AMSA / NOPSEMA Memorandum of Understanding

The Senate Standing Committees on Education and Employment recommended that NOPSEMA and Australian Maritime Safety Authority update their Memorandum of Understanding (MoU), with a particular focus on achieving clarity on the common areas and interactions between the two agencies and their legislations.

The previous MoU was underpinned by that objective, linked to safety outcomes:

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(a) the improvement in safety outcomes in the offshore petroleum sector;

(b) the delivery of a consistent and comprehensive regulatory regime in offshore waters and that duplication of activities is avoided as far as reasonably possible in respect of facilities and ships over which the parties have regulatory obligations.

The discussion paper describes that the MoU has since been updated and the objectives are now to ensure:

- The effective cooperation of parties in the improvement of OHS and environmental management outcomes in the offshore petroleum sector;

- Duplication of activities is avoided as far as reasonably possible in respect of facilities and vessels over which the parties have regulatory obligations;

- That industry operations comply with relevant maritime and offshore legislation and regulations.

Marine Order 47

Given that consultation is underway for Marine Order 47 – APPEA considers it important that AMSA align their engagement processes to inform the drafting of the department’s policy framework document.

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APPEA is pleased to table an information paper prepared by a working group of HSE professionals, with a wealth of experience in the development and implementation of safety cases and the management of major hazards on offshore facilities both in Australia and internationally.

The information paper is tabled verbatim, to preserve the operational context.

The majority of the issues that have been identified herein have been raised in the DIIS Discussion Paper [5], further commentary is provided on these issues along with the summary of other key issues.

Background

A robust and clear legislative framework for the implementation of the safety case regime is essential to support safe operations and enable effective regulation. An objective for all stakeholders is continuous improvement, however, this needs to be supported by consistent regulatory assessment and implementation to encourage and promote improvement. There are some current areas of concern that have been identified by Industry which have the potential to reduce the effectiveness of the regime. The intent of this paper is to identify these concerns, provide some context and examples to inform the development of potential solutions as part of the DIIS review. These concerns can be grouped in the following headings, which are further expanded upon in the following sections:

- **Safety Cases – development and implementation**: The opportunity to exert influence on design related safety outcomes, and to implement the most robust forms of risk reduction, diminishes as a Project progresses. The focus of the safety case should be on major hazards.

- **Safety Case revisions**: The requirement for revisions of safety cases requires further clarity.

- **Clarity of jurisdiction, intent and definitions**: The jurisdictional overlap between AMSA and NOPSEMA associated with mobile production facilities, as well as vessels engaged in support activities (construction, installation, maintenance and diving) results in a lack of clarity and hence dilution of the effectiveness of both the OPGGS and Maritime safety regimes.

  o Duplication of content, effort and clarity on roles and responsibilities between ‘titleholder’ and vessel ‘operator’.
• **Regulatory pathway for emergency response:** There are opportunities to improve Industry (and the Regulator’s) preparedness for major emergency events (e.g. well control events), including clarifying the regulatory pathways available to enable robust regulator assessment whilst acknowledging the time critical nature of the response actions.

**Safety Cases – development and implementation**

The following section addresses the issues for discussion raised in Part 3, Development of Safety Cases, of the DIIS Discussion Paper [5] as below, in addition to comments regarding the focus on major hazards and implementation challenges:

- “What are your views on the current regulatory approach to design and installation of a facility, including the process for early engagement with the regulator?”
- “Should early engagement with the regulator be voluntary or mandatory? Why?”

**Early Engagement**

An object of the OPGGS(S) Regulations is to **ensure that facilities are designed, constructed, installed, operated, modified and decommissioned in Commonwealth waters only in accordance with safety cases that have been accepted by NOPSEMA.**

The OPPGS(S) regulations require that a safety case be ‘in force’ for the stages in the life of the Facility (construction, installation, operation, maintenance or decommissioning), which take place in Commonwealth waters (Refer to Reg 2.44).

For a new Facility, the Operator is not obliged to submit any safety case documentation to the Regulator until such time as approvals are required to allow construction or installation to commence in Commonwealth waters. This typically occurs relatively late in the Project lifecycle, following the completion of the design phase.

The structure of the safety case was identified as an area for improvement in the last operational review of NOPSEMA in 2015 [1]. Under the area of Reducing Regulatory Burden, the need for a Design Notification Scheme was highlighted. The issue generated a recommendation for the Department of Industry and Science, (**Recommendation 9:** The Department of Industry and Science should develop regulations regarding the Design Notification Scheme in collaboration with NOPSEMA and appropriate stakeholders).

It is well understood that the application of inherent safety and safety in design principles which afford the most effective risk reduction occurs in the early stages of the project lifecycle. At these early stages of the project lifecycle there is an opportunity to apply risk controls from higher in the control hierarchy (e.g. elimination and substitution). As the project lifecycle progresses, this opportunity reduces and the risk controls implemented late in a project are normally controls from lower down the control hierarchy (e.g. engineering and administrative).

In most cases, by the time any submission is made to the Regulator, the majority of key risk related design decisions have been concluded and the opportunity to influence design outcomes is severely diminished.
The result is:

- Limited opportunity for Regulatory engagement and challenge during the stages of a Project where the most effective risk benefit can be achieved;
- The safety case document becomes unwieldy in trying to serve multiple purposes. The Regulator requires sufficient design information to make an assessment, resulting in significant detail that is not directly useful to the workforce. The safety case becomes a document for the Regulator and not the workforce. Further discussion below;
- Potential reduction in opportunity for workforce engagement during the design and early project lifecycle; and,
- Significant risk for Project proponents (The Operator), on the basis that no Regulatory engagement or approval takes place until after the design, and in many cases, construction is complete. This business risk reduces the incentive to pursue innovative design solutions which may have an overall lower risk profile.

Examples of the benefits of early engagement can be seen in cases studies from the UKCS, one facility in particular which at design notification stage was a single integrated facility, including the HPHT wells. Through the design notification process it was concluded that the ALARP solution was a 2-jacketted, bridge linked facility, with HPHT well on one and the processing / accommodation on the other. This significant concept shift was only achievable at the design notification stage. The current OPGGS regime would not have enabled this engagement and significant design improvement.

The review of the Early Engagement process should also consider that the management of safety in operation of a Facility is heavily dependent on the management of quality during its construction. Validation as currently required under the OPGGS regime (Reg 2.40) provides a high-level assurance that the correct intent has been achieved in the design basis, but does not provide verification that the intent has been implemented in the commissioned facility. There should be an opportunity for the project proponent to demonstrate that it has in place processes to verify that the design intent is achieved in the construction, installation and commissioning of the Facility. In essence, the early engagement submission should describe a Project Quality Management System and suitable verification process.

The Norwegian PD approach to conducting inspections of Facilities during the construction phase, and issue ‘improvement notices’ prior to the Facility entering the jurisdiction also offers opportunities for earlier intervention which is not currently enabled under the OPGGS.

“Primarily the Safety Case is a matter of ensuring that every Company produces an FSA to assure itself that its operations are safe and gains the benefit of the FSA. Only secondarily is it a matter of demonstrating this to the regulatory body.” (Cullen Inquiry Cl 17.35).

As discussed above, the current regulatory framework is such that the Regulator requires significant additional ‘design’ detail to be added to support their assessment, resulting in ‘operational’ safety cases including too much detail relating to early design issues and decisions,
subjects which the Operator may have addressed some years prior. This level of detail may not be useful to the workforce engaged in day to day operations.

“The Safety Case should demonstrate....that the potential major hazards of the installation and the risks to personnel thereon have been identified and appropriate controls provided” (Cullen Inquiry Recommendation 2).

This situation described above is further compounded by the definition of ‘major accident’ being taken as any event with the potential for more than one fatality, therefore ‘personal’ safety type activities and hazards are treated in the same manner as the high consequence, low frequency events.

The effect of this approach is that the “technical and other control measures” (typically referred to as safety critical elements) encompass more components of the facility than those which are not ‘safety critical’. This dilutes the effectiveness of the ‘safety critical’ designation in the management of maintenance, assurance, monitoring and regulatory oversight.

The outcome of this is a loss of focus on the management of major accident hazards in the safety case, in the supporting management system processes and by the regulator.

The current approach to the safety case results in the development of a largely regulator focused document which over time has resulted in the development of increasing large, complex documents which provide limited benefit in achieving the original intent of the safety case regime. If the safety case is separated and accepted at different stages with focus on the relevant stage, this will deliver benefits to the operator, the regulator and the workforce.

A step change in effective implementation of the safety case regime in Australia can only be achieved through mandating early engagement, such as through a design notification similar to that used in the UK sector. Such a process also enables further technical engagement between Operators and Regulator during the design change and an opportunity for sharing of best practices. The success of any such changes will heavily depend on whether the Regulator is supported in administering such provisions, and it is considered that a mandatory process ensures that all stakeholders remain accountable for effective implementation. Furthermore, the regulatory competencies and resources required for the assessment of design, and the monitoring of construction activities are not necessarily aligned with the competency profile of an OHS inspector engaged in operational inspections.

The regulatory review should also consider the original intent of the safety case in terms of focusing on major hazards, to ensure that this intent is not diluted in application. In so doing, the regulatory provisions for those matters not addressed in detail in the safety case should be evaluated. Reference is made to Clause 17.63 of Cullen Inquiry “The regime should not rely solely on the Safety Case.”
Safety Case Revisions

Clause 2.30 of the Regulation describes the triggers for the revision of a Safety Case due to change of circumstances or operations. In addition, the Safety Case Lifecycle Management Guidance Note (A86483) provides further guidance.

The Safety Case describes the Operator’s safety management system to a sufficient level of detail to provide an understanding of how change is managed to ensure that risk remains at a level that is as low as reasonably practicable.

The adequacy of the arrangements for management of change are assessed by the regulator in the safety case assessment process, and tested during planned inspections. On the assumption that the regulator is in a position to discharge these aspects of their role, the application of the management of change process in day-to-day operations remains the responsibility of the Operator. “...a regulator cannot be expected to assume direct responsibility for the on-going management of safety. There may be circumstances in which inspectors can and should take relatively drastic step of interfering by means of statutory notices, but these are the exception. For all practical purposes the management of safety is and remains in the hands of the operators.” (Cullen Inquiry Cl 21.4).

It is evident through the current application of Regulation 2.30, that the Regulator feels that there is a requirement for independent scrutiny of the implementation of temporary changes to a Facility through a formal safety case revision. In other words, temporary deviations managed under an Operator’s (accepted) change process are considered by the Regulator to represent a change to the basis upon which the safety case was accepted.

This indicates a divergence between the basis upon which safety cases and formal safety assessments are developed and the regulator’s basis for accepting such. It represents a level of involvement in day-to-day operations that is not warranted in the context of the basis and intent of the safety case and provides little benefit to the management of safety at the Facility when compared to the administrative burden.

An alternative approach is required for managing temporary changes, and a similar ‘design / change notification’ mechanism as proposed for ‘early engagement’ may be worth further consideration.

This issue can also be seen in the uncertainty surrounding the notification of dangerous occurrences relating to ‘damage to safety critical equipment’ (Sched 3, Cl 82, Regulation 2.42, NOPSEMA Guidance GN-0099). Reporting practices, interpretations and expectations vary considerably between Operators and OHS inspectors, which is taken as further indication of the lack of clarity of intent of the requirement. The basis for notification of ‘damage to SCE’ events needs to be further clarified and a balance achieved between notification of events which result in an increased risk at the Facility and the administrative burden associated with notifying failures which are clearly within the expected, tolerable failure rates and do not result in any material increase in risk. As discussed above in the context of safety case revisions, the basis of the safety case allows for failures of SCEs without resulting in a significant increase in risk.
The formal safety assessment processes underpinning the safety case take account of potential failures and availability/reliability of safety critical equipment. Operators’ change management and operational risk assessment processes are intended to manage these type of failures.

**Clarity of jurisdiction, intent and definitions**

This section addresses the issues for discussion raised in Part 7, Jurisdiction Coverage, Terminology of the DIIS Discussion Paper [5], (page 79), as follows:

- “Do you think the current definitions of key terminology such as facility, offshore associated place, offshore petroleum operations, offshore greenhouse gas storage operations and other definitions are fit for purpose? Are any amendments or clarifications needed?”

The specific issues regarding the NOSPEMA / AMSA interface for mobile facilities has been acknowledged in numerous earlier reviews, primarily focused on mobile production and drilling facilities. Similar concerns and issues arise in relation to vessels supporting petroleum activities (construction, installation, maintenance and diving vessels). The definition of “Facility”, “vessels and structures that are not Facilities” and the concept of an “Associated Offshore Place” (refer Regulations 1.6 and 1.7) pose a number of problems for effective management of safety onboard these vessels (Facilities or Associated Offshore Places).

The definition of a Facility (OPGGS Act Sch 3, Cl 4) includes a vessel laying pipes, manufacturing pipe or working on an existing pipe, or a vessel ‘erecting’ another vessel or structure (that is a Facility). This definition is to be read in conjunction with OPGGS(S) Reg 1.6 and 1.7 which provides some ‘exemptions’, such as a vessel installing and connecting a short length of flexible pipe or jumper if there is no petroleum substance in the pipe or equipment to which it is being connected. The ‘exemptions’ defined in Regulations 1.6 and 1.7 are not clearly linked to any defined principles and hence their basis is unclear, e.g. there is no direct correlation between the exemptions and hydrocarbon risk exposure.

The issues that this arrangement poses can be demonstrated by way of the following example.

A construction / diving support vessel is engaged during a brownfield construction and installation phase associated with an offshore facility. The scope of work includes ROV survey, laying subsea flowlines (flexible pipe), diver based inspection activity on existing hydrocarbon infrastructure. The Regulations are such that during each of these example activities the vessel adopts a different status, i.e. during ROV survey the vessel is a marine vessel under Maritime regulation, during laying of pipe the vessel is a Facility with a safety case under the OPGGS regime, and whilst conducting diving based inspection activity the vessel is an “Associated Offshore Place” under the OPGGS regime but is not a Facility working under a safety case. Hypothetically, all three of these activities could run within a short (e.g. 48 hour) period. The result is that the likelihood of personnel involved in operating the vessel having a clear understanding of the regulatory provisions under which they are working is low. This confusion can be emphasized by the difficulty in identifying the correct regulatory authority to which incident notifications should be directed.
Another example would be a vessel that is engaged to undertake a workscope limited to an ROV campaign to remove marine growth from operational subsea structures. The vessel would not be classified as a Facility (Reg 1.6(1)) but may be classified as an “Associated Offshore Place” due to potential hydrocarbon risks associated with the activity (Reg 1.7(2)). In such a scenario, there is no requirement for the vessel to have an in force safety case, the vessel is not regulated under maritime regulation whilst conducting the activity, and as such the opportunity for NOPSEMA or AMSA to assert any regulatory oversight is extremely limited.

The regulatory definitions and resultant impact on jurisdictional coverage for vessels operating in support of petroleum activities are complex and lack clarity. The result is an ineffective application of any regulatory oversight and a potential to overwhelm operators with regulatory bureaucracy in lieu of practical safety management. This is of particular concern for vessels or operators that may be new to the regime, temporarily in the regime, or smaller (e.g. specialist) contractors. Further review and consideration of the objects of the Regulations in the context of vessels is required, and the relevant regulatory provisions updated to align with the intent.

A vessel may routinely conduct relatively high-risk activities during ‘marine’ type operations but such operations are unlikely to be the source of major accident events. Major accident events which may involve a vessel are likely to be an outcome of an interaction with the production facility, rather than a routine vessel-based activity. For example, a dropped object on a vessel back deck may result in a fatal accident event during routine operations without any interaction with a petroleum facility. The same event dropped overboard onto live hydrocarbon infrastructure may result in loss of containment and multiple fatalities. In such an example, the titleholder has only an indirect influence over the fatality on the vessel back deck, through contractor selection and management processes. The titleholder can have a direct influence on the outcome of a dropped object impacting live infrastructure, through adequate isolations or similar safeguards. Consideration should be given to whether the OPGGS regime and safety case should primarily focus on the activities where an interface with the hydrocarbon risks exists and less focus on the routine marine risks.

Vessel and diving facilities - duplication

Operator safety case revisions (production facility) should only address hazards that the facility and activity present to the vessels and / or divers. Industry experience is that NOPSEMA expects details of the vessel and the dive system on the vessel to also be described in the operators (host facility) safety case revision. This leads to unnecessary duplication, confusion regarding accountabilities, approval delays, and potential inconsistencies between management documents.

Regulatory pathway for emergency response

There are provisions in the OPGGS Act (Schedule 3, Clause 92) and the OPGGS(S) Regulations (Reg 2.39) for exemptions from certain (defined) requirements of the legislation. These provisions are supported by NOPSEMA Policy ‘Exemptions’ (N-05000-PL0157).
The intent of the exemption provisions in legislation, and the NOPSEMA Policy, remain unclear to industry when considered in the context of major emergencies which require response activities by a vessel or structure (mobile facility). The most relevant example being source control activities in response to a drilling / well loss of containment (i.e. requiring an MODU to drill a relief well). There are scenarios where the critical path to initiate response activities may be regulatory approvals. There are some aspects of the response activity that can be pre-prepared, and groundwork for approvals established. The intent and nature of the safety case regulations, and assessment, are such that many aspects of the submission can’t be pre-prepared to account for the specific nature of the scenario, the activities and the vessels / structures involved.

This lack of clarity is evident in the outcomes of recent NOSPEMA planned inspections which includes discussion and recommendations to consider whether regulatory approvals for these activities / facilities can be established in advance. As discussed above, whilst some aspects of pre-planning can be undertaken by Titleholders, it is not practicable to have fully developed approvals documents in advance.

There needs to be consideration given to establishing clear regulatory pathways that drive a reasonable level of preparedness but also enable robust, expedient assessment where delays may lead to consequences that outweigh the benefit of a prolonged assessment.

References

The following documents are referenced in this paper.


[3]. The public inquiry into the Piper Alpha Disaster, The Hon Lord Cullen, November 1990
