



Australian Government

Second Triennial Review of the Operational Effectiveness of the National Offshore Petroleum Safety Authority

Report

November 2011



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The Hon Martin Ferguson AM MP
Minister for Resources & Energy
PO Box 6022
Parliament House
CANBERRA ACT 2600

Dear Minister

2011 Operational Review of National Offshore Petroleum Safety Authority (NOPSA)

We are pleased to advise we have completed our review in accordance with the requirements of the Offshore Petroleum and Greenhouse Gas Storage Act 2006 and the Terms of Reference provided.

The appended report includes:

- The Report
- Our recommendations, findings and various attachments
- Copies of written submissions provided to the Review Team

The Report is signed by all members of the Review Team.

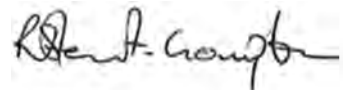
Yours sincerely



Mr Chris Raper
Chair



Dr. Agu Kantsler



Mr Robin Stewart-Crompton

29 November 2011

Acknowledgement

We are most grateful for the cooperation and assistance of the many people we have met and with whom we have worked during the review. We particularly thank the CEO of NOPSA, Ms Jane Cutler and her staff for their considerable help. Ms Kerry Gordon of NOPSA worked closely with us during the review and made an invaluable contribution to the work of the review panel.

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Summary

Our report is the second triennial report on the operations of the National Offshore Petroleum Safety Authority (NOPSA). The terms of reference are set out below. Because the matters contained in the terms of reference are inter-related and interdependent, we have identified twelve themes which underpin them. As we discuss each of those themes, we have made a recommendation or finding. The nine recommendations and three findings are grouped for convenient reference below, but they are also contained in the report at the end of the discussion of each theme.

The report is structured in two parts.

In Part One, *Background and Context*, we explain the role of NOPSA and the complex legislative context in which it operates. We also consider the safety performance of Australia's offshore oil and gas industry. We review developments that have affected NOPSA since the 2008 operational review.

Part Two contains our discussion of the twelve identified themes.

As required by our terms of reference, we have looked at many aspects of the work of NOPSA and at the factors that influence its performance. At this point, we provide our overall assessment.

Overall assessment of the operations of NOPSA

The period since the 2008 operational review of NOPSA has been one of consolidation, interspersed with ongoing legislative change, significant reviews and inquiries requiring resource intensive operational and policy responses.

This year, NOPSA has had to plan and prepare for significant structural change with the passage of legislation to create NOPSEMA, which is to commence at the start of 2012.

We have concluded that, notwithstanding these significant events and some recommendations for further improvement in our Report, NOPSA has firmly established itself as a respected and competent safety regulator among stakeholders and peers in both the domestic and international offshore petroleum and gas industry.

The key points in Part One are as follows:

- for a number of reasons, since 2008 NOPSA and its operations have been the subject of considerable scrutiny, with several important reports making recommendations that have led to changes in the governing legislation and the role and operations of NOPSA, not all of which have yet been implemented;
- the biggest of those changes is to occur on 1 January 2012, when NOPSA becomes the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA)¹ with responsibilities for environmental management, adding to the new responsibilities that NOPSA was given this year for well integrity²;

1 The National Offshore Petroleum Titles Administrator (NOPTA) is also being established.

2 The *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* were amended for the purpose in April 2011, in response to a recommendation of the Montara Commission of Inquiry – see later.

- the change process since 2008 has been demanding for NOPSA and is not yet completed³;
- the safety performance of the offshore petroleum and gas industry has improved in many respects since 2008, and whilst it continues to be a strong performer nationally, its safety performance lags behind that of its international offshore industry peers;
- the OHS provisions of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act) and associated regulations may, subject to further decisions of the Council of Australian Governments (COAG) be affected by the national harmonisation of the principal Australian occupational health and safety laws⁴.

We also explain in Part One that we have refrained from making any recommendations that could cut across decisions that have been taken as a result of the reviews in the period since 2008 or that might distract attention from implementing the government's decisions in relation to the numerous recommendations of the reviews, including the critically important task of establishing NOPSEMA.

In Part Two, we deal with the themes that we identify as central to the terms of reference. For each theme, we consider existing policies and powers, what happens in practice, industry stakeholder views, the relevant findings and recommendations of the previous reports relating to NOPSA, a broad overview of other approaches that are relevant to the theme that is being considered, and any action that is being taken to address identified gaps in the powers, functions or operations of NOPSA. This is the basis for our discussion and analysis of the issues and for our recommendations and findings.

The first theme, *Effectiveness of NOPSA*, looks at that issue from a number of perspectives. After identifying how effectiveness should be measured, we conclude (as previous reviews have) that NOPSA is effective. Recognising that the regulation of the industry involves a number of governments and regulators, we recommend action to entrench and improve regulatory cooperation and continuous improvement (Recommendation 1).

In the second theme, *Effectiveness of the NOPSA Advisory Board*, we recognise that the Board, established by the OPGGS Act, has an important role in the regulatory structure. We conclude that the Board is a valuable resource. On the basis of our consideration of its operations, the accountability framework in which it performs its functions and the formal guidance it receives from the Commonwealth Minister, we find that previous concerns appear to have been addressed and that the Board is effective (Finding 1).

3 As we report later, NOPSA has completed its various assigned tasks for the purposes of the changes process.

4 The harmonised laws, based on a nationally developed *Model Work Health and Safety Act*, commence in most jurisdictions on 1 January 2012

Our third theme, *Safety Performance*, examines the critical issues of how well the industry performs in this respect. We note that there have been improvements, but that some areas, such as reportable incidents and dangerous occurrences, show little or no improvement. We commend the initiatives taken by the industry and note various improvements that have strengthened NOPSAs ability to undertake its regulatory role. Legislative changes have had a positive influence. We comment on some particular hazards and risks that were identified by a number of stakeholders and note that they are receiving attention from NOPSAs or the industry or both. We underscore the importance of NOPSAs engagement with stakeholders. We note the complexity of the multi-jurisdictional regulation of safety in the industry, the importance of high levels of cooperation between governments and regulatory agencies and we encourage all parties to work towards achieving ‘end to end’ regulatory best practice.

This leads to our Recommendation 2, which is for NOPSAs to continue to identify, through consultation, priority hazards and risks as a focus for its planning and interventions. We also propose that NOPSAs consult Safe Work Australia about the implications of the National Occupational Health and Safety Strategy for strategic planning and the measurement of safety performance.

In our fourth theme, *Capacity of NOPSAs*, we consider some critical variables, namely, funding adequacy, staffing and ability to manage change. The terms of reference cover NOPSAs capacity as a regulator. We discuss broader changes in the regulatory environment. We note the general perception that NOPSAs is a capable regulator. We recognise that NOPSAs is a relatively small agency, capable of fulfilling its mandate, but with little reserve capacity. We identify actions that are pivotal for NOPSAs capacity to undertake its wider role as NOPESMA. Against the background of that discussion, in Recommendation 3, we recommend three things:

- stronger engagement with the industry and the offshore workforce,
- priority attention to completing the legislative action required to implement decisions already taken by government or which are receiving attention (including in relation to the interface between the OPGGS legislation and Commonwealth maritime legislation); and
- a change to ensure that NOPSAs recovers its costs for assessing a safety case that is withdrawn or rejected.

In considering the fifth theme, *Compliance policy and powers*, we examine NOPSAs approaches to securing compliance. We identify some deficiencies in the range of available compliance tools compared with the approach that is taken in the Model Work Health and Safety Act. The question of compliance powers is under current examination through public consultation undertaken by the Commonwealth Department of Resources Energy and Tourism (DRET). In Recommendation 4, we endorse equipping NOPSAs (or NOPSEMA) with a wider range of tools under the legislation for graduated enforcement. We recommend that the opportunity be taken to allow the regulator to bring actions that do not require the referral to the Commonwealth Director of Public Prosecutions (e.g., civil penalties and injunctions),

In our sixth Theme, *Consistency*, we consider issues relating to the consistency of decision making by NOPSAs and its staff. Consistency is universally recognised as a vital element in good regulation. We note concerns that have been expressed about perceived inconsistency in NOPSAs regulatory activities, but we acknowledge the work that

NOPSA is undertaking to improve this aspect of its performance. We saw no evidence of systemic failure, but, in the light of ongoing expressions of concern by some stakeholders, we recommend (Recommendation 5) that NOPSA maintain appropriate policies and procedures and monitor consistency in its regulatory decision making, e.g., by audits or surveys.

The seventh theme, *Safety Case Requirements*, considers a range of issues relating to safety cases. Safety cases are the central element of regulation of the industry. Accordingly, we have looked closely at these issues. They involve different groups (including operators, contractors and consultants). We note that the fundamental policies and principles have been tested and settled through several reviews and inquiries. Recommendation 6 for this theme has three components: supporting the initiative of issuing clear safety case guidance notes by a program of targeted workshops; providing a clearer explanation for not accepting a new safety case until a decision has been taken on an existing application for acceptance of a safety case and inviting proposals for reducing the risk of delay; and inviting APPEA, IADC and IMCA to organise occasional forums specifically for consultants who prepare safety cases (this could be extended to other industry groups).

Our eighth theme, *Early Engagement*, considers the current legislative arrangements for early engagement safety cases. After examining the strengths and weaknesses of the arrangements, we recommend that the safety case system be strengthened by providing for design notification arrangements along the lines of those under the British Offshore Safety Case Regulations (Recommendation 7).

The ninth theme, *Stakeholder Engagement*, considers NOPSA's approach to such engagement and possible enhancements. Effective stakeholder engagement is essential for successful regulation. We discuss managing risks of regulatory capture. We also note the resource demands in stakeholder engagement, but we conclude that the improved safety outcomes that will result from well planned, successful engagement with stakeholders will fully justify the application of the required resources. Recommendation 8 proposes a clearly stated commitment to representative, tripartite and consultative engagement (which could be included in a service charter) and the development and implementation of a program for stakeholder engagement as part of NOPSA's Annual Operating Plan. There would be appropriate preliminary scoping of stakeholder needs and issues and the outcomes of such engagement would be analysed and reported to the Advisory Board.

In our tenth theme, *Command and Control*, we give attention to a long standing issue, which is currently being considered as part of wider legislative reforms. This concerns uncertainty about the interface between the OPGGS Act and the Commonwealth's maritime legislation. The underlying issue goes to identifying which legislative regime applies at the critical times when a vessel (subject to maritime laws) becomes a facility (subject to the OPGGS legislation) and when it reverts to being a vessel. A previous inquiry identified a number of complex issues, to which the Government is responding. We consider that there is a further issue, which appears to be an unintended anomaly of the application of the OPGGS legislation to diving operations, as defined, without a NOPSA inspector having relevant powers on a vessel if it has ceased to be a facility.

In Recommendation 9, we propose continuing to give priority attention to resolving the interface issue, as well as addressing the problem of a NOPSA (or NOPSEMA) inspector lacking authority under the OPGGS Act to deal with diving operations that are within the scope of the Act simply because the vessel concerned has ceased to be within the scope of the inspector's powers.

The eleventh theme, *Emergency Response*, considers the role of NOPSA (and NOPSEMA) in an emergency situation. We review government and industry initiatives and recognise the difficulties inherent in potential multi- government and multi-agency responses to emergencies. We find (Finding 2) that to assist its participation in national coordination arrangements for offshore emergencies (including testing of their effectiveness), NOPSA (or NOPSEMA) should periodically examine emergency response arrangements and issues in its consultations with stakeholders.

Our final and twelfth theme, *Relationship with Other Agencies*, examines NOPSA's cooperation with other agencies, as required by the OPGGS Act. We note the cooperation and collaboration between NOPSA and a wide range of agencies at Commonwealth, State and NT levels. These are covered by a number of memorandums of understanding. We acknowledge these well developed arrangements. In Finding 3, we suggest that it may be useful for NOPSA (or NOPSEMA) to maintain a program for reviewing those arrangements and any associated understandings to ensure that they are current, effective and meet best practice standards.

Recommendations

Recommendation 1

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

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

Recommendation 2

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

Recommendation 3

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

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

[See related Recommendation 8]

Recommendation 4

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

Recommendation 5

NOPSA should:

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

Recommendation 6

We recommend that:

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

Recommendation 7

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

Recommendation 8

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

- a) they are underpinned by a clearly stated commitment to representative, tripartite and consultative engagement (this could be included in a service charter⁵);
- b) a clear program for stakeholder engagement be developed and implemented as part of NOPSA's Annual Operating Plan, with appropriate preliminary scoping of stakeholder needs and issues and the outcomes of such engagement analysed and reported to the Advisory Board

[See related recommendation 3(a)]

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

Recommendation 9

We recommend that:

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

Findings

Finding 1

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

Finding 2

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

Finding 3

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

Terms of reference

Term of Reference	Relevant Recommendation or Finding	Cross-reference to Themes
<p>TOR 1</p> <p>The effectiveness of the National Offshore Petroleum Safety Authority (NOPSA) in bringing about improvements in the occupational health and safety of persons engaged in offshore petroleum operations or offshore greenhouse gas storage operations.</p>	<p>Recommendations 1 and 2</p>	<p>Theme 1: <i>Effectiveness of NOPSA</i></p> <p>Theme 3: <i>Safety performance</i></p>
<p>TOR2</p> <p>The adequacy of NOPSA’s current engagement with offshore petroleum operators and other stakeholders, with a particular focus on safety case development, content requirements, implementation and compliance. Consideration should be given to the level and type of stakeholder interaction NOPSA could reasonably engage in without compromising regulatory independence and its commitment to a best-practice regime. This could also consider NOPSA capacity for involvement and role in the development and management of a coordinated response to incidents involving the offshore petroleum industry.</p>	<p>Recommendations 3,4,5,6, 8, 9.</p> <p>Findings 2 and 3.</p>	<p>Theme 4: <i>Capacity of NOPSA</i></p> <p>Theme 5: <i>Compliance policy and powers</i></p> <p>Theme 6: <i>Consistency</i></p> <p>Theme 7: <i>Safety Case requirements</i></p> <p>Theme 9: <i>Stakeholder engagement</i></p> <p>Theme 10: <i>Command and control</i></p> <p>Theme 11: <i>Emergency response</i></p> <p>Theme 12: <i>Relationship with other agencies</i></p>

Term of Reference	Relevant Recommendation or Finding	Cross-reference to Themes
<p>TOR 3</p> <p>NOPSA's current and ongoing capacity to address safety issues arising from the rapid growth and the incorporation of new and often large-scale technologies in the offshore petroleum industry, including issues of early engagement with operators on safety case compatibility with technology developments, and legislative arrangements for dealing with safety in design.</p>	<p>Recommendations 3, 6 and 7</p>	<p>Theme 4: <i>C capacity of NOPSA</i></p> <p>Theme 7: <i>Safety Case requirements</i></p> <p>Theme 8: <i>Early engagement</i></p>
<p>TOR 4</p> <p>The Review should also consider NOPSA's actions to-date against the accepted 2008 Operational Review recommendations and findings, make recommendations to improve the overall operation of NOPSA and the NOPSA Board, and the safety performance of the Australian offshore petroleum industry more generally.</p>	<p>Recommendations 1 and 8</p> <p>Finding 1</p>	<p>Theme 1: <i>Effectiveness of NOPSA</i></p> <p>Theme 2: <i>Effectiveness of the NOPSA Board</i></p> <p>Theme 9: <i>Stakeholder engagement</i></p> <p>Appendix 5: <i>NOPSA's actions</i></p>

Part One: Background and Context

Introduction

1. From its establishment in 2005 under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act), NOPSA has undergone considerable scrutiny and change. At the national level, the reform of upstream oil and gas regulation is a COAG priority.⁶ Substantial legislative and administrative reforms have occurred and many are still being implemented.
2. The OPGGS Act requires three-yearly reviews of NOPSA's operations.⁷ This is the second such review. Since the first in 2008⁸, several reviews have considered NOPSA's operations and mandate:
 - a) the Bills and Agostini NOPSA review, 2009⁹ examined, among other things, offshore petroleum regulatory safety arrangements, NOPSA's effectiveness and made recommendations for improvement;
 - b) Bills and Agostini also considered aspects of NOPSA's jurisdiction and activities in their Marine Issues Report and made a number of recommendations;¹⁰
 - c) in its 2009 report, *Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector*¹¹, the Productivity Commission supported broadening NOPSA's responsibilities and restructuring it as the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA)¹²;
 - d) NOPSA's actions in relation to the 2009 Montara blowout were considered by the Montara Commission of Inquiry and various findings and recommendations were made in 2010 that relate to NOPSA's statutory powers and functions and its administrative practices.¹³
3. Appendix 4 provides more details of the reviews and inquiries.

6 COAG *National Partnership Agreement to deliver a Seamless National Economy*, Implementation Plan, deregulation priorities – output 23 - oil and gas regulation: streamlining Commonwealth, State and Territory upstream petroleum regulations. See <http://www.coagreformcouncil.gov.au/>

7 OPGGS Act, s.695.

8 Ognedal, M, Griffiths, D, Lake, B, *Review of the National Offshore Petroleum Safety Authority Operational Activities; Report of the Independent Review Team*, Commonwealth of Australia, 2008

9 Bills, K and Agostini, D, *Offshore Petroleum Safety Regulation: Better practice and the effectiveness of the National Offshore Petroleum Safety Authority*, Commonwealth of Australia, 2009.

10 Bills, K and Agostini, D, *Offshore Petroleum Safety Regulation: Marine Issues*, Commonwealth of Australia, 2009.

11 Available at <http://www.pc.gov.au/>

12 NOPSEMA will be established by amendments made by the *Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011*. Its principal functions will be OHS; the structural integrity of facilities, wells and well-related equipment; environmental management; and the regulation of day-to-day petroleum operations. The necessary legislative changes commence on 1 January 2012

13 Report of the Montara Commission of Inquiry, Commonwealth of Australia, 2010.

4. The Australian Transport Safety Bureau (ATSB), in its transport safety report into a fatality on the *Karratha Spirit*, also made recommendations that relate to NOPSA and relevant legislation.¹⁴
5. In other words, our review is effectively the fourth substantive review of NOPSA in four years, and there have been other reviews that have dealt with aspects of NOPSA's responsibilities. The previous reviews made many recommendations (with numerous findings and recommendations relating to NOPSA – see later) that have guided the government's decisions and expanded NOPSA's mandate. Very substantial legislative and administrative changes are currently being implemented or are on the way. We recognise the need to avoid adding unnecessarily to the burden of change.
6. Accordingly, we have deliberately sought to limit our recommendations to those that deal with significant issues and which will materially assist in achieving the objects of the OPGGS Act and facilitate the agency's operations.
7. This does not downplay in any way the importance of particular matters which stakeholders raised with us, on which we have not made recommendations. In some instances, we considered that the issues could be addressed within the existing legislative structure and operations of NOPSA or would be addressed by already agreed changes that are yet to be implemented. In others, we concluded that particular proposals would not have benefits that warranted diverting resources to deal with them at this time. We are concerned not to distract from the high priority changes that are about to be implemented or are at an early stage of their operation.
8. The review commenced on 8 July 2011. We established a public web site, issued a background document and invited written submissions. We received six, which appear at the end of this report. We had discussions with many key stakeholders and other interested persons. Details are at Appendices 2 and 3.
9. All of the discussions and submissions have greatly assisted the review. More detail is provided in Appendix 3. The written submissions are at the end of the report.

14 ATSB Transport Safety Report concerning Marine Occurrence Investigation No. 261, Commonwealth of Australia, 2008.

NOPSA and the regulation of the offshore petroleum and greenhouse gas storage industry

10. NOPSA and its advisory board (see later) are established under Part 6.9 of the OPGGS Act. The OPGGS Act and associated regulations establish NOPSA's primary mandate.¹⁵ Under the Act, NOPSA has functions relating to OHS in connection with offshore petroleum operations and greenhouse gas storage operations.¹⁶ There are jurisdictional limits. Reflecting complex Constitutional arrangements, NOPSA's mandate extends to Commonwealth waters¹⁷ and any functions conferred by a State or the NT in respect of designated coastal waters.¹⁸ NOPSA also has functions relating to the non-OHS structural integrity of facilities, wells and well related equipment.¹⁹ When NOPSEMA is established, it will take over those responsibilities, but also have environmental management responsibilities. Appendix 7 provides more information on the new legislative arrangements, and the roles of NOPSEMA and the proposed National Offshore Petroleum Titles Administrator.

Economic importance of the Australian oil and gas industry

11. The industry is important for Australia's economic performance and energy security. The offshore industry directly employs twenty thousand people.²⁰ In 2010-11, export volumes and prices increased (against a background of currency appreciation).²¹ The following table shows some recent economic data.

Table 1: Economic data concerning the Australian oil and gas industry 2010-11

Item	Value
Oil and Gas Exports	\$25.309 billion
LNG Production/Exports	20 million tonnes / \$10.475 billion
Crude oil production/Exports	19,701 ml/ \$11.799 billion
Value Other Petroleum Exports (LPG, Bunker Fuel, Refined Products)	\$3.035 billion
Projects in Construction (Offshore LNG only)	\$98.4 billion
Offshore Exploration Expenditure	\$2.558 billion

Sources: Bureau of Resource and Energy Economics (BREE) and APPEA

15 For constitutional reasons, the offshore petroleum and greenhouse gas storage regime consists of several pieces of legislation: http://www.ret.gov.au/resources/upstream_petroleum/ and <http://www.nopsa.gov.au/regs.asp>

16 Section 646.

17 Defined in s.643 of the OPGGS Act.

18 Defined in s.644 of the OPGGS Act.

19 Section 646 of the OPGGS Act. The 'non-OHS' qualification will be removed as unnecessary when NOPSEMA replaces NOPSA.

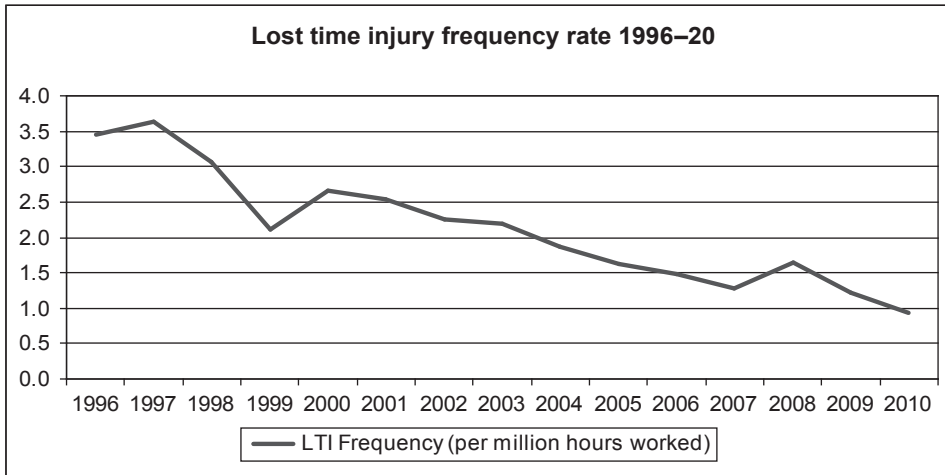
20 APPEA data.

21 BREE, *Resources and Energy Statistics, June Quarter 2011*, Commonwealth of Australia 2011.

Safety performance of the Australian OPG Industry

12. Data provided by the Australian Petroleum Production and Exploration Association (APPEA) show a steady improvement in safety performance in the Australian offshore petroleum and gas industry. The severity measure of lost time injuries per million hours worked²² declined from 3 in 1996 to 0.9 in 2010 – see figure 1.1

Figure 1.1: Australian upstream oil and gas industry safety performance, 1996 to 2010.

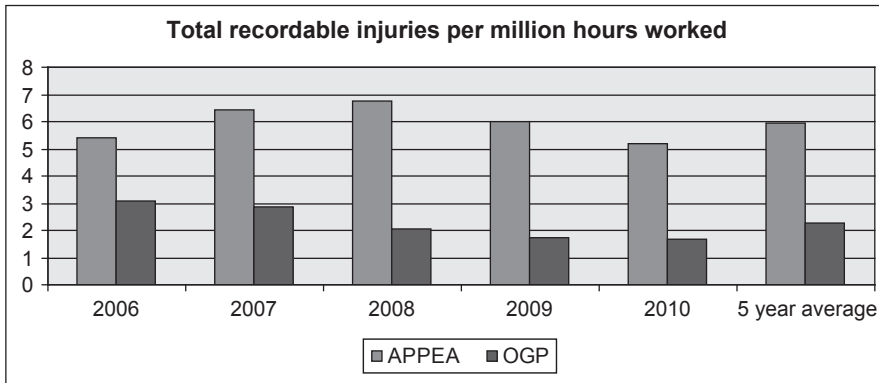


Source: APPEA

13. Despite being a leading OHS performer in Australia, the offshore oil and gas industry acknowledges that its national safety performance lags international best practice in the industry in respect of injury rates. APPEA has indicated that in 2010, the total recordable injury frequency rate (TRIFR) in Australia for APPEA member companies was 5.20 per million hours worked (down from a rate of 6 per million hours worked in 2009). By contrast, the global average for members of the International Oil and Gas Producers Association was 1.68 per million hours worked see figure 1.2.

²² Under the relevant Australian standard (AS1885.1 -1990), a lost-time injury is an occurrence that resulted in a fatality, permanent disability or time lost from work, of one day/shift or more. The LTIFR is the number of lost-time injuries per million hours worked.

Figure 1.2: APPEA/OGP 5 year rolling TRIFR average²³



Source: APPEA

Industry safety initiatives

14. APPEA drew our attention to the industry's *CEO Safety Leadership Forum*. The Forum brings together the Chief Executives and Managing Directors of the explorers and producers, contractors and service providers. The industry's contractors account for about eighty per cent of the hours worked by the industry. They have a large share of the day to day OHS risk exposure. Accordingly, the involvement of contractors is essential for improving safety performance.
15. APPEA also advised us of significant progress by the industry in sharing learning and solutions, including critical information from high potential incidents. For example, APPEA has introduced or established:
 - a) a new requirement to report all high potential incidents;
 - b) the industry-wide '*Stand Together for Safety*' annual event;
 - c) the *Common Safety Training Program*.²⁴
 - d) the Australian Offshore Well Integrity Committee (an APPEA sub-committee).
16. IMCA has established a supervisor training program.
17. Despite the industry's considerable progress with respect to personal safety, albeit falling short of international best practice, APPEA acknowledges that the industry has some way to go in achieving strong process safety culture.

²³ The total recordable injury frequency rate includes lost time injuries and medical treatment injuries that did not result in lost time.

²⁴ See <http://www.appea.com.au>. APPEA and NOPSAs conduct an annual HSR forum.

Main developments since 2008

18. In forming our views, we have examined the developments affecting NOPSA since the first operational review of the agency in 2008. As mentioned, NOPSA has undergone many changes since then. Many are externally driven, but a number reflect a genuine, ongoing commitment by NOPSA's managers and staff to improving its regulatory approach and results. In this section of our report, we outline material changes in NOPSA's legislative mandate, in its role, functions and powers and how it performs and exercises them, and in the resources that it is able to deploy.
19. In every year from 2008 onwards, there have been important legislative changes that have affected NOPSA. More amendments are likely to emerge in 2012 and 2013. The scope of the Act has changed, provisions concerning OHS duties and duty holders have been amended, the powers and functions of NOPSA have been widened and the new regulator, NOPSEMA is not only to take up NOPSA's responsibilities but also be responsible for environmental management. We note that the ongoing reforms have considerably improved the scope and effect of the regulatory regime, but that there are still issues about the interface between Commonwealth and State or Territory powers, particularly where pipelines pass from Commonwealth waters to designated State or Territory waters and onto land. The implications of this complication are discussed later.
20. The following table describes the main changes from the numerous amendments. We note that NOPSA has accommodated all of the changes efficiently and effectively, but there has been some strain on resources and management time in doing so. The regulatory task would be helped if the process of legislative change could be speeded up.

Table 2: Significant legislative changes since 30 June 2008

Year	Legislative developments
2008-09	July 2008: <i>Petroleum (Submerged Lands) Act 1967</i> repealed and replaced with the <i>Offshore Petroleum Act 2006</i> - amendments made to Schedule 3 relating to inspection powers

Year	Legislative developments
2009-10	<p>Oct 2009: <i>Offshore Petroleum Act 2006 amended</i></p> <ul style="list-style-type: none"> • Act becomes the OPGGS Act • Greenhouse Gas Storage provisions enacted • NOPSA becomes responsible for OHS in relation to greenhouse gas storage activities. • Application of absolute liability to duties and negligence becomes a fault element. • Titleholders become duty holders under the Act (responsibility for the design of facilities) <p>January 2010: <i>OPGGS (Safety Levies) Regulations 2004</i></p> <ul style="list-style-type: none"> • Levies to be paid in arrears • Change in various levy ratings • Unit amounts changed <p>January 2010: <i>Offshore Petroleum (Safety) Regulations 2009:</i></p> <ul style="list-style-type: none"> • Previously separate <i>Management of Safety at Offshore Facilities Regulations</i> consolidated with OHS and diving safety regulations • Pipelines made subject to a safety case • Certain low risk vessels excluded from the definition of a ‘facility’ and ‘associated offshore place’ and from safety case regime <p>June 2010: <i>OPGGS (Safety) Regulations 2009:</i></p> <ul style="list-style-type: none"> • Coverage extended to greenhouse gas activities. • Early engagement provisions allowing a safety case for a proposed facility to be submitted without an agreed scope of validation.
2010-11	<p>November 2010: <i>OPGGS Legislation Amendment (Miscellaneous Measures) Act 2010</i></p> <ul style="list-style-type: none"> • NOPSA’s functions include oversight of the non-OHS structural integrity of facilities (including pipelines), wells and well-related equipment. • Titleholder made a duty-holder under Schedule 3 (OHS) with respect to wells • Inspection and enforcement powers of OHS inspectors extended to titleholder’s duty of care <p>April 2011: <i>OPGGS (Resource Management and Administration) Regulations 2011</i></p> <ul style="list-style-type: none"> • NOPSA to regulate well operations and activities (previously a function of the DAs)

Year	Legislative developments
2011-12	<p>October 2011: OPGGS Amendment (National Regulator) Act 2011</p> <ul style="list-style-type: none"> • NOPSEMA to replace NOPSA, with environmental protection role • Power to enter into contracts for regulatory services to foreign Govt agencies and to States or the NT for both offshore and onshore • Administration of safety zones around facilities • Power to give directions • Appointment of petroleum project inspectors • Well regulations become ‘listed OHS laws’ under s.638 of OPGGS Act • Functions include compliance and enforcement in relation to all obligations of persons under the OPGGS Act and regulations <p>October 2011: OPGGS Regulatory Levies Legislation Amendment (2011 Measures No.2) Act 2011</p> <ul style="list-style-type: none"> • Provision for cost-recovery levies on titleholders²⁵ for environmental approvals <p>December 2011: OPGGS (Environment) Regulations 2009 to be amended</p> <ul style="list-style-type: none"> • NOPSEMA to be provided with environmental management regulatory functions and powers

21. Many amendments derive from the government’s responses to the findings and recommendations of past reviews and inquiries (see discussion of those reviews and inquiries in the *Introduction* above and Appendix 4). We are required by our terms of reference to consider NOPSA’s actions to date against the accepted 2008 Operational Review recommendations and findings. In Appendix 5, we have identified the extent to which NOPSA has implemented the recommendations and findings of each of the reviews and inquiries from 2008 onwards that have been accepted by the Government and assigned to NOPSA for action. We did so because the examination shows the extent of NOPSA’s responsiveness to change (high), the extent to which NOPSA is drawn into the change process (considerably), and provides an insight into the stability of the regulatory environment (dynamic). There is a considerable call on NOPSA’s resources in managing this aspect of its work.
22. The first group of recommendations with which NOPSA has had to deal, once they were accepted by the Government, are those of the 2008 Operational Review. The second are those from the Bills and Agostini NOPSA and Marine Issues Reports. The following table outlines progress.

25 Registered holders of petroleum and greenhouse gas storage titles in Commonwealth waters, or, where a State has suitably conferred power on NOPSEMA, registered holders of titles in the coastal waters jurisdiction of any State or Territory

Table 3: NOPSA’s progress implementing recommendations and findings of 2008 Review and of Bills and Agostini Reports

Review or Inquiry	Number of Recommendations or Findings	Number assigned to NOPSA	Status of NOPSA items
2008 NOPSA Operational Review	17 Recommendations	9	9 Implemented
2009 Report of the Bills and Agostini NOPSA review	10 Recommendations	6	6 Implemented
	16 Findings	12	12 Implemented
2009 Bills and Agostini Marine Issues Report	4 Recommendations	0	N/A

23. We understand that DRET is to lead a Montara Report Implementation Plan, including a legislative review under a *Better Regulation Ministerial Partnership*. NOPSA will be a contributor. In the meantime, NOPSA has acted on a number of the Commission of Inquiry’s recommendations that were accepted by the Government. They concern:

- a) offshore safety or well integrity regulatory regime;
- b) the role of the regulator;
- c) industry and regulator giving consideration to specified initiatives.

24. Sixty-eight of the one hundred and five recommendations met the criteria. In most cases, the proposed actions are either inter-related or otherwise connected, and accordingly were grouped appropriately for action by NOPSA. The following table outlines progress in dealing with them.

Table 4: NOPSA’s progress implementing Montara inquiry recommendations and findings

Responsible party	Number of groups of recommendations and findings	Status	
NOPSA sole implementation	10	6	Completed
		4	In progress
NOPSA supporting DRET	6	2	Completed
		4	In progress
NOPSA working with APPEA	1	1	In progress

25. In other words, NOPSA is progressively transforming from its main statutory focus on OHS at offshore facilities to a much broader safety mandate. The issue that we consider in the following discussion is how well NOPSA has managed those considerable changes and the major challenges that it has faced during the triennium. Our findings and recommendations also take account of NOPSEMA's imminent establishment.²⁶
26. NOPSA is committed to continuous improvement.²⁷ In the three years under review, NOPSA has developed and strengthened its operations across a wide range of functions and activities, as shown in the following table. Where more detail is required, we provide it in our discussion of the key themes of the review.

Table 5: Improvements made by NOPSA since the 2008 Review

Function or activity	Improvement initiative
Industry Engagement	<ul style="list-style-type: none"> • Early engagement over proposed safety cases commenced following 2010 amendments to regulations (see our discussion later of the Theme 8, <i>Early Engagement</i>). • Operator liaison process adopted (October 2010) to discuss with each operator the appropriate frequency of liaison meetings, to provide OHS performance feedback annually and to involve related duty holders (titleholders and operators). • Revised safety case assessment process to include a safety case engagement plan to provide guidance to operators, case by case. • Actively seeking opportunities with industry to conduct joint workshops on key topics • Considerable industry engagement in lead up to NOPSA's regulation of well integrity (November 2010) and administration of <i>Well Operations Regulations</i> (April 2011)
Advice and Guidance	<ul style="list-style-type: none"> • <i>Health and Safety Performance Reports</i> for the offshore industry published (2009 and 2010) • <i>Safety Case Guidance Note Project</i> commenced in 2008, core documents issued and promoted in 2009 and 2010, with the final 4 to be completed before mid-2012. • HSR handbook prepared and issued (2009) • Technical paper on Offshore Facility Accommodation. • Substantial increase in subscriptions to NOPSA's Safety Alerts and Newsletter

²⁶ Under the *Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011*

²⁷ NOPSA Corporate Plan 2010-13. Note that the Corporate Plan is required by s.678 of the OPGGS Act. In the recent Commonwealth, NOPSA and APPEA action plan, NOPSA has also pledged continuous improvement (NOPSA media release, 11 August 2011).

Function or activity	Improvement initiative
Promotion	<ul style="list-style-type: none"> • 2009-10 national survey on process safety culture (with feedback to individual operators and presentations on survey results to industry conferences). • Promotion, publications, advice and liaison activities more than doubled over the period under review.
Inspection and compliance monitoring	<ul style="list-style-type: none"> • Inspection and audit processes revised. • Adoption of a risk matrix for decisions on frequency of inspection. • More inspections (increased from 88 in 2008-09 to 152 in 2010-11), with at least 2 inspections per facility each year. • 2 national inspection programs undertaken (facility integrity and lifting operations) and analyses of incidents relating to each program topic. • Theme based audits identified from data and international trends and undertaken (ageing facilities, maintenance management, contractor management, emergency response, and operator auditing)
Internal Development	<ul style="list-style-type: none"> • Number of inspectors increased by 25% in period under review (30 to 37). • NOPSAs teams reorganised on functional basis.²⁸ • Balanced scorecard introduced to assess performance. • Comprehensive intranet website established to facilitate access to resources and information availability.
System Improvements	<ul style="list-style-type: none"> • NOPSAs Quality Management System (QMS) to ISO 9001 certified (2009). • QMS processes introduced for key regulatory activity functions. • Electronic <i>Regulatory Management System</i> established to record and track regulatory processes (2009).²⁹ • Systematic process for monitoring and reviewing guidance material of other national regulators electronically.
Financial Management	<ul style="list-style-type: none"> • Systematic consulting with operators on expected facility movements in and out of levy regime, enabling determination of annual safety case levy rates. • Safety case levy forecasting model developed. • Financial Management Information System and a computer-based payroll system implemented. • Improved NOPSAs financial risk controls.

Function or activity	Improvement initiative
Government and Agency Liaison	<ul style="list-style-type: none"> • MOU arrangements reviewed and improved to conform to National Collaboration Framework.³⁰ • Quarterly meetings with DRET (as the portfolio policy department). • Established annual <i>Australasian Petroleum Safety Regulators Forum</i> in 2010.

27. Some stakeholders had the incorrect impression that, in increasing its staff numbers in recent years, NOPSA had inappropriately reduced the percentage of staff engaged in regulatory tasks. In fact, although staff numbers increased from 30 June 2008 to 30 June 2011, NOPSA has actually increased the percentage of staff engaged in regulatory tasks. This may partly reflect the addition of new functions relating to wells. In the three-year period, the departure rate of regulatory staff was relatively small. Thus, not only has the regulatory staffing increased, continuity and expertise have been maintained.

Implications of nationally harmonised OHS laws

28. National harmonisation of Australia's principal OHS laws will occur on 1 January 2012. The Commonwealth, States and Territories are committed³¹ to replacing their principal OHS legislation with a local version of the nationally developed *Work Health and Safety Act* (WHS Act) and Regulations (WHS Regulations).³²
29. The new national legislation was formulated through an exhaustive, four-year process. It is based on the decisions of the Workplace Relations Ministers' Council (WRMC) on the recommendations of a national review. The legislation has been developed on a tripartite basis by all Australian governments and the peak industry and union bodies, with extensive public consultation. The WHS Act and regulations introduce some new concepts to OHS regulation. The legislation will provide more effective and wider protection from work-related injury and disease than is provided by most of the existing Australian OHS laws. The new laws do not, however, affect the OHS regime under the OPGGS legislation.³³

28 Investigation Team, Operational Strategy and Improvement Team, Technical Service Team, Communications Team (a Legal Counsel position was also established).

29 We understand that NOPSA's software is not considered to be ideal as a data base for relationship management. NOPSA is obtaining advice on this point in an overall examination of stakeholder engagement

30 A system for documented cross- agency arrangements, using a tiered structure of increasing detail and formality.

31 *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety*: <http://www.coag.gov.au/>

32 Victoria and Western Australia have agreed to introduce the new legislation, but at a later date, and, in the case of WA with some variations

33 The WHS regulations will expressly prevent the requirements under those regulations which relate to the safety of major hazard facilities from applying to facilities that are regulated by NOPSA and subject to the

30. Notably, the WRMC agreed to recommend to COAG that:
- a) *where Ministers in portfolios outside the WRMC administer separate and specific OHS laws (including those that form part of an Act that has other purposes) for particular hazards or high risk industries, there should be a presumption that the laws only continue where they have been objectively justified (note: this would extend to the OPGGS Act);*
 - b) *even where that justification is established, there should be an on-going, legislative and administrative inter-relationship between the laws and, if there are different regulators, between those regulators;*
 - c) *as far as possible, the separate legislation should be consistent with the nationally harmonised OHS laws;*
 - d) *where the continuation of the separate legislation is not justified, it should be replaced by the harmonised WHS Act within an agreed timeframe;*
 - e) *where specific provisions are necessary, they should normally be provided by regulations under the harmonised WHS Act, with specific provision in that Act relating to the matters previously regulated by the separate legislation kept to a minimum.*³⁴
31. COAG has not yet considered this matter. Potentially, the separate OHS regulation under the OPGGS legislation may be comprehensively examined to consider whether the separate regime is justified. In the circumstances, we did not undertake a detailed comparison of the approaches taken in the OPGGS legislation and the nationally harmonised laws, nor recommend that they be replaced by particular provisions of the WHS Act and regulations. Even so, we refer to the model legislation to illustrate contemporary practice in OHS regulation (for example, see our discussion of compliance measures).
32. We note that many of the issues that are raised in the extensive submission to this review by the ACTU and unions (the ACTU submission) may be encompassed by possible future decisions about national harmonisation. Among other things, the ACTU submission advocates greater alignment between the offshore and onshore OHS laws in certain areas.³⁵

OPGGS Act (Model WHS Regulations, Chapter 9, *Major Hazard Facilities*, reg. 530).

34 See decisions of WRMC 81 at <http://www.safeworkaustralia.gov.au>

35 When options for the national harmonisation of OHS laws were being considered in 2008-09, the ACTU stated its strong preference for the retention of separate OHS legislation for the offshore oil and gas industry on various grounds, including the fact that the industry had its own regulator, NOPSA. Even so, the ACTU saw the national harmonisation of OHS laws as a potential vehicle for making offshore OHS regulation (which it considered deficient) consistent with that applying onshore [ACTU, *The Highest Standards for Harmonised OHS Law*, 2008, Submission to the National Review on Model OHS Laws, paragraphs 38 and 39].

Part Two: Discussion of Themes

33. In the following sections of the report, we discuss the key themes that we have identified as central to the terms of reference.

Theme 1: Effectiveness of NOPSA

Existing policy and powers

34. NOPSA's current statutory functions are described above. NOPSA's operational policies are built around those functions and have been refined over time. The policies are available on NOPSA's web site.³⁶ NOPSA has developed performance standards for its functions. It is also required to give effect to any written policy principles given to it by the Commonwealth Minister.³⁷ This is issued periodically as a Statement of Expectations, to which NOPSA responds with a Statement of Intent.³⁸ NOPSA's Chief Executive Officer (CEO) is required to prepare a three-year corporate plan, which covers specified contextual, strategic, performance and resource matters. The Minister may require the plan to address other matters. The Minister must respond to the plan after consulting State and NT ministerial counterparts.³⁹

What happens in practice

35. How much a safety regulator influences overall safety performance is difficult to measure in a co-regulatory system. The Australian offshore oil and gas industry appears to have better safety performance than most Australian onshore industries with high hazards and risks, but is behind the performance of the industry internationally (see Theme 3, Safety Performance). This suggests that more needs to be done by all industry participants, including the regulator.
36. The following table outlines the range of NOPSA's activities in 2010-2011.

36 <http://www.nopsa.gov.au/>

37 OPGGS Act, s.647. The principles are tabled in Parliament.

38 Both documents are available at <http://www.nopsa.gov.au> NOPSA does not have a service charter (if this were proposed, the AMSA and CASA service charters are useful models).

39 OPGGS Act, ss.678, 679.

Table 6: NOPSA Activities 2010-11

Core activities	Details	Number
Assessments	Total notified	218
	Safety Cases	198
	Well Integrity Assessments	22
Inspections	Facilities Inspected	149
	Inspections (trips)	102
Investigations	TOTAL Notifications	423
	Incidents	367
	Complaints	27
	Non-Reportables	14
	Major Investigations	1
	Preliminary Enquiries / Minor Investigations	31
Enforcement	TOTAL Issued	78
	Verbal Warnings	3
	Written Warnings	15
	Improvement Notices	50
	Prohibition Notices	9
	Intent to withdraw Safety Case Acceptance	0
	Prosecution Briefs submitted to CDPP	1
Promotional Activity	Safety Alerts published	8
	Technical Safety Bulletins published	1
	Newsletters published (The Regulator)	8
	Key Industry Conference presentations	9
	Annual Operator Liaison presentations	20

Source: NOPSA

Views of industry stakeholders

37. Key stakeholders were generally positive about NOPSA's systemised approach to its tasks and the increasing availability of useful guidance material. At the same time, some felt that NOPSA was too legalistic, reducing its capacity for constructive interaction with industry. The overall competence and integrity of inspectors was widely recognised, but there were individual issues about how inspectors perform their role. These issues are discussed in Theme 9, *Stakeholder Engagement*. Overall, NOPSA was seen as professional and as having become increasingly effective.

38. We found it difficult to identify any trend in overall stakeholder assessments about NOPSA, because our interaction with them was focused on our terms of reference. There have been many changes since the 2007 stakeholder survey was conducted.⁴⁰ Accordingly, we were unable to use that survey as a reliable base line. Reviews since then have referred to that survey, but their assessments were also based on the information and submissions available to them at that time for the purposes of those reviews. A further survey conducted in 2010 found "... few stakeholders had concerns beyond resourcing and communication..." and, "... that the broadening of NOPSA's responsibilitiessuggested a high level of support for the organisation".
39. NOPSA does not appear to have a program of regular or consistent stakeholder surveys. They would be a useful ongoing source of comparable information for planning and performance measurement, particularly after the forthcoming regulatory changes are implemented. NOPSA might therefore wish to consider a new program of periodic, consistent surveys of stakeholders.

Findings and recommendations of previous reports

40. NOPSA has previously been assessed as effective. The Report of the 2008 Operational Review found that NOPSA had made good progress in building a safety regulatory regime and authority of world class calibre. The 2008 review team considered that there were, nonetheless, some aspects of the regime that could be improved to achieve best practice regulation.⁴¹ The Productivity Commission agreed, on balance, with that finding.⁴² In their NOPSA Report, Bills and Agostini found that NOPSA was broadly effective within the bounds placed on it by the legislation, other interfaces, resourcing levels, and its internal policy decisions.⁴³

Other relevant approaches

41. Australia's offshore safety case regime appears to be capable of being benchmarked, albeit broadly, against the performance of similar regulation in Great Britain, Norway and Canada's Maritime Provinces. To our knowledge, this has not been systematically undertaken. There are good informal interchanges between regulators through the International Regulators' Forum (IRF), but a closer comparison of regulatory practice and results might provide a better foundation for regulatory benchmarking. In this respect, we note that at its 2010 Conference, the IRF identified twelve points for assessing and improving offshore safety programs.⁴⁴ Several of these are useful for considering regulatory effectiveness. The summary appears at Appendix 6. NOPSA could propose that the IRF look at developing international regulatory benchmarks.

40 Survey respondents were Ministers, the offshore petroleum industry, industry associations, HSRs and unions.

41 Ognedal, M, Griffiths, D, Lake, B, *Review of the National Offshore Petroleum Safety Authority Operational Activities; Report of the Independent Review Team*, Commonwealth of Australia, 2008, p.1.

42 Productivity Commission, *Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector*, Commonwealth of Australia, 2009, p.172.

43 Bills and Agostini, op. cit., p.xxii.

44 <http://www.irfoffshoresafety.com/>

Action that is being taken to address identified gaps

42. The legislative framework is being progressively modified to widen NOPSA's responsibilities and accompanying powers (particularly when it becomes NOPSEMA), as recommended in previous reviews. NOPSA has created staff positions for its new roles and is in the process of completing recruitment action. The necessary business planning is under way. The regulations under the OPGGS Act have been consolidated and streamlined to improve the regulatory framework's efficiency and effectiveness 'with a view to creating consistency, removing duplication and streamlining information and reporting requirements'.⁴⁵ As indicated elsewhere, further legislative action is expected to complete the implementation of the government's responses to relevant recommendations of previous reviews and reports.

Discussion and analysis

43. Our assessment of NOPSA's effectiveness draws on the submissions and other feedback from stakeholders, as well as our examination of NOPSA's processes and the outcome of its activities and of the overall trends in the industry of managing OHS and of the integrity of facilities, pipelines and wells.
44. We consider that NOPSA is effective and has made significant progress since 2008. Recognising that there is room for further improvement, NOPSA is seeking to enhance its performance through continuous improvement across the board. It has only relatively recently secured sufficient resources to meet the previous criticism that it was understaffed and over-stretched. Even so, it is far from being resource rich. There is a risk that, if resource needs are not continuously monitored against agreed objectives, potential or actual shortcomings may not be identified in a timely way. An objective case for any necessary strengthening may be more difficult to establish in the cost-recovered regulatory environment.
45. The final establishment of NOPSEMA will present more opportunities for the agency to focus on its broader range of functions and to consolidate its operations and systems. Although transition necessarily has an opportunity cost, we consider that the organisation is progressing well in readying itself for the change.
46. We have identified key factors that we consider to be critical to NOPSA's regulatory performance. Some are externally imposed (e.g., by legislation) and others are factors that are within the regulator's control. We developed the factors after considering previous reports, the views of stakeholders and relevant regulatory literature.⁴⁶ The following table sets them out and provides an overall picture of our views on how well NOPSA is performing as a regulator.

45 Explanatory Statement for *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011*

46 In particular, see the ANAO's Better Practice Guide, *Administering Regulation*, Commonwealth of Australia, 2007

Table 7: Factors influencing NOPSA's regulatory performance

	Type of factor	NOPSA's conformance
1.	<p>Resources:</p> <ul style="list-style-type: none"> a) funding b) technology c) staffing d) skill base 	<p>NOPSA is funded on a full cost-recovery basis, with fees and levies set legislatively. The funding base appears adequate but we recommend later that the timing of one fee be changed.</p> <p>NOPSA's Information and Communications Technology appears modern and adequate, although NOPSA's software may require upgrading to provide a better foundation for managing stakeholder relationships.</p> <p>NOPSA has a well established staff and skill base for its OHS related activities and is recruiting appropriately for its newer functions. It appears to have addressed some previously identified under-resourcing, but has limited reserve capacity if critical staff were to leave the agency or are required to focus on major tasks outside their normal activities.</p>
2.	<p>Legislative authority:</p> <ul style="list-style-type: none"> a) clarity of legislation b) suitability for regulatory tasks c) up to date legislation 	<p>The OPGGS Act and associated regulations are lengthy and relatively complex. For constitutional reasons, the legislative regime involves several pieces of legislation. Even so, for its various purposes, the legislation is clear and provides the necessary authority, but there are gaps (for example in respect of wells and diving regulation).</p> <p>To improve regulatory effectiveness, the gaps in the legislation should be addressed.</p> <p>Some aspects of the legislation will change when some of the previous recommendations for legislative change are implemented (see Appendix 5)</p>
3.	<p>Clear jurisdiction and mandate</p>	<p>Broadly, NOPSA's jurisdiction and mandate are clear, but complexities arise from the contiguous onshore and offshore jurisdictions, including for pipelines that are necessarily subject to State or Commonwealth jurisdiction at different geographical points.</p> <p>The interface between the <i>Navigation Act</i> and the OPGSS Act is still widely seen as problematic.</p>
4.	<p>Independence and impartiality</p>	<p>The legislation provides a suitable framework for this purpose. There are appropriate mechanisms for the scrutiny of NOPSA's performance and decision making (as there will be for NOPSEMA). The critical variables are the performance of the agency and its staff. Nothing during our review indicated any significant shortfalls in this area and NOPSA has appropriate internal audit mechanisms.</p>

	Type of factor	NOPSA's conformance
5.	<p>Good governance:</p> <ul style="list-style-type: none"> a) compliance with statutory obligations b) efficiency and effectiveness c) openness d) transparency e) accountability 	<p>NOPSA is now a relatively well established Commonwealth agency. As well as the governance obligations under its own legislation, NOPSA is subject to a range of other Commonwealth statutory governance requirements. There is appropriate compliance.</p> <p>NOPSA is continuing to develop a more open and transparent approach to its dealings with stakeholders. Key documents are readily available to stakeholders and the wider community. This is good regulatory practice.</p> <p>Decisions are reviewable.</p>
6.	<p>Decision making:</p> <ul style="list-style-type: none"> a) appropriateness b) timeliness c) balance d) judgement e) fairness f) consistency 	<p>Overall, we found no systemic issues relating to NOPSA's decision making. Decisions are taken within the statutory mandate, are rarely questioned and, with few exceptions, meet NOPSA's statutory and administrative time frames.</p> <p>NOPSA has documented processes and decision making criteria which support consistency in the performance of its functions.</p> <p>Some stakeholders queried the consistency of some decisions and approaches taken by inspectors.</p>
7.	<p>Adaptability to changing circumstances:</p> <ul style="list-style-type: none"> a) identifying risk and developing counter-measures b) capacity to respond to internal and external emergencies c) capacity to anticipate change d) 'over the horizon' scanning 	<p>Consistent with accepted good practice, NOPSA has a range of risk management plans.</p> <p>NOPSA appears to have the capacity to respond to emergencies and to have suitable relationships with a range of other regulators who will be involved in such responses (including as first responders).</p> <p>NOPSA has taken on board the Montara Commission of Inquiry findings about the need for greater flexibility in relation to interaction and engagement with operators.⁴⁷</p> <p>NOPSA primarily relies on its relationship with industry and with national and international counterparts for identifying emerging changes in industry practice and technology. NOPSA does not have the resources for dedicated 'over the horizon' scanning.</p>

	Type of factor	NOPSA's conformance
8.	<p>Constructive relationships:</p> <ul style="list-style-type: none"> a) within government b) with regulated community c) with other interested persons 	<p>NOPSA has 18 Memorandums of Understanding (MOUs) with other Commonwealth, State and NT regulators and agencies. It has an MOU with its Brazilian counterpart (ANP).</p> <p>NOPSA has an appropriate relationship with the relevant Commonwealth department (DRET). It is critical that the relationship be efficient, effective and constructive. This is further considered in our discussion in Theme 9, <i>Stakeholder Engagement</i>.</p> <p>Stakeholders mostly considered their relationship with NOPSA to be satisfactory, but unions and some industry associations felt that, until relatively recently, their level of contact with NOPSA was inadequate.</p>
9.	<p>Reputation and influence:</p> <ul style="list-style-type: none"> a) within government b) with regulated community c) with other interested persons 	<p>NOPSA is widely seen as a professional and effective regulator. Comments about shortcomings tended to reflect on the regulatory regime, rather than the regulator.</p>
10.	<p>Performance:</p> <ul style="list-style-type: none"> a) achievement of objectives b) timeliness c) outcome-based d) continuous improvement e) benchmarking 	<p>We note the difficulty of measuring any safety regulator's effectiveness in achieving best safety performance in industries where the worst incidents have a very low frequency but very serious consequences. Personal safety and process safety Key Performance Indicators (KPIs) are being developed (this is a matter of common importance to NOPSA and to stakeholders).</p> <p>NOPSA meets its strategic and business plan objectives. There are outcome and process measures. With few exceptions, NOPSA meets statutory timelines and regulatory requirements.</p> <p>NOPSA does not systematically benchmark its safety-related regulatory performance against that of counterparts or other safety regulators. We acknowledge that this may be difficult for a variety of reasons. NOPSA could raise the matter with the IRF.</p> <p>[Note: We discuss safety performance in more depth under Theme 3, <i>Safety Performance</i>]</p>

47. The Ministerial Upstream Petroleum and Geothermal Sub-committee (the UPGS) initiated a process for developing a National Legislative Compliance Framework (NLCF), intended to assist in developing consistent best practice approach by the regulators of Australia's offshore petroleum industry by identifying good regulatory practice. An NLCF has been developed. Our views are consistent with the criteria and observations in the 2011 NLCF report.⁴⁸

Recommendation 1

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

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

48 Noetic Solutions Pty Ltd, *National Legislative Compliance Framework*, 2011, a report to the UPGS (available at <http://www.ret.gov.au>).

Theme 2: Effectiveness of the NOPSA Advisory Board

Existing policy and powers

48. The OPGGS Act provides for the *National Offshore Petroleum Safety Authority Board* (the Board).⁴⁹ The Act spells out the Board's powers and functions. Broadly, the Board is to give advice, and make recommendations, to:
- a) the CEO about NOPSA's operational policies and strategies; and
 - b) Ministers about offshore OHS policy or strategic matters and NOPSA's performance
49. There was previously some uncertainty about the Board's role (see discussion below), but that has been resolved, including by the Commonwealth Minister formally issuing a statement of expectations. The Act requires the CEO of NOPSA to work with the Board, requesting its advice on strategic matters relating to the performance of NOPSA's functions. The CEO must keep the Board informed of NOPSA's operations and give the Board such reports, documents and information in relation to those operations as the Chair requires.⁵⁰

What happens in practice

50. The Commonwealth Minister appoints the Board. The members are selected by the Ministerial Council (which has developed a skills matrix for such selections).⁵¹ The Board's advisory activities are recorded in its annual report.⁵²

Views of industry stakeholders

51. We noted that generally stakeholders had few comments to make about the Board. The ACTU and unions considered that the OPGGS Act should provide for the ACTU to nominate worker representatives on the Board, which should have equal numbers of members representing government, industry and workers.⁵³

Findings and recommendations of previous reports

52. At the time of the 2008 Operational Review, the Board's role was unclear. Some stakeholders questioned the need for a Board. The Review was concerned about overlapping responsibilities of the Board and NOPSA's CEO.⁵⁴ Clarifying the board's advisory role was recommended.⁵⁵

49 OPGGS Act, Chapter 6, Part 6.9, Division 3, *National Offshore Petroleum Authority Board*, ss.653-664.

50 Section 667.

51 Section 656.

52 The board's annual report is required by s.690 of the OPGGS Act.

53 ACTU submission, pp.42, 43.

54 Report of the 2008 Operational Review, pp.16 and 29.

55 *Ibid*, Recommendation 16.

53. In their 2009 Report, Bills and Agostini found that the NOPSA Board should function as envisaged in the legislation and its role should be clarified in writing by the Commonwealth Minister and reinforced by the Department to the Board and NOPSA's CEO. Bills and Agostini proposed that:
- a) any lack of clarity in the legislation about the Board's role should be resolved;
 - b) NOPSA provide funds to support the Board's role, including research and the holding of four to six meetings annually;
 - c) the Board be explicitly renamed as an advisory Board. (p. 11)
54. In its Regulatory Burden report, the Productivity Commission agreed that, in practice, the NOPSA Board's role was unclear. The Commission recommended that the Government consider whether a Board was still appropriate for NOPSA and, if so, explicitly clarify the Board's role and communicate it to all stakeholders.

Other relevant approaches

55. There is no relevant standard practice to be derived from the Commonwealth's safety authorities or those of the States and Territories. In practice, boards may have various roles, from purely advisory to decision making and governance. In all cases, boards must operate within their legislative mandate.

Action that is being taken to address identified gaps

56. The Government has responded to the previous reviews' recommendations. The Government considered that s.654 of the OPGGS Act clearly stated the Board's role and responsibilities. The Government expressed its support for those advisory functions, which provided the Government, NOPSA, State and Territory Petroleum Ministers and the Ministerial Council with a valuable resource to assure that policy and operational elements are robust and achievable. This is also guided by the Commonwealth Minister's Statement of Expectations.⁵⁶
57. As part of the amendments being made by the OPGGS Amendment (National Regulator) Bill 2011 establishing NOPSEMA, the Board will become the NOPSEMA Board with suitable extensions to the scope of the matters on which it is to give advice. The Act⁵⁷ is to be amended by inserting a requirement that reports, documents and information that the Board seeks from NOPSEMA must be 'reasonably' required by the Chair. This is intended to provide for a dialogue between the CEO and the Chair as to the level of NOPSEMA's resources that is to be devoted to providing such material to the Board.⁵⁸

56 Government Response, op. cit., p.14.

57 Section 667(3)(b)

58 Explanatory Memorandum for

Discussion and analysis

58. We agree that the NOPS Board is a valuable resource. As Bills and Agostini stated, a well functioning Board can provide an additional means of bolstering NOPS's effectiveness.⁵⁹ We note the relatively recent appointment of new members. In our discussion with Board members, we were struck by their constructive approach and the positive relationship between the CEO and the Board. We are not in a position to comment on the extent of the current Board's effectiveness, but we are satisfied that it is acting in accordance with the Minister's *Statement of Expectations* and will continue to do so when it becomes the NOPSEMA board.

Finding 1

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

Theme 3: Safety Performance

Existing policy and powers

59. Consistent with its safety objects,⁶⁰ the OPGGS legislation gives NOPS functions and powers to secure, by various means, OHS at or near facilities (including diving activity), as well as the non-OHS structural integrity of facilities, wells and well related equipment.⁶¹ These responsibilities are undertaken through various means authorised by the legislation, including:
- a) the assessment of safety cases, pipeline safety management plans, diving safety management systems and well operations management plans (WOMPs);
 - b) field activities, such as inspections, audits and investigations;
 - c) other compliance activities, including the provision of guidance material and various other forms of engagement with stakeholders (discussed in Theme 9, *Stakeholder Engagement*), and the issuing of notices;
 - d) enforcement through prosecutions (discussed in Theme 5, *Compliance Policy and Powers*);
 - e) the withdrawal of acceptance of safety cases (discussed in Theme 5, *Compliance Policy and Powers*).

59 Bills and Agostini, op cit, p.9

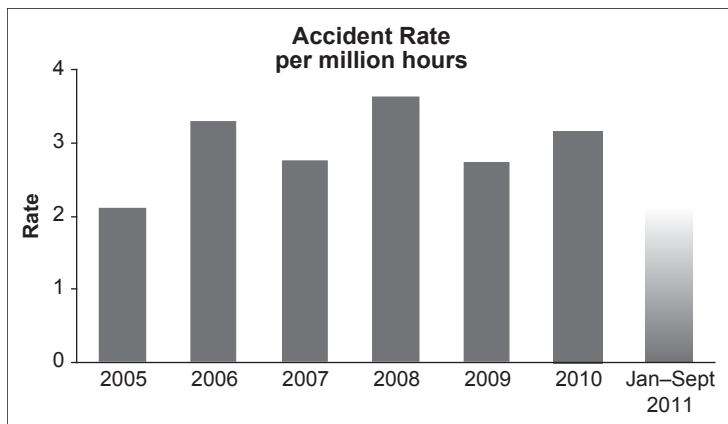
60 Schedule 3, clause 1.

61 Under the imminent legislative changes that establish NOPSEMA, the agency's jurisdiction will be expressed as extending to structural integrity, not simply 'non-OHS structural integrity' NOPSEMA will regulate all aspects of structural integrity [OPGGS Amendment (National Regulator) Act 2011].

What happens in practice

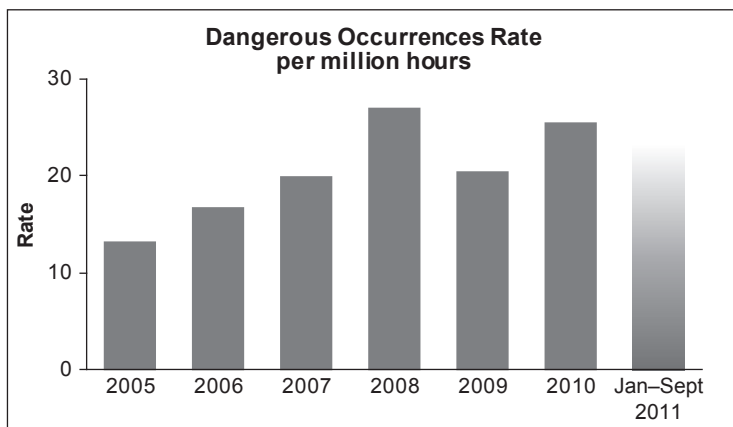
60. Since 2008, the industry has matured and NOPSA has been given new responsibilities relating to wells, with an additional environmental management role to commence in 2012 when NOPSA becomes NOPSEMA. Safety performance is described in NOPSA's *Offshore Health and Safety Report*. It might reasonably be expected that there would have been a consistent improvement in industry safety performance as the OPGGS regulatory regime has become more familiar to industry participants and the regulator has developed its regulatory skills, resources and practices. Some indicators of safety show improvement (accident rates, complaints), but other indicators show little or no improvement (reported incidents, dangerous occurrences).⁶² The following figures illustrate this experience.

Figure 3.1: Australian upstream oil and gas industry accident rate



Source: NOPSA

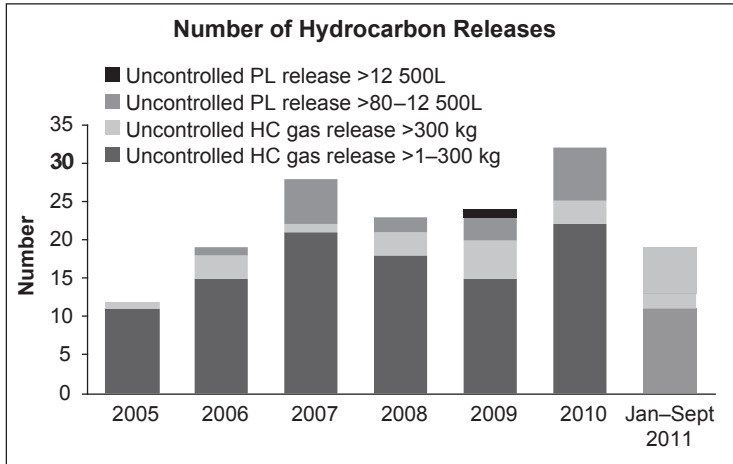
Figure 3.2: Australian upstream oil and gas industry dangerous occurrences rate



Source: NOPSA

62 There have been suggestions of under-reporting and misclassifying incidents – advice by the former CEO of NOPSA, Mr J Clegg, to the December 2010 public hearing of the US Chemical Safety and Hazard Investigation Board on regulatory approaches to offshore oil and gas safety (<http://www.csb.gov/>)

Figure 3.3: Australian upstream oil and gas industry number of hydrocarbon releases

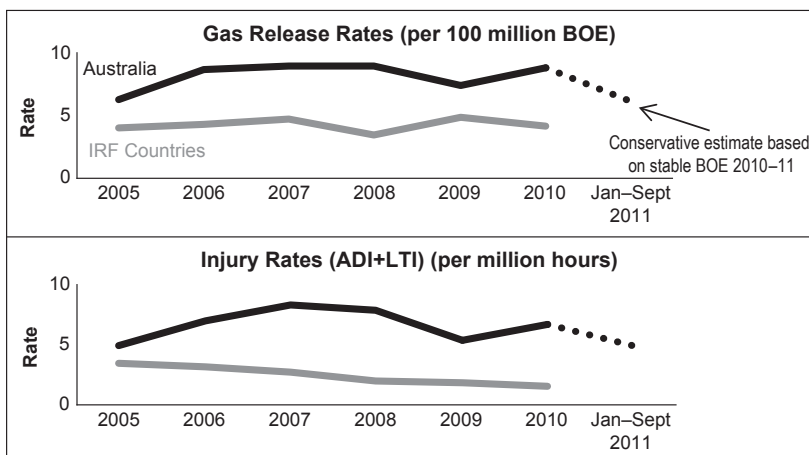


Source: NOPSA

Views of industry stakeholders

61. The industry recognises that its safety performance needs to improve, particularly measured against international benchmarks (see graph below). In that regard, the need for better benchmarking data is recognised. Stakeholders generally accepted that safety improvements must be driven by the primary duty holders, but also recognised the critical role of an effective, independent regulator. NOPSA was seen as fulfilling this role. Nonetheless, stakeholders all consider that there are areas where improvements can be made. There was support for more advice and feedback, as well continued advocacy of a greater safety culture within the industry and its participants. Stakeholders drew our attention to the problems of both ageing facilities and new facilities that enter production while still completing commissioning activities. NOPSA is aware of those issues, but again the primary duty holders must eliminate the relevant hazards or minimise the risks.

Figure 3.4: Australian OPG safety performance compared with international performance



Source: NOPSA

62. Unions advocated aligning offshore and on shore safety regulation, adopting stronger provisions relating to the training and powers of HSRs and increasing the rights of unions. These were seen as critical for improving safety. The importance of a better safety culture was emphasised and changes to NOPSAs initiatives in that area were advocated.

Findings and recommendations of previous reports

63. The Bills and Agostini NOPSA review emphasised the importance of safety culture:

'A positive safety culture is crucial, including: senior management safety emphasis; a realistic view of short and long term hazards; fostering feedback and dealing with safety deficiencies; a non-punitive 'just culture' (but punishment if culpability); communicating safety at all levels; good training and learning; a safety ethic so (there is) little risk-taking behaviour; human factors understood and defences in place; and pro-active data gathering, analysis and response'.⁶³

Other relevant approaches

64. In recent years, the Offshore Division of the Health and Safety Executive (HSE) in Britain has considered a variety of drivers of safety performance. It has focused on critical areas of offshore industry performance where further improvements are needed. These include emphasising the major hazard potential of poor asset integrity (including structure, process plant, and connected wells and pipelines); promoting leadership so industry leaders will demonstrate commitment to health and safety, based on appropriate information (including KPIs); and promoting a safety culture encouraging the active involvement of the offshore workforce.⁶⁴
65. SafeWork Australia (SWA) is in the process of developing a second ten-year National OHS Strategy, with targets for reducing the incidence of work related deaths, non-fatal injuries and diseases and various underpinning strategies, including the improvement of OHS data. Critically, the second National Strategy will build on the experience of the first ten-year national OHS strategy, which commenced in 2002. National OHS performance is measured and reported upon through the *Comparative Performance Monitoring* reports that compare OHS outcomes within Australia.⁶⁵ The offshore industry in Commonwealth waters has not been a specific part of that comparison, although maritime activities covered by the Seacare Authority (Seafarers Safety, Rehabilitation and Compensation Authority) are included. There may be opportunities for NOPSEMA to draw on the development work by SWA and its members and its experience in data improvement.

63 Bills and Agostini, op. cit., p.110.

64 HSE Offshore Division, Business Plan 2010/11, priorities for 2011/12 (<http://www.hse.gov.uk/offshore/>)

65 The 13th Annual Edition was published by Safe Work Australia in October 2011

Action that is being taken to address identified gaps

66. Since 2008, NOPSA has refined its corporate and business planning. NOPSA now has more resources, better data, and improved interaction with other regulators and the industry participants. The relevant legislation has been progressively updated and consolidated. The industry itself is taking industry wide safety initiatives, e.g., the common safety training program and the annual *Stand Together for Safety* event, the IMCA supervisor training program, the annual APPEA/NOPSA HSR forum, the Australian Offshore Well Integrity Committee (an APPEA sub-committee) and the annual APPEA CEO Safety Forum which has helped either to precipitate or consolidate several of the preceding initiatives.

Discussion and analysis

67. We are impressed by the ongoing commitment to improving safety in all aspects of the OPGGS industry shown by governments, NOPSA, industry participants and the various representative bodies. It is genuine and substantive. Major changes have been made in the regulatory regime, priorities, approaches and resources, as well as in the approaches of the industry itself. What is difficult to explain is why some safety indicators show little improvement and why Australia's performance substantially lags the world's best. We discuss some particular hazards and risks elsewhere in this report, but we note here that the gap between Australia and the world's best performing offshore industries is unlikely to close unless the primary duty holders achieve and maintain safety cultures within their organisations that equal the world's best practice.
68. During the review, a number of stakeholders identified particular hazards and risks as requiring attention. It was accepted that the primary duty holders have to ensure safety in relation to all hazards and risks, but the nominated issues were said to require closer regulatory attention, either in the legislation or in the field, or both. The strongest emphasis was placed on the following issues: ageing facilities⁶⁶, the operation of cranes, human factors, safety culture, an ageing workforce and risks in diving operations.
69. Good cases were made for giving particular attention to each of these issues. Some accord with NOPSA's strategic priorities (process safety culture, asset integrity, ageing facilities and maintenance management) or have been the subject of inspection program activity (e.g., lifting operations). Others are receiving attention at an industry level (e.g., safety culture). In Theme 10, *Command and Control*, we draw attention to a particular difficulty relating to the regulation by NOPSA of safety in diving operations and recommend action to address it.

66 The issue was considered by the 2008 Operational Review (R.12) and addressed in the Government's 2010 Response.

70. We do not propose to attempt to identify priorities in relation to hazards and risks in the offshore industry. NOPSA is now in a position to make good evidence-based decisions about its strategic priorities. On the other hand, NOPSA (and NOPSEMA) could consider the potential for using its engagement with stakeholders over its policies and programs more effectively. This would provide a means of informing the stakeholders about NOPSA's identification of strategic priorities and how stakeholders may contribute to the agency's periodic review and resetting of those priorities in corporate and business planning. It would build on existing interaction and may have the additional benefits of building confidence in the regulatory system and serving as more systematic and formalised intelligence gathering.
71. As we identify in the introduction, in recent years, there has been much regulatory reform affecting NOPSA. The reforms are markedly improving the coverage and effectiveness of offshore oil and gas regulation. The gains that will come from the imminent establishment of NOPSEMA and NOPTA are widely recognised and welcomed. There is considerable support for the regime for offshore oil and gas regulation operating seamlessly and without duplication or inconsistency. This necessarily entails the continuation of the high levels of cooperation between the relevant government and their regulatory agencies, with the support of stakeholders. We encourage all parties to continue to work towards achieving 'end to end' regulatory best practice.

Recommendation 2

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| <p>a) For the purposes of designing and implementing its regulatory activities, NOPSA should continue to identify priority hazards and risks and their underlying causes, in consultation with the NOPSA Advisory Board and stakeholders (see Theme 9, <i>Stakeholder engagement</i>).</p> <p>b) NOPSA should consult Safe Work Australia about how the National OHS Strategy 2002-12 and its forthcoming replacement may assist strategic planning over safety performance and its measurement in the offshore oil and gas industry.</p> |
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Theme 4: Capacity of NOPSA

Existing policy and powers

72. There are several key elements for the successful operation of the OPGGS regulatory regime. These include the legislation itself, the successful delineation of the interlocking Commonwealth, State and NT jurisdictions, the constructiveness of the relationships between the Governments and the relevant departments, agencies and regulators, and the capacity of the co-regulated community (collectively and individually) to discharge their obligations.
73. NOPSA is central to making the scheme work successfully. That responsibility will be greater when NOPSEMA commences. NOPSA's functions and related powers and policies are discussed elsewhere in our report. In broad terms, they are sufficient for its role, but we have identified some areas where improvements are being made or are needed.

What happens in practice

74. NOPSA must have the capacity to perform its functions successfully. Key factors for regulatory efficiency, including those that affect capacity are discussed in Theme 1, *Effectiveness of NOPSA*. In considering NOPSA's capacity, we now focus on the following factors
- a) funding adequacy;
 - b) staffing (number, skills, turnover);
 - c) ability to manage change
75. The OPGGS regime, which is based on full cost recovery, conforms to the relevant Government guidelines and policy requirements⁶⁷. The legislation provides for the recovery of safety and wells investigation levies, certain other well levies, safety case levies and fees for assessing safety cases.⁶⁸ The CEO of NOPSA must prepare a financial report in respect of each financial year that assesses the cost-effectiveness of NOPSA's operations in that financial year. A copy of the independent audited report is given to APPEA, operators and titleholders. The CEO is also required to meet industry representatives annually to discuss NOPSA's cost effectiveness.⁶⁹ The most recent published report⁷⁰ indicated that NOPSA was sufficiently funded (the then foreshadowed levy increases are now in place).
76. We note that the levy for a safety case is payable to NOPSA after the acceptance of the safety case, which means that NOPSA resources may be used for its assessment, but not paid for if the safety case is rejected or withdrawn.⁷¹ This appears anomalous in a cost recovery regime. Consideration should be given to providing for the recovery of costs for NOPSA's work undertaken on a safety case that is formally submitted but (a) withdrawn before a decision is made on it, or (b) rejected. The cost recovery mechanism for early engagement safety cases (see Theme 7, *Safety Case Requirements*) might be a useful model.⁷²
77. NOPSA has forty-three regulatory staff and is building up staff resources for its NOPSEMA responsibilities. The inspection resources appear to be adequate, although with some vulnerability arising from the small number of staff with particular skills. Absences or vacancies may affect capacity. There are appropriate staff development programs. NOPSA's staff separation rate of 4.6 per cent is manageable.

67 Australian Government Cost Recovery Guidelines 2005

68 *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003*, OPGGS Act, *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004*

69 OPGGS (Regulatory Levies) Regulations, regs.62 and 63.

70 NOPSA, *Annual Review of Cost Recovery Arrangements and Financial Report on Cost Effectiveness 2009-10* (published October 2010)

71 OPGGS Act, s.687(3), OPGGS (Regulatory Levies) Act, Part 3 and Regulations, reg. 23.

72 OPGGS (Regulatory Levies) Regulations, reg. 60

78. NOPSA is undergoing considerable expansion of its functions. There have been important improvements to its original powers and functions, but it has also to manage the implementation of the legislation relating to wells and the environment. This not only requires preparing for the application of the laws, but managing new or changed relationships with stakeholders and other regulators and agencies. The demands of such activity are considerable, and carry risks of diversion of resources and attention from ongoing activities. NOPSA appears to be managing this satisfactorily, but the implementation of the new responsibilities (particularly for the change to NOPSEMA) is not complete.
79. The industry itself is dynamic. Changes in the size, composition, technologies and hazards and risks of the industry and its operations have implications for the regulator's capacity to deal with the changes and their effects.
80. We note that NOPSA is not funded for any systematic intramural or extramural research into offshore safety topics and there are no proposals for NOPSA to have such an ongoing research capacity. NOPSA is committed, through its MOU with AMSA, to consulting AMSA on research and data analysis in the offshore sector, including identifying areas for research or reviews, but there is no program for research. This contrasts with the British position, where the HSE's Offshore Division commissions a considerable number of research reports each year. There may be a knowledge gap in the Australian context. Further consideration should be given to this, possibly in the future consideration of harmonisation of OHS regulation and the potential adoption of the successor to the current National Occupational Health and Safety Strategy.⁷³

Views of industry stakeholders

81. Generally, industry found that NOPSA was a capable regulator. Stakeholders were more focused on how NOPSA performed its functions (see Theme 1, *Effectiveness*) than its underlying capacity to do so. There were some concerns about whether NOPSEMA would be ready to perform fully its environmental functions, particularly within required timeframes.

Findings and recommendations of previous reports

82. The 2008 Operational Review was undertaken when NOPSA had been in place for three years. At that time, stakeholders recognised the difficulties inherent in changing from an established safety regime to a new one and the protracted adjustment period for the regulator, the industry and workforce.⁷⁴ Overall, NOPSA was found to have been soundly established, but with a number of areas requiring further attention.

73 The new ten-year National Strategy is being developed on a tripartite basis by SafeWork Australia and is expected to commence in 2012.

74 Report of the 2008 Operational Review, p.16.

83. In 2009, DRET reported on its 2008 review of NOPSAs cost recovery arrangements.⁷⁵ Among other things, DRET found that NOPSAs financial model enabled an appropriate cost recovery mechanism using levies to establish the resources that NOPSAs required to meet its budgeted annual work program cost.⁷⁶ This still appears to be the case, including for NOPSAs expanded functions.
84. On the other hand, in 2009 Bills and Agostini found that NOPSAs was seriously under-resourced, even to fully discharge its then current responsibilities. They considered that NOPSAs needed more professional staff and broader competencies such as human and organisational factors as well as in offshore production and pipeline corrosion.⁷⁷
85. Conversely, the Montara Commission of Inquiry⁷⁸ and the Productivity Commission⁷⁹ indicated their confidence in NOPSAs capacity to undertake a wider regulatory role by recommending giving new responsibilities to NOPSAs.

Other relevant approaches

86. A quite different model is provided by the British HSE. As a national OHS regulator, with responsibilities in most parts of Britain and covering work generally, the HSE has around three thousand four hundred staff and a budget of around two hundred and thirty million pounds.⁸⁰ There is no Australian equivalent. Australian national safety regulators tend, like NOPSAs, to be relatively small, specialised (e.g., AMSA, Civil Aviation Safety Authority) and stand alone entities. At the State level, OHS regulation is more like the British model, with coverage of all or most industries and forms of work but on a smaller scale. In other words, for reasons of scale and specialisation, it is difficult to identify different approaches that have been successful for national regulators in the Australian context.

Action that is being taken to address identified gaps

87. NOPSAs is working with DRET on the implementation of NOPSEMA, and is putting the staffing and administrative infrastructure in place for NOPSEMA's commencement in 2012. NOPSAs is seeking to develop and maintain staff skills and capacities, including in areas of identified need such as human factors.

75 DRET, *2008 Review of Cost Recovery Arrangements and Cost Recovery Impact Statement for the National Offshore Petroleum Safety Authority (NOPSAs)*, Commonwealth of Australia 2009

76 *Ibid*, p.21.

77 Report of the Bills and Agostini NOPSAs Review, p.xiv.

78 Montara Commission of Inquiry, Rs.75, 76, PC Regulatory Burden Report, R.10.7

79 Report of Productivity Commission, 2009, op cit

80 HSE Annual Report, 2010-11

Discussion and analysis

88. NOPSA is a relatively small agency funded on a cost recovery basis. It appears to be capable of fulfilling its mandate, but has little reserve capacity. For NOPSA (and, in the near future, NOPSEMA) to manage successfully within the new regulatory model, a period of consolidation is required. The most significant legislative changes are now in place and are being implemented, or are about to be given effect. NOPSA and NOPSEMA should soon be in a position to focus on administering the widened regulatory regime. The resources that have necessarily been used for managing the change process will be available to administer and support the system.
89. We consider that some pivotal actions are needed for the agency to have the capacity to undertake its wider role successfully:
- a) any regulatory changes that have been agreed but are still to be delivered, should be made expeditiously (this includes proposed legislative changes);
 - b) work should continue as a priority on overcoming the perceived remoteness and over-detachment of the agency through ongoing, constructive engagement, directly and through their representatives, with the industry and the offshore workforce;
 - c) NOPSA should provide strategic leadership in driving cultural change in the industry, reinforcing the co-regulatory nature of the relationship between the industry and the regulator (providing strategic leadership in promoting a safer industry does not compromise the regulatory role, it complements and enhances it);
 - d) to be a modern, more effective and credible regulator, the agency needs a better range of compliance tools (we discuss this in Theme 5, *Compliance policy and powers*) and the skills and methodology for using them fairly, effectively and consistently under a graduated compliance model;
 - e) NOPSA and (NOPSEMA) should have the capacity to pursue legal action for compliance purposes, without being limited to action that must be pursued exclusively through the Commonwealth Director of Public Prosecutions (see Theme 5, *Compliance policy and powers*).

Recommendation 3

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

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

[See related Recommendation 8]

Theme 5: Compliance policy and powers

Existing policy and powers

90. The OPGGS Act gives NOPSA a range of powers to secure compliance with the OHS requirements of the Act and regulations.⁸¹ Inspectors are given conventional powers to enter facilities and search them, inspect workplaces at facilities, and so on. Those powers relate to facilities, as well as certain *regulated business premises*⁸² and other places in order to locate documents relating to a facility or facility operations or to certain contraventions under the Act. A warrant is required in some circumstances. There is also a power to inspect the seabed and subsoil in the vicinity of a facility to which an inspection relates. Inspectors are authorised to exercise a range of powers when they have entered a facility or other premises. For the purposes of ensuring well integrity, verification and OHS inspections are combined.

81 See Schedule 3, Part 4 of the OPGGS Act and the Regulations.

82 Defined in OPGGS Act, Schedule 3, cl.3 and facilities are defined in cl.4. Both definitions are intricate. Broadly, *facilities* are vessels or structures that are within an area covered by the Act and engaged in specified OPGGS-related activities. Certain pipelines are also facilities. An *associated offshore place*, in relation to a facility, is any offshore place near the facility where activities (including diving activities) relating to specified actions affecting the facility take place. There are some exclusions.

91. There is a serious sanction available to NOPSA for non-compliance with Schedule 3 (the OHS schedule) of the OPGGS Act,⁸³ or non-compliance with an improvement or prohibition notice issued by an inspector under the Schedule. Subject to certain procedural requirements, the acceptance of a safety case may be withdrawn.⁸⁴ This is also available in certain circumstances relating to non-compliance with requirements for revised safety cases or where a revised safety has been rejected. The practical and economic effects of the withdrawal are profound. The facility or structure cannot continue to operate. This sanction will often be massively disproportionate to the non-compliance which potentially triggers it. We understand that it has never been applied for non-compliance with Schedule 3.
92. The recent amendments to the OPGGS Act for the establishment of NOPSEMA and NOPTA will result in additional responsibilities for inspectors appointed by NOPSEMA. When performing functions as petroleum project inspectors or greenhouse gas storage inspectors, they will be subject to direction by NOPTA. We were not required to consider the operation of the new provisions, but we have taken account of their potential impact on overall regulatory operations.
93. NOPSA's statutory functions under the OPGGS Act (s.646) and the objects of Schedule 3 indicate by implication that a graduated approach to securing compliance underpins the legislative regime. Provision is variously made for promotion, advice, monitoring, investigation and enforcement. These are typically elements of a graduated approach, under which the regulatory intervention is appropriate to the breach and the offender's culpability.
94. Like most Australian OHS regulators, NOPSA has a publicly available compliance and enforcement policy.⁸⁵ The principles under the policy, as set out in the box below, are consistent with graduated compliance.

83 Such non-compliance would cover the failure by a person to whom a copy of an inspection report is given under clause 80 to provide NOPSA with details of remedial action.

84 OPGGS (Safety) Regulations 2009, regs 2.37 and 2.38.

85 <http://www.nopsa.gov.au/document/N-05000-PL0067%20-%20Compliance%20and%20Enforcement.pdf>

NOPSA's compliance and enforcement principles

NOPSA uses its powers in a transparent, efficient and consistent manner, and according to the principles of procedural fairness. NOPSA's compliance and enforcement activities align with the organisation's primary objective of improving safety outcomes across the offshore petroleum industry.

NOPSA achieves this by:

- *educating the offshore petroleum industry about their regulatory obligations through fostering a spirit of cooperative compliance with the legislation;*
- *assessing risks posed by non-compliance; and*
- *addressing risks posed by non-compliance, in a fair and consistent manner, and in proportion to the offence or non-compliance committed.*

NOPSA ensures operators and other responsible parties meet legislative requirements by being:

- outcome focused;*
- proportional and responsive;*
- informed;*
- transparent and consultative;*
- consistent;*
- targeted;*
- aligned with the principles of 'due process' and 'natural justice'; and*
- subject to probity.*

95. These NOPSA principles are broadly consistent with those used by most Australian OHS regulators and the HSE. We note that, as national harmonisation has been developed, the Heads of Workplace Safety Authorities, Australia and New Zealand (HWSA)⁸⁶ have agreed on a principles-based *National OHS Compliance and Enforcement Policy* (2008) and a *Framework for a common approach to inspection work* (2011).⁸⁷ NOPSA may find it useful to compare its policy and principles with HWSA's nationally developed policy and framework documents.

What happens in practice

96. In 2010-11, NOPSA inspectors conducted one hundred and two inspections of one hundred and forty-nine facilities.⁸⁸ Inspectors issued fifty improvement notices and nine prohibition notices. No proceedings were commenced for contraventions detected by inspectors⁸⁹.

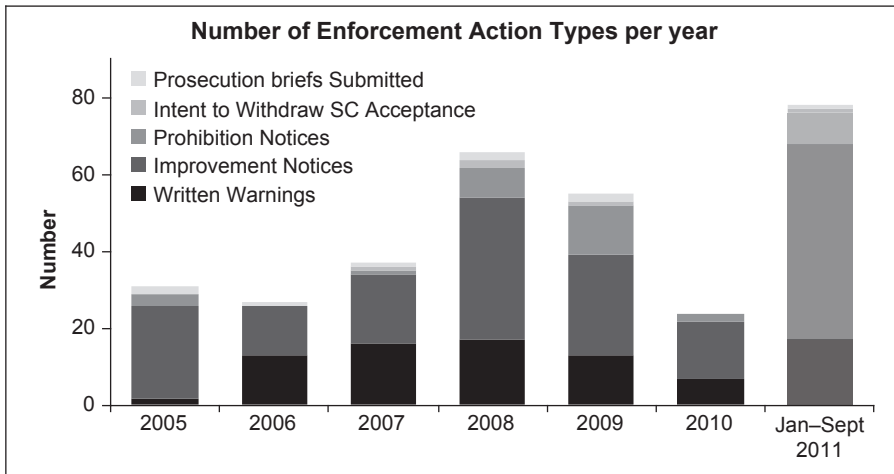
86 HWSA is constituted by the general managers of the main government bodies that regulate and administer OHS in Australia and New Zealand.

87 Each document is available at the HWSA web site: <http://www.hwsa.org.au>

88 Some inspections related to more than one facility (e.g., pipelines).

89 One prosecution brief was submitted to the Commonwealth Director of Public Prosecutions.

Figure 5.1 Number of enforcement action types per year



Source: NOPSA

Views of industry stakeholders

97. Generally, NOPSA was regarded as professional, constructive and competent in promoting and securing compliance. Again, shortcomings were mainly seen as associated with the legislation. The compliance powers were considered by some stakeholders as incomplete, particularly when compared with those under most of the principal OHS statutes onshore and with the forthcoming nationally implemented WHS Act.⁹⁰
98. A related issue raised by most stakeholders concerned perceived delays in amending the legislation. Some noted that deficiencies in the legislative regime had been identified in the Report of the Bills and Agostini NOPSA Review, but action was yet to be taken.
99. Concern was also expressed by NOPSA inspectors and investigators about difficulties in proceeding to prosecutions. The minimal number of prosecutions was seen to reflect an inherent problem in the Commonwealth criminal law arrangements. Prosecutions must proceed through the Commonwealth Director of Public Prosecutions (CDPP). Apart from differing views about the circumstances that justify a prosecution, there was some support for giving the regulator wider powers (such as enforceable undertakings and the capacity to initiate proceedings for less serious matters without using the CDPP, including by seeking civil penalties) that would be entirely within its control.

Findings and recommendations of previous reports

100. The Report of the Bills and Agostini NOPSA review supported graduated enforcement (whereby compliance action is escalated to more serious coercive or punitive responses where a duty holder is unresponsive to other regulatory action or a breach is sufficiently serious to warrant such responses). The report recommended that:

⁹⁰ The background to national harmonisation of OHS laws is discussed in Part One of this Report.

- a) the OPGGSA and its subsidiary regulations be amended to enable NOPSA to have a broader range of graduated compliance tools including the ability to impose a civil fine on an operator per day of non-compliance with an improvement or prohibition notice.
- b) NOPSA should be authorised to make public, with appropriate safeguards, specific information concerning its enforcement actions including the name of the operator, the breach, and the enforcement action required including potential penalties.⁹¹

101. The Government has indicated that it would give the matter further consideration.⁹²

Other relevant approaches

102. The OPGGS Act contains fewer compliance powers and enforcement mechanisms than most contemporary Australian OHS Acts. The model WHS Act drew on, among other things, the various approaches taken across the Australian jurisdictions. The model WHS Act represents the agreed views of all Australian governments on what is an appropriate range. The following table compares the relevant provisions of the OPGSS Act with those of the model WHS Act.

Table 8: comparison of compliance powers and enforcement mechanisms under the OPGSS Act and the model WHS Act

Type of power	Exercisable by whom	OPGSS Act	WHS Act
Improvement notice	Inspector	Yes	Yes
Prohibition notice	Inspector	Yes	Yes
Non- disturbance notice	Inspector	Yes	Yes
Injunction	Court	Not included	Yes
Enforceable undertaking	Regulator	Not included	Yes
On the spot fine	Inspector	Not included	Yes
Civil penalty	Court	Not included	Yes
Fine	Court	Yes	Yes
Imprisonment (for highest category of offence)	Court	Yes (not for OHS offences)	Yes
Adverse publicity order	Court	Not included	Yes
Order for restoration	Court	Not included under OHS provisions	Yes
Work health and safety project order	Court	Not included	Yes
Court ordered WHS undertaking	Court	Not included	Yes
Training order	Court	Not included	Yes

91 Op cit, R.6, p.61.

92 Government Response, September 2010

103. Apart from the omissions in the OPGSS Act, there is also a difference in the maximum fines. Under the model Act, there are three categories of offence for a breach of a duty of care. The maximum fine for a category 1 offence (the most serious breach) is \$3 million for a corporation and \$0.6 million for a natural person. By contrast, the maximum fine under the OPGGS Act for any offence is \$110,000.⁹³ This may be explained by the Commonwealth's policy on the size of penalties for strict liability offences.
104. Civil penalties are not available. They were recommended by the Bills and Agostini NOPSA Review⁹⁴ and are included in the model WHS Act⁹⁵, with the regulator and inspectors given standing to apply for their imposition.
105. The maximum periods of imprisonment under that the OPGGS Act vary from 6 months for such offences as failing to answer an OHS inspector's questions [s.74(5)] or giving false or misleading evidence [s.74(7)] to 15 years for intentional entry of a vessel into a notified petroleum safety zone [s.616(3)]. Notably, imprisonment is not an option in relation to OHS duties of care, even where there is serious culpability. Under the model WHS Act, an individual who has committed the most serious breach (a category 1 offence) may be subject to imprisonment for up to 5 years. Unlike onshore OHS legislation, the relevant provisions of the OPGGS Act do not place duties on officers.
106. Although some of the Bills and Agostini NOPSA Review recommendations have been implemented, we note that the power of an inspector to issue a prohibition notice is limited to circumstances where an inspector believes that a notice is required to remove an *immediate threat* to the health or safety of any person.⁹⁶ This issue was identified both in the report of the Bills and Agostini NOPSA Review⁹⁷ and in the Montara Commission of Inquiry Report⁹⁸ as unnecessarily restrictive.
107. Modern Australian regulatory practice supports prohibition notices, but, as provided in the model WHS Act, authorises the issuing of a prohibition notice in wider circumstances.⁹⁹ These are where an inspector reasonably believes that an activity is occurring, or may occur, at a workplace that involves or will involve a *serious risk* to the health or safety of a person *emanating from an immediate or imminent exposure to a hazard*.

93 Breaches of principal duties of care, OPGGS Act, Sch. 3, ss.9-11.

94 Op cit, R.6.

95 Model WHS Act, Part 13, *Legal Proceedings*, Division 7, *WHS Civil Penalty Provisions*.

96 Discussed in Bills Agostini at p.62.

97 At p.62, paragraph 3.57.

98 Op cit, paras 4.124-4.128 and R.72, p.361

99 Model WHS Act, Part 10, *Enforcement Measures*, Div. 2, *Prohibition Notices*

Action that is being taken to address identified gaps

108. DRET informed us that a process is under way to review the compliance provisions and that any resulting recommendations for amendments may be considered in 2012. An issues paper has been released inviting public comment by December 2011.¹⁰⁰

Discussion and analysis

109. NOPSA has the skills and policies of a modern safety regulator. Plainly, it does not yet have all of the necessary tools. The compliance machinery is deficient in some respects.¹⁰¹ Although being addressed, the gaps are serious and resolving them should continue to be a policy priority.

Recommendation 4

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

Theme 6: Consistency

Existing policy and powers

110. NOPSA's functions and powers are described earlier. The primary mechanisms for guiding and limiting the exercise of those powers are the OPGGS legislation (which does not expressly require consistency) and the policy principles issued by the Minister under the Act, as a written *Statement of Expectations*.¹⁰² That Statement is expressed to be in accord with the ANAO's *Administering Regulation, Better Practice Guide*, and therefore should be taken as expecting consistency. NOPSA has responded with a Statement of Intent, in which NOPSA expressly commits to fulfilling its functions in accordance with the guiding principles and specific expectations set out by the Minister.¹⁰³ NOPSA also has policies that are expressly relevant to consistency (see below).

100 DRET, *Issues paper: A rigorous compliance and enforcement regime for offshore petroleum activities in Australia*, Commonwealth of Australia, 2011.

101 The NOPSA Advisory Board has reached a similar conclusion – see the Board's 2010-11 Annual Report.

102 OPGGS Act, s.647.

103 Both are available at <http://www.nopsa.gov.au>

What happens in practice

111. NOPSA has focused on regulatory consistency through a number of policies, procedures and practice. Each of NOPSA's *Assessment Policy*, *Safety Case Assessment Policy* and *Enforcement Management Model*, *Standard Operating Procedure* (based on an equivalent HSE document – see later) includes consistency as an operating principle and expected outcome. Appropriate recognition in those documents is also given to the vital role of team leaders in securing consistent decision making.
112. In our discussions with NOPSA's management and staff, we were satisfied that the importance of consistent regulatory decision making and actions was accepted within NOPSA and that regulatory activity was taken with that in mind. On the other hand, as we outline below, the industry does not consider that consistency is always achieved.

Views of industry stakeholders

113. In NOPSA's 2007 survey of stakeholders, nearly one third of respondents felt that NOPSA applied the safety case regime inconsistently.¹⁰⁴ We are not in position to quantify the current concerns, but the same issue was raised several times with us. Similarly, industry representatives were concerned about perceived inconsistency by inspectors in the field. It was observed that inconsistency was demonstrated by the extent of the differences between the styles, standards and approach of inspectors. Frustration was expressed with what appeared to be unreasonably persistent challenges by some inspectors on issues that should have been accepted as resolved. This was characterised as an inspector's pursuing issues out of personal interest and not accepting an agreed NOPSA position. A particular issue, with which NOPSA was familiar, was NOPSA's views on the number and weight carrying capacity of lifeboats. We considered that the problems here may illustrate at least a need for more effective communication by NOPSA with the industry about the justification for NOPSA's views.

Findings and recommendations of previous reports

114. The 2008 Operational Review's report stated that stakeholders praised the professional competence of NOPSA's staff, but most stakeholders complained about a lack of consistency in NOPSA's work processes and in their dealing with the industry's duty holders.¹⁰⁵ The report observed that consistency in regulation had improved following the establishment and operation of NOPSA, but: *'... issues still existed with differing opinions and interpretations and applications across NOPSA teams. There are inconsistencies between all the teams, regardless of where they are located.'* Consistency differences were reported both between teams in Perth and between NOPSA staff in Perth and Melbourne. At that time a particular source of frustration was apparently differing opinions within NOPSA about the information required in a safety case.¹⁰⁶

104 NOPSA Stakeholder Survey, May 2007, Research Report.

105 Report of the 2008 Operational Review, p.15.

106 Ibid, p.6

115. The 2008 review team commended NOPSAs training and competency program, which, coupled with performance appraisal processes, provided a way to deal with the problems.¹⁰⁷ The report also recommended revised safety case guidelines.¹⁰⁸
116. Concerns about consistency still existed at the time of the Bills and Agostini NOPSAs Review. Their 2009 report acknowledged that NOPSAs *Enforcement Management Model* (EMM) provided a framework for making consistent compliance and enforcement decisions. NOPSAs *Compliance and Enforcement Policy* complemented the EMM. The Report noted inconsistent applications of the EMM and policy in the issuing of improvement and prohibition notices.¹⁰⁹

Other relevant approaches

117. In Great Britain, the HSE is subject to the *Legislative and Regulatory Reform Act 2006* ('Reform Act'). Under section 21, a regulator must observe certain specific principles, namely, that regulatory functions must be carried out in a way that is 'transparent, accountable, proportionate and consistent' and that regulatory activities should be targeted only at cases in which action is needed.
118. There is also a statutory code of practice, the *Regulators' Compliance Code*.¹¹⁰ Paragraph 8.6 of the Code states:

Regulators should enable inspectors and enforcement officers to interpret and apply relevant legal requirements and enforcement policies fairly and consistently between like-regulated entities in similar situations. Regulators should also ensure that their own inspectors and enforcement staff interpret and apply their legal requirements and enforcement policies consistently and fairly.

119. A series of policy statements explain how the HSE meets these requirements. In its *Enforcement Policy Statement*, the HSE observes:

*Duty holders managing similar risks expect a consistent approach from enforcing authorities in the advice tendered; the use of enforcement notices, approvals etc; decisions on whether to prosecute; and in the response to incidents ... in practice consistency is not a simple matter. (There are) many variables including the degree of risk, the attitude and competence of management, any history of incidents or breaches involving the duty holder, previous enforcement action, and the seriousness of any breach, which includes any potential or actual harm arising from a breach of the law. Decisions on enforcement action are discretionary, involving judgement by the enforcer. All enforcing authorities should have arrangements in place to promote consistency in the exercise of discretion, including effective arrangements for liaison with other enforcing authorities.*¹¹¹

107 Ibid, p.5.

108 Ibid, p.6.

109 Report of the Bills and Agostini NOPSAs Review, paragraph 3.54

110 The code is issued under s.22 of the *Legislative and Regulatory Reform Act 2006* It is available at: <http://www.bis.gov.uk/files/file45019.pdf>

111 HSE, *Enforcement Policy Statement*, paragraphs 22, 23.

120. The HSE has undertaken internal audits (using expert field investigation professionals) of regulatory decision making. The audits evaluated regulatory decisions made as a result of the investigation of accidents. In the 2008 audit, one hundred and twenty-seven conventional accident investigations were reviewed as a sample. The panel agreed with the action taken by the inspector in one hundred and twenty of the sample cases. In no case was an inspector considered to have been over-zealous.¹¹²
121. The concept and methodology of the HSE audits may interest NOPSAs as a possible means of testing the industry's continuing perceptions of inconsistency in various aspects of NOPSAs' regulatory work.

Action that is being taken to address identified gaps

122. Australia does not have legislation equivalent to the British Reform Act, but, as discussed earlier (Theme 1, *Effectiveness of NOPSAs*), a National Legislative Consistency Framework (NLCF) has recently been established. The NLCF is intended to ensure a consistent best practice approach by regulators of Australia's offshore petroleum industry in the areas of well operations, environment and integrity.¹¹³ In addition, the policy directions given by the Minister provide impetus for NOPSAs' ongoing efforts to achieve consistency in its regulatory activities.
123. The NLCF states that procedures for regulatory activities such as inspections, audits, investigations, review and approval of documents such as Environment Management Plans, Field Development Plans, Safety Cases and so on should be developed, documented, published and implemented. This is seen as promoting consistency within the regulator, ensuring that personnel understand and meet expectations. Publication is also identified as a tool for duty holders and other stakeholders to determine whether a regulator is acting in a fair and consistent manner.¹¹⁴
124. NOPSAs already has done a considerable amount of work in formulating and publishing policies and procedures for its regulatory activities. The establishment of the electronic Regulatory Management System has also facilitated information sharing and accessibility for NOPSAs staff. This fosters consistent decision making. Even so, more will be required as NOPSEMA becomes established. Moreover, continuous improvement implies that regulatory policies and approaches will alter, requiring changes in the relevant documents. A particular challenge for NOPSAs is to keep the documentation up to date and effective.
125. NOPSAs normally sends inspectors in pairs for field activities. This is seen as not only efficient, but also as ensuring that there is on-site peer support for inspectors and facilitating consistency. Inspectors indicated to us that the practice has those benefits. We also note that the establishment of a dedicated investigation team can be expected to assist in achieving consistency in investigation practices as well as reducing the risk of regulatory capture.

112 HSE, *Regulatory Decision Making Audit Report*, 2008

113 Noetic Solutions Pty Limited, *National Legislative Compliance Framework*, 2011, p.iii.

114 *Ibid*, p.16

Discussion and analysis

126. As the ANAO observes ... *regulated entities expect regulation to be administered consistently, fairly, equitably, in accordance with legislation, and at a cost justified by the regulatory risks.* On the other hand, as the HSE observes, consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.¹¹⁵ Room must be left for judgement and discretion about the appropriate regulatory decisions or interventions.
127. We did not see evidence of any systemic failure in NOPSAs policies and procedures that are designed to achieve regulatory consistency. Nor did we find examples of capricious or unwarranted decisions or interventions. On the other hand, NOPSAs should do more to counter the impression that the risk of inconsistent actions is more than minimal. An audit of regulatory decision making along the lines of that undertaken by the HSE is one option to be considered. It is also up to industry through liaison meetings or other channels to identify what it considers to be serious lapses in NOPSAs standards. Ongoing attention to communication with stakeholders is essential (we discuss this further in Theme 9, *Stakeholder Engagement*).

Recommendation 5

NOPSA should:

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

¹¹⁵ HSE, Enforcement Policy Statement, paragraph 21.

Theme 7: Safety Case Requirements

Existing policy and powers

128. Safety cases have been widely accepted as the most suitable form of securing safety in the offshore petroleum, oil and gas industry since their introduction in the UK following the inquiry into the 1988 Piper Alpha disaster.¹¹⁶ Australian legislation is based on that model.
129. The OPGGS (Safety) Regulations 2009 provide extensively for safety cases. An express object of the regulations is to ensure that facilities¹¹⁷ are designed, constructed, installed, operated, modified and decommissioned in Commonwealth waters only in accordance with safety cases accepted by NOPSA. The objects also seek to ensure that safety cases provide for various measures to secure the OHS of persons at or near facilities.¹¹⁸
130. A safety case is a written document in which the operator of a facility describes the facility in detail, identifies hazards and risks at the facility, specifies the control measures to reduce risks to a level that is as low as reasonably practicable, provides a detailed description of the comprehensive safety management system (SMS) to apply at the facility and demonstrates that the SMS will be implemented, monitored and improved systematically and continually.¹¹⁹
131. The safety case does not replace the statutory duties of care set out in Schedule 3 of the OPGGS Act.¹²⁰ It demonstrates in detail how operations will be conducted safely. Non-conformance may lead to withdrawal of the acceptance of the safety case.¹²¹ A breach of a statutory duty of care may lead to the imposition of a criminal penalty. An incident may lead to both consequences.
132. The entry point for the safety case life cycle in respect of a facility is when a vessel or structure is identified as a facility or proposed facility (the facility) that is to operate within NOPSA's jurisdiction. The relevant titleholder¹²² or facility owner nominates the operator of the facility and gives the written nomination to NOPSA.¹²³ The nomination must be accepted and the operator registered if NOPSA is satisfied that the nominated person has, or will have, day to day control of the facility and its operations. NOPSA must reject the nomination if it is not so satisfied.¹²⁴

116 Cullen, The Honourable Lord, *The Public Inquiry into the Piper Alpha Disaster*, HM Stationery Office, 1990

117 OPGGS Act, Schedule 3, clause 4 defines what constitutes a facility. Since 2010, licensed pipelines have been facilities and require a safety case. Floating accommodation (a'flotel') is also facility for the purposes of the Act and requires a safety case if it is to be used within the jurisdiction...

118 OPGGS (Safety) Regulations, reg.1.4, Objects.

119 Ibid, regs 2.4-2.6.

120 OPGGS Act, Schedule 3, Part 2, *Occupational health and Safety*.

121 This has not yet occurred.

122 OPGGS (Safety) Regs, reg.1.5 defines 'titleholder' and 'facility owner'.

123 Ibid, reg. 2.1.

124 Ibid, reg. 2.3

The operator is responsible for submitting a safety case for the facility (or more than one facility) to NOPSA for acceptance, but may not do so before agreeing with NOPSA on the scope of the validation for the facility (see below).¹²⁵ That threshold step is not required for certain proposed facilities, but NOPSA may decline to assess the safety case for a proposed facility before the scope of validation is agreed.¹²⁶ The assessment for a safety case is to be completed within ninety days (thirty days for a revision).¹²⁷

133. NOPSA must accept a safety case¹²⁸ if:
- a) the safety case is appropriate to the facility and the activities conducted at the facility;
 - b) it complies with specified content requirements under the regulations; and
 - c) NOPSA requests a validation¹²⁹ and the response is satisfactory.
134. The operator must demonstrate to NOPSA that, in the development or revision of a safety case, there was effective consultation with, and participation of, members of the workforce. The safety case must also provide adequately for such consultation and participation so members of the workforce can reach informed opinions about the risks and hazards to which they may be exposed on the facility.¹³⁰

What happens in practice

135. In 2010-11, two hundred and eighty-two assessments were submitted for NOPSA's acceptance or agreement. They included:
- a) safety cases or revisions of safety cases;
 - b) Scopes of Validation;
 - c) new or revised Pipeline Safety Management Plans;
 - d) Diving Safety Management Plans;
 - e) Well Activities Approval Applications; and
 - f) Well Operations Management Plans (WOMPs).
136. One hundred and eighty-one were accepted or agreed within the required time limits. NOPSA required further information¹³¹ in relation to ninety-seven assessments. Twenty-six assessments were rejected, and eleven were withdrawn. Eighty-nine per cent were notified within the required timeframes.

125 Ibid, reg.2.24

126 Ibid.

127 Ibid, regs.2.27 and 2.35. Where a decision cannot be taken within the statutory period, the regulations require NOPSA to advise the operator and provide a proposed timetable for considering the safety case or revised safety case.

128 Ibid, reg.2.26.

129 Ibid, reg.2.40: NOPSA may request a validation (a written statement by an independent validator in respect of the particular things that are to be validated) in respect of a proposed facility or a proposed significant change to an existing facility. The purpose is to satisfy NOPSA about the existence of measures to protect the health and safety of persons at the facility.

130 Ibid, reg.2.11

131 Ibid. reg 2.25.

137. The following table indicates the types of facilities that were the subject of the eighty-four accepted safety cases or revised safety cases.

Table 9: Accepted safety cases or revised safety cases by type of facility in 2010-11

Type of facility	Number of accepted safety cases or revised safety cases
Platform	10
Floating Production Storage and Offloading Unit (FPSO) Floating Storage and Offloading Unit (FSO)	16
Mobile Offshore Drilling Unit (MODU)	35
Vessels	13
Pipelines	10

138. As reported by facility operators, members of the workforce are involved in developing and revising a facility's safety case¹³² and are provided with induction training and presentations on key elements of the safety case.

Views of industry stakeholders

139. In general, industry stakeholders widely support the underlying principles for a goal setting, safety case regime, and appear to have developed a better understanding of the safety case requirements and process.

140. The ACTU and unions hold more negative views. They characterised the safety case regime as primarily a deregulated, non transparent and non participative model for OHS management. They considered that, given the high risk nature of the offshore oil and gas industry, NOPSAs had not yet achieved an appropriate balance between using performance and prescriptive regulation, placing too much trust and emphasis on safety cases in the absence of a framework of regulated minimum standards.¹³³ The ACTU and unions propose greater prescription.

141. Industry stakeholders often criticised the requirements for safety cases and the acceptance process. They made the following points of concern or criticism:

- a) the safety case is not useful in the field, as it is too large, too detailed, and of little use to the workforce at large;
- b) the amount of documentation that is required appears to be expanding and is too costly and time consuming to compile;
- c) in considering whether to accept safety cases, NOPSAs sometimes asks for detail that is not material;
- d) safety case revision requires the unnecessary repetition of previously submitted and approved documentation;

¹³² Ibid, reg. 2.11.

¹³³ ACTU Submission, p.29

- e) bridging documents should be permitted rather than completely revised safety cases;
- f) the practice of not accepting a revision until the earlier safety case has been accepted is inconsistent with the reality of short term projects in the shipping industry; and
- g) the concept of a *facility* is too wide resulting in vessels being brought within the regime unnecessarily (the operator's safety case could cover interaction with a vessel).

Findings and recommendations of previous reports

- 142. The Productivity Commission in its *Upstream Petroleum Regulation* report strongly supported objective-based legislation as best practice in the offshore oil and gas industry.¹³⁴ Consistent with this, the Commission noted that NOPSAs should take care, in its use of internal standards, not to undermine the objective-based nature of the offshore safety regime.¹³⁵
- 143. A recommendation of the 2008 Operational Review suggested that improved and agreed guidelines for safety case application and assessment, including suggested structure and content, would alleviate many current problems related to safety case processes.
- 144. Since 2008, NOPSAs have been providing advice through its Safety Case Guidance Note project and has published an information brochure: *Stages in the Regime*. Seven of a planned series of eleven Safety Case Guidance Notes have now been published. NOPSAs expect to publish at least two more Safety Case Guidance Notes in 2011-2012
- 145. The safety case assessment process also now includes arrangements for a safety case engagement plan through which guidance may be provided to operators on a targeted, case by case basis.¹³⁶

Other relevant approaches

- 146. Under the British system, a revision to a safety case requires the resubmission of the complete document clearly showing the proposed revisions in context. This is explained as being 'for ease of assessment'.¹³⁷
- 147. On the other hand, in Victoria, WorkSafe does not require the resubmission of an entire safety case for a Major Hazard Facility (MHF) when there is a revision of the safety case. In a guidance note, WorkSafe explains:

134 Op. cit., R.10.3, p.281, 'Governments should ... promote the use of objective-based legislation where feasible'

135 Op. cit., Finding 7.2, p.180

136 NOPSAs, *Safety Case Assessment Policy*, paragraph 4.1.

137 HSE *A guide to the Offshore Installations (Safety Case) Regulations 2005*, HSE Books, 2006, paragraph 204.

WorkSafe requires a copy of each revised Safety Case, either as a complete copy or as a set of revised or additional pages. This ensures WorkSafe has a 'controlled' copy of each operator's Safety Case, which is updated at the same time as the operator's copies. The revision should list the changes that have been made and highlight any improvements related to WorkSafe recommendations from previous assessments. WorkSafe acknowledges all Safety Case revisions it receives. The submission of a full revision of a Safety Case after every minor change may be burdensome on operators, e.g., large sites may make hundreds of changes in a year. In these cases, WorkSafe accepts Safety Case updates at regular intervals, such as every 12 months.¹³⁸

Action that is being taken to address identified gaps

148. The regulations allow for safety case submissions to cover one or more stages in the life of a facility.¹³⁹ In some cases, this may not be happening owing to misunderstanding validation and verification requirements. NOPSA is engaged in an ongoing education process with operators in respect of validation requirements.
149. Workforce involvement is the subject of a NOPSA safety case guidance note planned for publication in 2012. A workshop at the 2011 HSR forum gained input into the guidance note.
150. The Government has accepted certain findings in previous reviews that relate to safety cases. Appendix 5 identifies NOPSA's progress on those that have yet to be implemented.

Discussion and analysis

Changing the regulatory model

151. At the outset, we note that the safety case regime remains widely accepted within the industry. Nonetheless, some stakeholders sought significant change to the legislation by the inclusion of more prescription, qualifying the legislation's objective-based nature. Other stakeholders proposed changes to the application of the legislation, with titleholders or facility operators having primary responsibility for safety cases, so contractors would not require their own safety cases.¹⁴⁰ Other proposals were for changes of a more operational nature.
152. We appreciate that an objective-based regime will inevitably lead to differing views about the degree to which prescription should be included. As we commented earlier, however, our terms of reference essentially require us to address operational issues rather than the regulatory principles that underpin the current legislative regime. We also note that the Commonwealth Government, in its May 2011 response to the Productivity Commission's Upstream Petroleum (Oil and Gas) Regulation report, confirmed the government's commitment to objective-based legislation.

138 WorkSafe Victoria, Guidance Note, *Revision of a Safety Case for a Major Hazard Facility*, 2011, paragraph 3.3.2: *Submission of Revised Safety Cases*

139 Op.cit, regs 2.27 and 2.35.

140 See the Government's response to R.4 of the 2008 Operational Review. Note also that cl.13A of Schedule 3 of the OPGGS Act places a duty of care on the relevant titleholder for the safety of a well.

153. The response also observed that the regulations under the OPGGS Act were being consolidated, with public consultation as part of the process.¹⁴¹ In other words, the opportunity existed through the Productivity Commission's review and the consequent legislative action to address systemic issues. No fundamental change was recommended. The Government supports an objective-based regime. As mentioned earlier, the Government has also accepted a number of recommendations from previous reviews for specific legislative changes, but we saw no evidence that the fundamental design and underlying principles of the current system are questioned by any Australian government.
154. Turning to the specific issues raised with us in relation to safety cases, they broadly concerned the size and utility of safety cases, the requirements relating to the revision of safety cases and the requirement for contractors to have safety cases for their vessels.

Size, complexity and utility of safety cases

155. A facility safety case is compiled to meet the legislative requirements. It is often a large, complicated, stand alone document (or series of documents). The safety case must be appropriate to the facility and to the activities conducted at that facility. Sufficient detail is necessary for NOPSA to assess its acceptability. A considerable amount of detailed information may have to be submitted in relation to a complex facility.
156. Bills and Agostini commented in the report of their 2009 NOPSA Review that the length of some safety cases may be in response to the lack of specific guidance from NOPSA at that time. That might have caused operators to feel that 'more' is 'better' which might decrease the safety case acceptance time. Bills and Agostini suggested that this could be mitigated by an increase in NOPSA's advisory role.¹⁴² As we note earlier, NOPSA is now providing more guidance and assistance on safety cases.
157. Another factor may be how safety cases are prepared. For many facilities, a safety case may be mainly written and compiled by technical safety specialist consultants. We were advised that such safety cases appeared to use a template framework often, erring on the side of too much information. Bills and Agostini found that NOPSA might consider establishing an appropriate forum for consultants and those personnel within operators who undertake safety case development.¹⁴³ We agree with that view, but consider that it would probably be more effective if such a forum were industry organised and restricted to consultant personnel, to avoid the possibility of unintended difficulties arising from client and consultant interaction.

141 Commonwealth Government Response to the Productivity Commission *Review Of Regulatory Burden on the Upstream Petroleum (Oil & Gas) Sector*, Commonwealth of Australia, 2011, p.6.

142 Op. cit., p.66,

143 Ibid, p.24. Bills and Agostini considered that the forum could be through APPEA and should be used for education, promotion and discussion of safety case issues.

158. As part of the assessment process, NOPSAs policy is to conduct a detailed assessment of three topic areas. This is undertaken by considering the extent to which the safety case adequately addresses the content and appropriateness requirements of an applicable selection of the regulations that relate to the topic areas. Wherever possible, at least two of the topic areas focus on particular Major Accident Events (MAEs). The scope of this component of the assessment is, where possible, informed by relevant prior assessments, inspections and investigations and also considers such factors as risk, uncertainty, use of novel technology, and the timing and geographical location of particular activities.
159. NOPSAs uses a risk-based, sampling approach to test a safety case's acceptability. It may lead to detailed questioning and requests by a NOPSAs assessor for more information about sampled topics. This might be misconstrued as irrelevant or too detailed. In fact, it seems more efficient than exhaustively exploring all aspects of the safety case.
160. After a safety case is accepted, NOPSAs uses it in inspections to verify key controls for MAEs. Documents described in the safety case, e.g., relevant safety manuals, procedures and work instructions, are inspected in depth for assurance that everything is being managed and run safely.
161. Some operators consider that NOPSAs wants too much detail in submissions which makes no difference to safety performance. This overlooks NOPSAs's statutory obligation to assess safety cases against the criteria specified in the regulations. The regulations often require a safety case to contain detailed descriptions.¹⁴⁴
162. This concern involves the issue of how much information NOPSAs actually needs. The report of the 2009 Bills and Agostini NOPSAs review discussed whether key, safety critical issues may be obscured in a lengthy document and whether too much information provided to a regulator might be construed as transferring some risk to the regulator.¹⁴⁵ We recognise these are valid considerations, but we have concluded that NOPSAs appropriately applies the current regulatory model and conforms to the requirements of the legislation. Even so, further work could be undertaken to examine the issue and this might be considered for inclusion in NOPSAs's program of continuous improvement, once the initial implementation of NOPSEMA has been managed.
163. Workforce involvement is an essential element of effective risk management and has always been part of the safety case requirements.¹⁴⁶ A successful safety case is underpinned by the ongoing management of safety in close cooperation with the offshore workforce. Under the regulations, a safety case must provide adequately for effective consultation with, and the effective participation of, the members of the workforce, so that they can arrive at informed opinions about the hazards and risks to which they may be exposed on a facility and how these might best be managed.¹⁴⁷ The safety case is not intended to be the instrument of such consultation; rather it is the blueprint for consultation.

144 See OPGGS (Safety) Regulations, Part 2, Division 1, Contents of Safety Cases.

145 Op cit, p.33, paragraph 2.49.

146 OPGGS (Safety) Regulations, reg.2.11

147 Ibid.

164. A safety case which was ideal as a consultative instrument would be highly unlikely to satisfy the other requisites of a safety case and therefore have little prospect of acceptance. We find it difficult to identify how the safety case requirements could be altered to make a safety case a generally appropriate tool for workforce consultation and information, as well as constituting the documentation necessary for securing regulatory authorisation to operate a facility.
165. The development of safe work practices and culture is the direct responsibility of operators and those working on board. Safe working procedures and requirements are outlined not only in the required documented safety management system¹⁴⁸ but also in operators' safe working manuals and instructions. These manuals are updated regularly and are designed as operational documents. They bring the technical and legal requirements of the safety case to operational life.

Safety case revision

166. Safety case revision requires the repetition of previously submitted and approved documentation. As identified earlier, this approach is taken by the HSE. It facilitates assessment (with the benefit for an operator of speedier decision making) and more importantly reduces the risk of the omission of important information. Victoria's WorkSafe has a more flexible approach (see above), but it is not universally available and potentially has more risks than the HSE and NOPSAs approaches. In assessing a revised safety case, NOPSAs focus primarily on the basis for the revision. In most cases, this does not involve a complete reassessment of the safety case.
167. The regulations effectively require each safety case to cover the hazards from adjacent facilities and how they affect the facility to which the safety case primarily applies.¹⁴⁹ This can often lead to what operators perceive as an increased workload as they have to update a complete safety case, rather than focusing on the activity at hand. In the case of MODU rigs undertaking drilling campaigns, safety case revisions require more forethought. Operators of MODUs could submit a safety case covering an entire drilling campaign at a given location, rather than submitting revisions for each well.
168. We have also considered NOPSAs policy of not undertaking concurrent assessments of revised safety cases. Where an operator has made a submission under particular regulations,¹⁵⁰ but has not yet been notified of NOPSAs decision and subsequently makes another submission¹⁵¹, NOPSAs notifies the operator that it cannot take a decision on the later submission. NOPSAs does, if possible, set out a proposed timetable for considering the revised safety case.

148 Ibid, reg. 2.5(3).

149 Ibid,

150 Ibid, regs. 2.24, 2.30, 2.31 or 2.32

151 Under reg 2.30

169. Some operators consider that this approach can impede their drilling programs or projects with short time frames. We note that this situation would not arise for a safety case that covered a program or campaign. There may be more difficulty for a series of short term projects that may not all be known in advance. Generally, problems of inconsistency or confusion should not occur where a revised safety case relates to discrete sequential activities that could not overlap. This may not always be the position. Nonetheless, we were given some details of a case where this problem arose. The revision was approved after an earlier submission was concluded. The project concerned was accordingly able to proceed, but the timing was very tight.
170. We suggest that NOPSA should explain the reasons for the policy to the industry and invite proposals for managing the process in a way that reduces the risk of delay

Safety cases for vessels that are facilities under the legislation

171. As we discuss elsewhere, certain marine vessels operating in the Australian offshore oil and gas industry are considered to be facilities for the purposes of the OPGGS legislation. Accordingly, they require safety cases. Some marine stakeholders questioned the need for this. Apart from anything else, they considered that NOPSA should accept internationally recognised regulatory controls (such as Class, IMO or flag state requirements) as safety case performance standards for vessels, given that they sufficed in many jurisdictions. They also had concerns about the process for revising safety cases, which could be cumbersome for short term projects.
172. There appear to be two underpinning issues. Firstly, the safety case process is perceived as unnecessarily burdensome and may deter some marine operators. Secondly, the difference between vessels and fixed facilities is said to be not sufficiently recognised and that overlaying safety case requirements on vessels is unnecessary where they are already subject to maritime safety laws.
173. We understand these points. In our view, they do not displace the crucial factor, namely, that, when the vessels are treated as facilities, it is because they are engaged in offshore petroleum operations. They should be subject to safety case requirements because they are effectively subject to the same hydrocarbon-related hazards and risks as any other facility (and indeed may, without appropriate regulation, increase the risks for other facilities¹⁵²).

152 For example, a vessel caused the 2005 Mumbai High North disaster by hitting a platform riser.

Recommendation 6

We recommend that:

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

Theme 8: Early Engagement

Existing policy

174. The OPGGS (Safety) Regulations¹⁵³ and the OPGGS (Safety Levies) Regulations were amended in mid-2010 to provide for 'early engagement safety case assessment'. An operator may now submit a safety case without having first agreed a scope of validation with NOPSA. There may be a fee for service for the assessment of a safety case for such a facility that is proposed to be, or is being constructed, at a place outside Safety Authority waters, and which is to be installed and operated at a site in Safety Authority waters.
175. The submission by an operator of an early engagement safety case and its assessment by NOPSA are intended:
- a) to lower risk through early regulatory engagement with an operator of a proposed facility with consequent benefits for the health and safety of the workforce;
 - b) to provide an operator with a mechanism for regulatory risk mitigation before making a Final Investment Decision or commencing detailed design; and
 - c) to allow NOPSA to challenge an operator's concept selection, design and consideration of inherent safety at an appropriately early stage in a facility's lifecycle.

¹⁵³ OPGGS (Safety) Regulations 2009, reg.2,24(5). For more details, see NOPSA's *Early Engagement Safety Case Assessment Policy*, available at <http://www.nopsa.gov.au>

What happens in practice

176. Consistent with the intent of the amendments,¹⁵⁴ the key early engagement principles are:
- a) submitting an early engagement safety case is voluntary;
 - b) early engagement is considered to be at or around the time of making key concept selections and before making a financial investment decision (FID);
 - c) early engagement applies to proposed facilities, not yet being constructed, that involve using new technologies, or new combinations or applications of existing technologies;
 - d) the assessment of an early engagement safety case is expected to be protracted, extending well beyond the usual 90 day timeframe;
 - e) NOPSA will recover the costs of assessing an early engagement safety case by a fee for service.

Views of industry stakeholders

177. In general, industry stakeholders view the early engagement process favourably. Title holders and operators support having more dialogue on technical solutions to safety issues earlier in the design decision process. More interaction with NOPSA about new technology is seen to be particularly helpful.
178. Very innovative designs can test the regulator's competence. At best, new technologies will prompt much questioning by NOPSA. This may be very time intensive for both parties. A collaborative approach is desirable, whereby the regulator and operator work together to understand new, emerging technologies and their safety implications.
179. The extent of support and encouragement for new, safer technologies in the Australian offshore oil and gas industry was questioned. By comparison, in the UK, the HSE sponsors industry research into new technologies. NOPSA is not designed or funded to provide similar support to the industry.
180. Industry stakeholders stated that the legislative arrangements for early engagement and consultation in design feasibility are not adequate. Early engagement safety cases are assessed against the complete regulations. They should instead be reviewed against key design requirements and intent.
181. We were advised that the outcome of an early engagement safety case assessment will be a formal rejection decision because the level of detail, at that stage, will not be adequate. Detailed reasons for the rejection will be given and it will be clear what additional information may be needed. Obviously, this may deter some operators from making an early submission seeking agreement in principle on a proposed design.

¹⁵⁴ Explanatory Statement for the Select Legislative Instrument 2010 No. 122

Findings and recommendations of previous reports

182. Recommendation 3 of the Bills and Agostini NOPSAs Report calls for NOPSAs to revise its approach to interacting with operators prior and subsequently to the Safety Case assessment process. Recommendation 14 of the same report proposes that NOPSAs should increase its advisory and promotional functions by engaging with operators more, and in a more targeted fashion, in the early stages of the Safety Case and the Pipeline Safety Management Plan (PSMP) process.
183. Legislative arrangements for early engagement with proponents of major, complex projects have been put in place with an operational policy also published. To date, NOPSAs has had initial meetings with three proponents and commenced the assessment of one early engagement safety case from a fourth.

Other relevant approaches

184. The 1992 UK *Offshore Safety Case Regulations* (OSCR) required a Design Safety Case to be submitted to the HSE before a new fixed design was completed. Under the 2005 UK OSCR, this was replaced by a simpler and earlier design notification. The HSE need not accept a design notification, but a duty holder must give proper consideration to the HSE's comments. The aim is to start a constructive dialogue between duty holders and the HSE as early as possible.¹⁵⁵

Discussion

185. Although early engagement safety cases may be submitted and assessed, some significant issues arise from the current legislative framework:
- a) because the regulations do not appropriately recognise the design stage in a facility's lifecycle, the content requirements for a safety case give little attention to matters such as concept selection and inherent safety in design;
 - b) formal dialogue between NOPSAs and an operator is limited to requests for further written information and the subsequent responses;
 - c) as NOPSAs's decision making is based on criteria (safety case content and level of detail) that are unlikely to be capable of being met at an early stage in a facility's design, rejection is virtually certain unless the operator withdraws the submission before that decision is made;
 - d) the current provisions are purely optional and so have limited potential for long term impact on the safety in design of future production facilities.

155 See the British legislation, *The Offshore Installations (Safety Case) Regulations 2005*, and the HSE publications, *Involvement in design notification* (2007), *Design notifications procedures* (2008) and *Offshore intervention guide* (2008).

Action that is being taken to address identified gaps

186. In order to manage the expectations of stakeholders in the current early engagement safety case process where a rejection of the safety case is the likely outcome, NOPSA clearly articulates the expected outcome of an early engagement safety case assessment through:

- a) a policy available on the NOPSA website;
- b) direct liaison with potential operators including a standard presentation for use during initial meetings with potential operators;
- c) terms of reference for the assessment;
- d) use of a submission coversheet that explicitly states that the submission is for assessment and not for acceptance.

187. NOPSA is reviewing how a design notification scheme may be more effective than the current early engagement safety case approach. We noted the following key points from NOPSA's examination of the issues:

- a) *an obligation to submit*: requiring operators to submit design notifications for all proposed production facilities would ensure meaningful early engagement;
- b) *timing* – requiring design notification before the submission of a full safety case and a FDP would significantly improve the practicability for an operator of making changes to the design (or potentially even the concept selected). NOPSA only sees submissions that are made just before a FID, by when the concept has long been selected and the front end engineering and design (FEED) work has already been largely or entirely completed. There is little likelihood of any significant changes being made at that stage that would result in less risk to the facility and its workforce;
- c) *topic focus* – currently, although design concept selection is not addressed by the safety case regulations, NOPSA may request such information from an operator on the basis that it is a 'relevant matter' in the context of early engagement. Even so, the existing framework is such that the information will be received too late to be reasonably challenged at a macro level;
- d) *requirement for ongoing dialogue* – design notification requirements would create ongoing and useful interaction leading up to the submission of a safety case;
- e) *requirement to address matters raised* – explicitly requiring an operator to address any matters raised by the regulator in reviewing a design notification provides clarity to the operator and a secure basis for dealing with design issues at an appropriately early stage in a facility's lifecycle ¹⁵⁶;
- f) *clarity of purpose* – the design notification process simply identifies matters that the operator should address. The current regulations are not suitable for this purpose and are being used in a cumbersome and unsatisfactory way to try to achieve such an outcome.

¹⁵⁶ In responding to design notifications, the HSE makes it clear that failure to address the matters that it has identified may result in the subsequent rejection of a safety case.

188. We understand that NOPSA and DRET are working together to consider the options.

Discussion and analysis

189. NOPSA and DRET should give consideration to the establishment of a more universal safety case system, such as the British design notification scheme. It would provide a better process and outcome by facilitating the safer design of facilities. Adopting such a scheme may necessitate more regulatory resources. Sufficient time would be needed for planning, consultation, implementation and the education of operators.

Recommendation 7

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

Theme 9: Stakeholder engagement

Existing policy and powers

190. Stakeholder engagement is a central element of modern safety regulation¹⁵⁷ and is critical for the successful operation of the co-regulatory safety case model. NOPSA's functions under the OPGGS Act are framed so that a range of engagement strategies must be deployed. The legislation gives NOPSA responsibilities for promoting OHS, using monitoring and enforcement strategies, advising persons about OHS, OPGGS matters and non-OHS structural integrity of facilities, wells and well-related equipment in Commonwealth waters.¹⁵⁸

What happens in practice

191. NOPSA engages regularly with a range of stakeholders, as shown in the following table. NOPSA also has *ad hoc* forms of engagement, such as workshops on its new well-related responsibilities. These are strongly supported by industry stakeholders.

157 The Robens Committee recommended an explicit policy for inspectorates which was aimed at the prevention of accidents and ill health and promoting progressively better standards at work through the provision of information and skilled advice to industry - *Report of the Committee on Safety and Health at Work* HMSO London (1972), para 215

158 OPGGS Act, s.646. The objects of the OHS Schedule to the Act includes ensuring that expert advice is available on OHS relating to facilities [Schedule 3, clause 1(c)]

Table 10: Stakeholders and types of regular engagement

Stakeholder	Required type of engagement	Authority for engagement	Form of engagement
Commonwealth Minister	<p>a) Minister may issue policy directions to NOPSA</p> <p>b) NOPSA is to make OHS reports and recommendations to Minister</p> <p>c) NOPSA reports, as appropriate, to Minister on non-OHS structural integrity investigations</p>	<p>a) OPGGS Act, s.647</p> <p>b) OPGGS Act, s.646(g)</p> <p>c) OPGGS Act, s.646(ge)</p>	<p>a) Conformance with policy directions and issuing of NOPSA Statement of Intent</p> <p>b) Provision of reports</p> <p>c) Provision of reports</p>
State and NT Ministers	<p>a) NOPSA is to make OHS reports and recommendations to Ministers</p> <p>b) NOPSA reports, as appropriate, to Ministers on non-OHS structural integrity investigations</p>	<p>a) OPGGS Act, s.646(g)</p> <p>b) OPGGS Act, s.646(ge)</p>	<p>a) Provision of reports</p> <p>b) Provision of reports</p>
DAs	NOPSA is to cooperate with DAs	OPGGS Act, s.646(h)	MOUs
Government agencies	NOPSA is to cooperate with other Commonwealth, State or Territory agencies with OPGGS functions	OPGGS Act, s.646(h)	<ul style="list-style-type: none"> • MOUs • NOPSA's CEO is a member of AMSA's Advisory Committee
Titleholders	NOPSA is to provide advice on OHS and non-OHS structural integrity matters	OPGGS Act, s.646(f) and s.646(gf)	Policy and guidance material
Operators	NOPSA is to provide advice on OHS and non-OHS structural integrity matters	OPGGS Act, s.646(f) and s.646(gf)	<ul style="list-style-type: none"> • Policy and guidance material • Liaison meetings and annual review • Interaction

Stakeholder	Required type of engagement	Authority for engagement	Form of engagement
Contractors	NOPSA is to provide advice on OHS and non-OHS structural integrity matters	OPGGs Act, s.646(f) and s.646(gf)	<ul style="list-style-type: none"> • Limited for contractors who are not operators • Policy and guidance material for diving contractors • Individual and ad hoc contact
Industry associations	NOPSA is to provide advice on OHS and non-OHS structural integrity matters	OPGGs Act, s.646(f) and s.646(gf)	<ul style="list-style-type: none"> • Formal consultation over OPGGS operational matters • Presentations by NOPSA at conferences, etc.
HSRs	NOPSA is to provide advice on OHS and non-OHS structural integrity matters	OPGGs Act, s.646(f) and s.646(gf)	<ul style="list-style-type: none"> • Information • Contact by inspector at facility (and availability at other times) • Support for annual HSR forum • Surveys
Workers	NOPSA is to provide advice on OHS and non-OHS structural integrity matters	OPGGs Act, s.646(f) and s.646(gf)	<p>No formal arrangements</p> <p>May contact or be contacted by inspector during inspections</p>
Unions	NOPSA is to provide advice on OHS and non-OHS structural integrity matters	OPGGs Act, s.646(f) and s.646(gf)	CEO has quarterly meetings with ACTU and unions

Stakeholder	Required type of engagement	Authority for engagement	Form of engagement
DRET	Agency to portfolio Department relationship	Administrative Arrangements Order	Periodic meetings of senior officers; ongoing administrative contact; other contact as required.
NOPSA Board [established under s.653 of the OPGGS Act]	<p>CEO must:</p> <ul style="list-style-type: none"> keep Board informed of NOPSA's operations and provide reports on them, as required by the Chair; request Board's advice on strategic matters relating to performance of NOPSA's functions and have regard to any advice given (whether requested or not). <p>[The CEO has observer status]</p>	OPGGS Act, s.667	CEO attends board meetings and provides reports.

Views of industry stakeholders

192. Most stakeholders considered that NOPSA had improved the nature and quality of its guidance material and was more outward looking. Even so, there were some concerns about whether NOPSA was not sufficiently willing to provide advice about safety cases and about compliance issues in the field.

Findings and recommendations of previous reports

193. In the 2008 Operational Review and the 2009 Bills and Agostini NOPSA review, concerns were raised about NOPSA being too legalistic and insufficiently consultative.¹⁵⁹ Similar issues arose in the Montara Commission of Inquiry.¹⁶⁰ Each report found those concerns to be warranted (in one report, NOPSA was described as 'overly hands-off and narrowly legalistic'¹⁶¹).

159 Report of the 2008 Operational Review, pp.15 and 28; Report of the Bills and Agostini NOPSA Review, p.xii.

160 Report of the Montara Commission of Inquiry, pp.214-216

161 Report of the Bills and Agostini NOPSA Review, p.xii.

Other relevant approaches

194. Our attention was drawn to the approach taken by WorkSafe Victoria for licence renewals for MHFs. This involves issuing an oversight history report to the licence holder fourteen months before the renewal date and a project management plan for the renewal application is requested twelve months before that date. There are opportunities for interaction. The licensed operator may raise and discuss with the regulator issues or possible new approaches to meeting the regulatory requirements.
195. The WA DMP noted its different regulatory approach towards well operations and integrity compared with that of NOPSA (while observing that it was too soon to assess the effect of the recent legislative changes in this area). The WA approach involved more interaction with operators ('a customer service' approach) and monitoring drilling on a daily basis. The WA DMP observed that, unlike the State regulator, NOPSA was not required to deal with public risk issues.

Action that is being taken to address identified gaps

196. NOPSA has commenced a project to develop principles to guide the stakeholder engagement activities of NOPSA and NOPSEMA. This is expected to provide options for improvement in many areas, such as organisational culture, information technology (to support up to date stakeholder engagement), and communications strategy (including improving the HSR forum).

Discussion and analysis

197. The issue arises of what levels and types of stakeholder interaction NOPSA could reasonably engage in without compromising its regulatory independence and its commitment to a best-practice regime.
198. Progress has been made since 2008 (the Government accepted the finding of the Bills and Agostini NOPSA review that NOPSA should increase its advisory and promotional functions by engaging more with operators), but similar concerns continue to be expressed. NOPSA is understandably concerned about any actual or perceived 'regulatory capture', whereby its independence may be compromised. Private interests may be seen as having higher priority than the public interest in achieving the objects of the Act. A related concern expressed by NOPSA is that too much involvement and influence over safety measures and outcomes may water down the obligation of the primary duty holders and result in inappropriate 'sharing' of responsibility for safety. This is seen as being at odds with the underlying principles of the safety case regime.
199. We note that the risk of regulatory capture has been reduced by the establishment of an investigation team within NOPSA. This has been shown to be one of the effective counter-measures against regulatory capture.¹⁶²

162 Gunningham, N, *Mine Safety*, The Federation Press, 2007, p.108.

There is appropriate rigour in NOPSA's investigations through the application of its formal Enforcement Management Model and its compliance with the *Australian Government Investigating Standards*.¹⁶³ Accountability is provided by NOPSA's obligation to report on investigations to Ministers.¹⁶⁴ These elements do not, of course, eliminate the risk of regulatory capture, but they mitigate it.

200. The issues here are relatively clear. Duty holders seek more engagement and guidance. NOPSA wishes to avoid any compromise of its regulatory role or of the underlying rationale of the safety case regime. The difficulty lies in finding the right balance that allows the regulator to satisfy the statutory objects relating to promotion and advice.¹⁶⁵ NOPSA's interaction in the development of a safety case appears to have become more constructive. The provision of guidance notes and early engagement (see above) are important elements in overcoming some of the concerns. That improvement will be greatly advanced by providing for design notification. NOPSA has also strengthened its interaction through liaison meetings and, at an industry sector level, through regular engagement with industry associations and other representative bodies.

201. Other concerns were expressed about differing approaches by inspectors, who were said to have varying attitudes towards engagement in the field. This is not uncommon within inspectorates. Continuous improvement and regulatory changes both affect consistency, so that over time approaches will change. Self-evidently, complete uniformity of approach is neither desirable nor feasible. No two situations will be identical. Inspectors must be able to use their judgement in any given situation where intervention needs to be considered. Nonetheless, it is important that inspectors continue to be given support in developing a common understanding about conformance issues and appropriate regulatory responses. The experience of onshore OHS regulators suggests that ongoing training and greater familiarity by inspectors with NOPSA's underlying regulatory policies and practices will reduce these differences of approach. Related issues are discussed in Theme 6, *Consistency*.

163 The *Australian Government Investigation Standards* are best practice case handling standards used by Australian government agencies.

164 OPGGS Act, s.646.

165 OPGGS Act, s.646, Schedule 3, Clause 1.

202. The current review of NOPSAs stakeholder engagement practices, which is intended to lead to the development of a more effective stakeholder relations strategy, provides a good framework for strengthening stakeholder relations in a comprehensive, cohesive and measurable way. The risks include finding and deploying sufficient resources (including time) for the required changes and entrenching them by entrenching a culture of constructive engagement with stakeholders within NOPSAs and, shortly, NOPSEMA. We consider, however, that the improved safety outcomes that will result from well planned, successful engagement with stakeholders will fully justify the application of the required resources.

Recommendation 8

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

- a) they are underpinned by a clearly stated commitment to representative, tripartite and consultative engagement (this could be included in a service charter¹⁶⁶);
- b) a clear program for stakeholder engagement be developed and implemented as part of NOPSAs Annual Operating Plan, with appropriate preliminary scoping of stakeholder needs and issues and the outcomes analysed and reported to the Advisory Board

[See related recommendation 3(a)]

¹⁶⁶ The ANAO's Better Practice Guide, *Administering Regulation* (op cit) advises at p.28 that Government policy requires departments and agencies with regulatory functions to publish a service charter and report annually on performance against the charter. In addition, regulators are expected to develop, in consultation with stakeholders, a regulatory code of conduct. NOPSAs does not have a formal service charter.

Theme 10: Command and Control

Existing policy and powers

203. As outlined in the discussion of Theme 7, *Safety Case Requirements*, the OPGGS Act operates so that the regulatory system established by the legislation is paramount for vessels or structures that are within the Commonwealth jurisdiction. This is done by treating them in specified circumstances as facilities that must have safety cases.¹⁶⁷ Section 640 of the OPGGS Act excludes the application of *Commonwealth maritime legislation* at facilities, to persons at or near¹⁶⁸ facilities and activities that take place at facilities. That term is defined in the section as being the *Navigation Act 1912*, the *Occupational Health and Safety (Maritime Industry) Act 1993* and their subordinate legislation.¹⁶⁹ AMSA administers those laws.
204. Under the OPGGS Act, the exclusion ('disapplication') of the Commonwealth maritime legislation ends when a vessel ceases to be used for a purpose specified in clause 4(1)(b) or (5A) and 'has been returned either to a navigable form¹⁷⁰ or to a form in which it can be towed to another place' [clause 4(7)(b)].
205. When a vessel is a facility, it is not unregulated. It must have a safety case and comply with it. A safety case must provide for a command structure on the facility.¹⁷¹ Among other things, the safety case must provide for an appropriately skilled and capable person to occupy a position that has command of the facility. The position must be occupied while the facility is operating.
206. NOPSA's *Safety Case Assessment Policy* stipulates that NOPSA will work with AMSA when assessing a safety case for a facility that can disconnect from the production riser. NOPSA assesses whether the proposed command structure is appropriate and works with AMSA to ensure that various maritime related safety criteria are met. These include the organisational arrangements for sailing away, when that is planned or unplanned, and whether the organisation structure takes into account relevant International Maritime Organisation (IMO) standards and AMSA's Marine Orders.¹⁷²
207. NOPSA and AMSA have an MOU which provides the basis for their cooperation, including in circumstances of transition between the regulatory regimes.¹⁷³

167 OPGGS Act, Schedule 3, clause 4(5A). Under clause 4(6), however, certain vessels and structures are not treated as facilities.

168 The application of s.640 to persons near a facility is limited to persons who are affected by the facility or activities that take place at the facility – s.640(1)(c).

169 Under s.640(2), Commonwealth maritime legislation may apply to the extent that it relates to the transfer of persons or goods between a *ship* and a *facility*, as defined in s.640(4).

170 The term 'navigable form' is not defined.

171 OPGGS (Safety) Regulations, reg. 2.8, *Command structure*.

172 IMO, *International Convention on Standards of Training, Certification and Watch keeping for Seafarers (STCW) 1978*, the *International Convention on the Safety of Life at Sea* and IMO Resolution A890 (21), *Principles of Safe Manning*, (the latter two are required by AMSA's Marine Orders, Part 60 *Floating Offshore Facilities*).

173 The MOU refers to joint inspections. When one agency is cloaked with regulatory powers, the other is not. For example, in a joint inspection of a vessel when it is a facility, a NOPSA inspector has regulatory powers, an AMSA inspector does not. The reverse applies when a vessel is in navigable form.

What happens in practice

208. Uncertainty exists about when the transition between the OPGGS regime and the Commonwealth maritime laws actually occurs. As previous reviews have found, it may be unclear at critical times who has what statutory obligations and powers to address safety issues. Fortunately, a catastrophic command and control ‘worst case’ has not occurred.
209. Previous reviews have considered the issues and proposed options for addressing it. Stakeholders continue to raise the issue. As outlined below, the Government proposes to clarify the position.
210. In considering this theme, our attention was drawn to another issue. Under the OPGGS legislation, extensive provision is made for diving operations.¹⁷⁴ For the purposes of the legislation, such operations may continue until a diver has completed any necessary decompression procedures.¹⁷⁵ Those procedures can continue after a vessel ceases to be a facility, but the change of status deprives a NOPSA inspector of powers. This seems to be an unintended anomaly.

Views of industry stakeholders

211. Some industry stakeholders were unsure about the boundaries of the regulatory relationship between NOPSA and AMSA. They were just as unclear about the future relationship, roles and responsibilities of NOPSEMA and AMSA. One example was uncertainty about who would have responsibility for marine offshore contingency plans after NOPSEMA was established.
212. The issue was raised again of NOPSA’s jurisdiction when a vessel that is a facility ceases to be physically connected at the site. The need for clarity was stressed.
213. The ACTU and unions considered that the OPGGS legislation has created a situation whereby the maritime workforce¹⁷⁶ employed on facilities lack safety, legal and other protections that have universal application throughout the global maritime industry. The workers would normally have those protections when engaged on ships, at times when the vessels are not facilities.¹⁷⁷

174 Diving operations and related terms are defined in regs 1.5 and 4.1 of the OPGGS (Safety) Regulations. Chapter 4 of those regulations sets out the regulatory requirements relating to diving operations that are within the scope of the legislation.

175 OPGGS (Safety) Regulations, reg. 4.2.

176 The ACTU and unions define the ‘maritime workforce’ as workers employed in occupations that require training and qualifications set out in AMSA Marine Orders Part 3: *Marine Qualifications*.

177 As an example, the ACTU and unions referred to the ILO *Maritime Labour Convention 2006* (MLC).. The Navigation Act is being amended so that the MLC will apply under Australian law when the MLC takes effect internationally (that will occur when there are sufficient ratifications of the MLC). The ACTU and unions considered it was anomalous for Australia to legislate to apply the MLC but to exclude the implementing legislation (the Navigation Act) when ships are facilities.

Findings and recommendations of previous reports

214. Each major review from 2008 to the present has considered issues relating to the change from maritime regulation to regulation under the OPGGS Act.
215. The 2008 Operational Review recommended that the consequences of disapplying the *Navigation Act* be analysed, the actual consequences identified and unintended consequences addressed.¹⁷⁸
216. In their 2009 Marine Issues Report, Bills and Agostini subjected the arrangements and issues to detailed analysis. They noted that the legislative position was complex, depending on a number of variables (e.g., the flag of vessel and the purpose of a voyage when a vessel returns to *navigable form*).¹⁷⁹ They recommended that there be amendments to ensure that when any floating facility reverted to a *navigable form*, the relevant provisions of the *Navigation Act* and the *OHSMI Act* applied regardless of any voyage criteria. This would help to ensure that the maritime legislation covered all Australian seafarers.
217. Bills and Agostini recommended:
- a) amending the then regulations to ensure that the safety case for a floating facility specifically identifies when changes to the command structure occur (which could be before departing the site and associated zone);
 - b) amending the OPGGS Act so that a vessel becomes a facility when any part of it comes within 500 metres of the site and continues to be a facility until no part of the vessel remains within 500 metres of the site;
 - c) AMSA be given (i) a role in assuring continuing marine standards that are not inconsistent with OPGGS Act provisions and (ii) defined powers to assist NOPSA in minimising risk in the offshore petroleum industry.¹⁸⁰
218. In its 2010 *Regulatory Burden* report, the Productivity Commission noted that there was regulatory uncertainty during the transition from the application of the OPGGS legislation to the reapplication of the Commonwealth maritime legislation.¹⁸¹ The Commission recommended that:
- a) the Commonwealth Government clarify whether any significant regulatory uncertainty resulted from the *Navigation Act* not applying to Australian registered vessels and FPSO vessels when they were operating under the safety case regime and, if such uncertainty was found to exist, act to remove it¹⁸²;
 - b) clarification of:
 - i. which sea-going vessels were regulated under the OPGGS Act safety case regime
 - ii. OHS regulations under that Act to ensure complete clarity about which petroleum-related sea going vessels must be regulated under the safety case regime.

178 Recommendation 2 of the report of the 2008 Operational Review.

179 Marine Issues Report, Chapter 3.

180 Bills and Agostini, op cit., recommendations 2 and 3.

181 Productivity Commission, *Regulatory Burden report*, p.182.

182 Ibid, recommendation 7.3. In the view of the Productivity Commission, reapplication of the *Navigation Act* would impose an onerous regulatory burden and would be unlikely to result in net community benefits.

Other relevant approaches

219. We were unable to locate similar regulatory arrangements elsewhere. The British regulatory arrangements do not treat vessels as installations in the way that the Australian law makes vessels facilities. Under the British *Offshore Installations (Safety Case) Regulations*, an installation's safety should cover all the reasonably foreseeable operations and activities that are intended to be undertaken, or may need to be undertaken, during the operating lifetime of the installation. This includes activities relating to all connected wells, any occasional activities such as major maintenance projects or diving work and any planned construction or alteration projects. The safety case also needs to take into account the implications for health and safety on the installation of any likely activities involving other vessels (e.g. nearby diving support, supply and service vessels, and floating storage units), helicopters or other installations. The HSE emphasises that particular attention should be paid to any potentially hazardous simultaneous activities and any novel techniques or equipment planned for use.¹⁸³

Action that is being taken to address identified gaps

220. The Government has considered the various review findings and recommendations outlined above collectively. The Government responses have been published.¹⁸⁴ The key decisions and proposed actions may be summarised as follows (this summary does not contain all of the detail in the Government's responses):

- a) in consultation with the Department of Infrastructure and Transport, AMSA and other stakeholders, DRET has examined the consequences of the 'disapplication' of the Navigation Act by s.640 of the OPGGS Act, with any action to be considered in the context of the proposed rewriting of the Navigation Act;
- b) DRET has asked AMSA to identify any substantive requirements of the international maritime regime in its application to ship-like petroleum facilities not expressly recognised in the safety case regime under the OPGGS legislation (the implications for foreign flag floating facilities was also to be investigated);
- c) as to when the change of regulatory regimes should occur, the Government's response indicated that, in order to maintain the integrity of the offshore petroleum health and safety regime, the changeover in command structure must take place at the same time as the changeover in health and safety regime, namely, when the changeover between marine vessel and petroleum facility takes place;

183 HSE, *A Guide to the Offshore Installations (Safety Case) Regulations 2005*, 3rd ed., 2006

184 Final Government response (September 2010) to the *Offshore Petroleum Safety Regulation Inquiry* (June 2009) and the *Review of the National Offshore Petroleum Safety Authority Operational Activities* (March 2008) Government Response; Commonwealth Government Response (May 2011) to the Productivity Commission *Review of Regulatory Burden On The Upstream Petroleum (Oil & Gas) Sector* (May 2011); and Final Government Response (2011) to the Report of the Montara Commission of Inquiry (2010)

- d) implementing such a reform is complex and is being examined in the context of a review examining the re-writing of the *Navigation Act 1912*:
 - i. DRET has outlined issues to that review concerning the possible simultaneous application of two regulatory regimes when a vessel functions as a facility and the provision of inspection and enforcement powers for a second regulator at that time.
 - ii. DRET has raised a possible addition to the safety case content requirements of the OPGGS (Safety) Regulations. Under this option, the safety case for a facility that was intended to be a navigable vessel when it ceased to be a facility would have to state which IMO Convention Certificates (relating to safety) were applicable to it when the facility was a vessel and describe how it would maintain the currency of the certificates while it was a facility. This would mean the facility would be ready to operate as a vessel when required. NOPSA would maintain regulatory oversight of this requirement.
- e) The Government does not propose the re-application of the Navigation Act to vessels that are facilities, since it would be burdensome and, in the Government's view, it would not provide any better clarity for the industry or community.
- f) Ministers are reviewing any need to amend the OPGGS Act and regulations to require ship-like petroleum facilities to comply substantively with requirements concerning seaworthiness and pollution prevention. This would mean that, when in a navigable form, the facilities would comply with relevant international conventions.

Discussion and analysis

221. The uncertainty about when the Commonwealth maritime legislation applies and when the OPGGS legislative regime applies is not finally resolved. We understand that amendments may be settled and implemented in 2012. This will be welcomed by the industry. We expect that there will be appropriate consultation over any such amendments. Given the sensitivity of the issue, we strongly endorse such consultation.
222. There is a related issue concerning the anomaly of the application of the OPGGS legislation to diving operations at times when a NOPSA inspector has no relevant powers because the vessel concerned has ceased to be a facility.
223. We also consider that the Department and NOPSA should ensure that stakeholders are suitably informed and assured about the relationships between NOPSEMA and other regulators. This might include an update for stakeholders on how and when the issues about the transition between OPGGS regulatory arrangements and the application of Commonwealth maritime laws are expected to be addressed.

Recommendation 9

We recommend that:

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

Theme 11: Emergency Response

Existing policy and powers

224. The safety case regulatory regime for the offshore petroleum oil and gas industry is based on the premise that it is considerably more likely to prevent the occurrence of harmful incidents than other forms of regulation. The primary responsibility for safety rests with the operator. If an emergency arises, the operator must implement the emergency response plan that is a required part of the operator's accepted safety case.¹⁸⁵ Depending on the nature of the incident, its location and the consequences, various Commonwealth, State or Territory government agencies may become involved in responding to an emergency.
225. There is a national plan for response to marine pollution incidents (the National Plan).¹⁸⁶ It is described as 'a national integrated government and industry organisational framework enabling effective response to marine pollution incidents.' AMSA manages the National Plan, working with the State and NT governments and the shipping, oil, exploration and chemical industries and emergency services. It is intended to provide the greatest marine pollution response capability. A National Plan Management Committee provides strategic management and a National Plan Operations Group handles operational functions.¹⁸⁷ When there is a marine spill at an oil exploration rig, platform or pipeline, the relevant oil company is the 'combat agency' that responds, with assistance, as required, from a National Plan State committee or from AMSA, depending on the area of jurisdiction.¹⁸⁸
226. NOPSA is not a first responder when an incident of this type occurs, but it has an important role, as demonstrated in the Montara Wellhead platform incident, which we discuss later. NOPSEMA will have more responsibilities and emergency response powers (see below).

185 *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009*, reg.2.20. See also NOPSA's *Safety Case Content and Level of Detail Guidance Note* (N-04300-GN0106).

186 *The National Plan to Combat Pollution of the Sea by Oil and other Noxious and Hazardous Substances*. [See also the Inter-Governmental Agreement on the National Plan – available at <http://www.amsa.gov.au/>]

187 *Ibid*, p.2.

188 *Ibid*, p.5.

227. Dealing with an incident may therefore be multi-jurisdictional. As it is likely to entail control measures and require remediation, that dimension may give rise to complex legal and administrative considerations.

What happens in practice

228. The 2009 uncontrolled release of oil and gas from the Montara Wellhead Platform is the most recent Australian major offshore incident requiring the use of emergency response procedures. The Montara Commission of Inquiry examined the incident and the response. The incident illustrates the complexity in responding to emergencies in the offshore oil and gas industry.¹⁸⁹

229. At that time, the NT Designated Authority was responsible for approving offshore well control practices (this has since become a responsibility of NOPSA). The Montara Commission of Inquiry found that the approved practices had not been followed and 'sensible oilfield practices' were not observed.¹⁹⁰ AMSA was an immediate responder, addressing the oil spill. For OHS reasons, NOPSA issued a prohibition notice which prohibited persons from being on the rig or adjacent support ships. The prohibition applied until NOPSA was satisfied that (a) the risks to safety had been comprehensively assessed and that (b) control measures were in place to reduce the risks to a level that was as low as reasonably practicable. NOPSA had significant safety concerns with what was proposed by the company, which then decided, on safety grounds, to use certain other options.

Views of industry stakeholders

230. We invited stakeholders to express their views on NOPSA's role in emergency responses. All stakeholders recognised the importance of swift, effective and co-ordinated responses. Some noted NOPSA's wider role in relation to well integrity issues and NOPSEMA's role for environmental issues as well as OHS. This demonstrated the importance of role clarity and effective coordination in future for the responsible agencies (particularly AMSA and NOPSEMA) and effective coordination. Support was expressed for DRET being the central coordinator in such emergencies. The ACTU and industry unions seek more consultation with them about emergency preparedness and responsiveness. They also advocated (a) developing a regional emergency and evacuation plan, given the large number of facilities, and (b) adopting an approach used by AMSA for maritime safety, namely, standby vessels being available under a contract with the Commonwealth for use in emergencies.

Findings and recommendations of previous reports

231. The Montara Commission of Inquiry observed that the Montara incident had revealed major deficiencies in Australia's environmental regulatory regime and oil spill response arrangements. The Commission of Inquiry found that:

189 Report of the Montara Commission of Inquiry, op.cit.

190 The Report identifies as the direct and indirect causes of the blowout a failure to have suitable barriers to a blowout and eleven 'systemic and interrelated factors' relating to the organisation and practices of the owner and operator of the well (see summary at pp.9 and 10 of the Report).

- a) in the case of a blowout, the operator and regulator should work together on identifying and deciding on or discarding control options ('... the public interest requires that all well control options be pursued and that there is a full and transparent explanation to the public as to which options are being ruled out and why');
- b) NOPSA's policy for engagement and interaction with operators should be applied flexibly to provide for speedy development and assessment of response options.¹⁹¹

232. The Commission of Inquiry recommended that:

- a) in similar blowout or offshore emergency situations, the Minister should appoint a senior public servant to establish and oversight a central coordinating body. The body would facilitate interaction between regulators, industry, AMSA and the owner/operator. Nonetheless, primary responsibility for stopping a blowout should remain with the owner/operator, subject to direction from the central coordinating body in consultation with stakeholders (including the owner/operator);¹⁹²
- b) all relevant information concerning the incident should be publicly available from one, authoritative and easy to access source.¹⁹³

Other relevant approaches

233. The United Kingdom has a *United Kingdom (UK) National Contingency Plan for Marine Pollution from Shipping and Offshore Installations*, which is tested annually. Normally, the plan involves an offshore installation every fifth year. This was brought forward to 2011, following the 2010 Deepwater Horizon (Macondo) incident in the Gulf of Mexico. The 2011 exercise was based on a major spill scenario. It identified a number of strengths and weaknesses in the coordinated response that was deployed in the exercise.¹⁹⁴

234. The Deepwater Horizon Study Group¹⁹⁵ drew attention to the importance of the development, implementation, and maintenance of an industry-wide emergency response capability. That included an industry-funded network of oil spill response operators and response equipment.

191 Op cit, findings 60, 61 and 72.

192 Ibid, Recommendation 84.

193 Ibid, Recommendation 85.

194 The results of the exercise are described at:
<http://www.oilandgasuk.co.uk/downloadabledocs/1023/7.%20EXERCISE%20SULA%20Presentation%20August%202011.pdf>

195 Deepwater Horizon Study Group, *Final Report of the on the Investigation of the Macondo Well Blowout*, Center for Catastrophic Risk Management, 2011, pp.94, 95.

Action that is being taken to address identified gaps

235. The Government has accepted the recommendations of the Montara Commission of Inquiry, outlined above.¹⁹⁶ In so doing, the Government indicated that DRET will be the central coordinating body. DRET and NOPSA have been given responsibility for developing, in consultation with other stakeholders, an incident management and coordination framework.
236. Under the *Offshore Petroleum And Greenhouse Gas Storage Amendment (Significant Incident Directions) Bill 2011*, NOPSEMA as the regulator for the offshore petroleum industry, will be able to issue a direction to a petroleum titleholder if a significant offshore petroleum incident has occurred in the titleholder's title area that causes, or might cause, an escape of petroleum.¹⁹⁷ The direction may, among other things, require the titleholder to take action to prevent or eliminate the escape of petroleum or potential escape of petroleum, and/or to mitigate, manage or remediate the effects of an escape of petroleum.

Discussion and analysis

237. Self-evidently, if an operator's safety case and WOMP meet all of the statutory objectives and requirements, and are then fully implemented and properly maintained, the prospects of a serious incident are much reduced. The opportunities for more effective engagement with an operator to identify the vulnerabilities of a proposed facility or operation that is subject to a safety case under the OPGGS Act have been strengthened by some of the post-2008 legislative and administrative changes relating to safety cases and well integrity. This will be further enhanced if an optional design notification stage is established (see Theme 9, *Early Engagement*).
238. We note that, although the current position will be much improved by the establishment of NOPSEMA (and NOPTA), there will still be jurisdictional complexity in the offshore petroleum and gas industry, since the States and the NT continue to have jurisdictional authority for operations, facilities and pipelines that are on shore, and, depending on their decisions about the conferral of powers, coastal waters. We simply note that this will continue to make effective coordination more complex.
239. As far as stakeholders are concerned, we strongly support the initiatives taken within the industry to improve safety and responsiveness when emergencies arise.¹⁹⁸ We note that the unions have expressed their strong interest in contributing to the development of more effective emergency response arrangements. We support using and developing existing consultation avenues to secure the benefit of their contributions.

196 *Final Government Response to the Report of the Montara Commission of Inquiry*, Commonwealth of Australia 2011

197 New ss.576A-576D of the OPGGS Act.

198 The industry (through APPEA's Montara Response Taskforce) is developing a mutual aid agreement and agreed strategies for oil spill response and preparedness.

Finding 2

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

Theme 12: Relationship with other agencies

Existing policy and powers

240. Under the OPGGS Act, one of NOPSA's functions is to cooperate with (a) other Commonwealth, State or NT agencies with responsibilities that affect, overlap with or abut NOPSA's responsibilities and with (b) the DAs.¹⁹⁹
241. Elsewhere we discuss the question of NOPSA's powers to secure compliance with the legislation. We identified the administrative requirement that the CDPP undertake any prosecution action. We noted some concerns about the speed with which prosecutions may be brought and the priority that may be given to them. We noted the limited use of prosecutions. The issues do not appear to relate to NOPSA's relationship with the CDPP.

What happens in practice

242. As previously noted, NOPSA has MOUs with relevant safety and OPGG authorities. We met officials of the Western Australian DMP/DA, SafeWork Victoria, AMSA and DRET. Among other issues, we sought their views about the relationship with NOPSA. Overall, it was considered to be constructive, with relatively regular contact for operational purposes.
243. The State agencies recognised the challenges in managing the change to NOPSEMA and NOPTA so that there will be no gaps in regulatory oversight of the relevant activities.²⁰⁰ We discerned some differences of approach at the State level to the relationships with titleholders, operators and other interested persons, which could in part be explained by the legislative arrangements under which each operates, as well as local practice. Our discussions with AMSA indicated that the relationship between AMSA and NOPSA in the field is constructive. The problems of changes in jurisdiction (particularly when a vessel becomes or ceases to be a facility) appeared to be managed by a practical approach to the issues and liaison between officials.
244. DRET advised us that it has quarterly meetings with NOPSA, at which the Department and NOPSA are able to identify and discuss priorities (including legislation). DRET noted that the change process may be affected by the crowded legislative agenda across government.

¹⁹⁹ Paragraph 646(h)

²⁰⁰ DRET is monitoring the transition to NOPSEMA and has identified and is addressing risks.

245. Overall, the inter-agency relationships appear to have improved since Bills and Agostini found that such liaison was often reactive, based on a requests or approaches by the other organisation, and that NOPSA often failed to proactively engage.

Views of industry stakeholders

246. Support was expressed for joint AMSA and NOPSA inspection activities. A common issue was uncertainty about the jurisdictional boundaries between NOPSA and AMSA (we deal with this in Theme10, *Command and Control*), which has implications for compliance activities.

Findings and recommendations of previous reports

247. In their NOPSA report, Bills and Agostini found that NOPSA's liaison with other agencies was often reactive, based on a requests or approaches by the other organisation, and that NOPSA often failed to proactively engage.²⁰¹ Also, in their marine issues report, Bills and Agostini found that there were potential gaps in both OHS and regulatory coverage and less than optimal interface issues. They recommended legislative amendment (see our discussion of the progress with implementing the accepted recommendations of previous reports) and increased cooperation between AMSA and NOPSA in the offshore marine context.

248. In its safety report on the *Karratha Spirit* incident, the ATSB drew attention to some operational difficulties arising from the jurisdictional limitations on AMSA and NOPSA.

Other relevant approaches

249. Cooperation between regulatory agencies in Australia is common. It operates both formally and informally, and frequently involves MOUs. It is more easily achieved within a jurisdiction than between agencies in different jurisdictions, but that also occurs frequently. Accordingly, there are well developed models that are accessible for regulators. We have not identified an alternative approach that would be more suitable for NOPSA than its existing cooperative arrangements.

Action that is being taken to address identified gaps

250. In the context of the imminent establishment of NOPSEMA, existing MOUs between NOPSA and other agencies are being examined and progressively updated.

201 Op cit, p.71, paragraph 4.22.

Discussion and analysis

251. NOPSA appears to have well developed arrangements for co-operating with other regulatory agencies. The most important development will be further legislative clarification of the interface between the OPGGS legislation and the Commonwealth maritime legislation. NOPSA (and NOPSEMA) are necessarily dependent on the successful operation of such arrangements. It is important that they meet the best practice standards outlined by the Australian National Audit Office.²⁰² They should be periodically reviewed with that in mind. The establishment of NOPSEMA provides an opportunity for planning a review program.

Finding 3

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

202 ANAO, *Effective Cross-Agency Agreements*, Audit Report No. 41, 2009-10

Appendices

Appendix 1: List of acronyms and abbreviations

Appendix 2: Persons and bodies consulted

Appendix 3: List of submissions

Appendix 4: Reviews and inquiries affecting NOPSA from 2008 to 2011

Appendix 5: NOPSA's actions in relation to the Government's decisions on recommendations and findings of reviews and inquiries from 2008 onwards

Appendix 6: Consensus findings and recommendations of 2010 IRF conference

Appendix 7: Role of NOPSEMA and of NOPTA

Appendix 8 : Submissions

Appendix 1: List of acronyms and abbreviations

Acronym or abbreviation	Name or title
ACTU	Australian Council of Trade Unions
AMSA	Australian Maritime Safety Authority
ANAO	Australian National Audit Office
ANP	Autoridade Nacional do Petroleo (National Agency of Oil, Gas and Biofuels, Brazil)
APPEA	Australian Petroleum Production and Exploration Association
ATSB	Australian Transport Safety Bureau
BREE	Bureau of Resource and Energy Economics
CDPP	Commonwealth Director of Public Prosecutions
CEO	Chief Executive Officer
COAG	Council of Australian Governments
DA	Designated Authority of a State or the Northern Territory
DMP	Department of Mines and Petroleum, Western Australia
DRET	Commonwealth Department of Resources, Energy and Tourism
FPSO	Floating Production Storage and Offloading Unit
FSO	Floating Storage and Offloading Unit
HSE	Health and Safety Executive of Great Britain
HSR	Health and Safety Representative
HWSA	Heads of Workplace Safety Authorities, Australia and New Zealand
IADC	International Association of Drilling Contractors
IMCA	International Maritime Contractors Association
IMO	International Maritime Organisation
IRF	International Regulators' Forum
MAE	Major Accident Event

Acronym or abbreviation	Name or title
MHF	Major Hazard Facility
Model WHS Act	Model <i>Work Health and Safety Act</i>
MODU	Mobile Offshore Drilling Unit
MOU	Memorandum of Understanding
NLCF	National Legislative Compliance Framework
NOPSA	National Offshore Petroleum Safety Authority
NOPSEMA	National Offshore Petroleum Safety and Environmental Management Authority
NOPTA	National Offshore Petroleum Titles Administrator
NT	Northern Territory
OHS	Occupational health and safety
OPGGs Act	Offshore Petroleum and Greenhouse Gas Storage Act 2006
OPGGs legislation	The suite of Commonwealth offshore and greenhouse gas storage legislation
OPGGs (Safety) Regulations	<i>Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009</i>
PSMP	Pipeline Safety Management Plan
SMS	Safety Management System
SWA	Safe Work Australia
TRIFR	Total recordable injury frequency rate
UPGS	Upstream Petroleum and Geothermal Sub-committee
WOMP	Well Operations Management Plan
WRMC	Workplace Relations Ministers' Council

Appendix 2: Persons and bodies consulted

Bruce Lake, 2008 Independent Review Team Member

Raphael Moura, Head of the Safety Division, ANP (National Petroleum Agency) Brazil

Steve Walker, Head of Offshore Division, Health and Safety Executive, United Kingdom

Australian Council of Trade Unions

Australian Maritime Safety Authority

Australian Petroleum Production and Exploration Association

Government of Western Australia, Dept of Mines and Petroleum

Department of Primary Industries

Commonwealth Department of Resources, Energy and Tourism

Esso Australia Pty Ltd

International Association of Drilling Contractors

International Maritime Contractors Association

Maritime Union of Australia

Shell Development (Australia) Proprietary Limited

Woodside Energy Ltd

WorkSafe Victoria

Appendix 3: List of submissions

Australian Council of Trade Unions

Australian Petroleum Production and Exploration Association

Eni Australia

International Marine Contractors Association

PTTEP Australasia (Ashmore Cartier) Pty Ltd

Teekay Shipping (Australia)

Appendix 4: Reviews and inquiries affecting NOPSA from 2008 to 2011

Year	Developments
2008-09	<p>January 2008: the Commonwealth and WA Ministers initiate an inquiry into the OHS and integrity regulation for petroleum operations with reference to the 2008 Varanus Island incident and marine operations. (Bills and Agostini)</p> <p>March 2008: Report of first triennial operational review (Ognedal et al) - <i>Review of the National Offshore Petroleum Safety Authority Operational Activities.</i></p>
2009-10	<p>April 2009: Productivity Commission report, <i>Review of the Regulatory Burden on the Upstream Petroleum (Oil & Gas) Sector.</i></p> <p>June 2009: Offshore Petroleum Safety Regulation Inquiry (Bills and Agostini) Reports:</p> <ul style="list-style-type: none"> • Better practice and the effectiveness of (NOPSA); and • Marine Issues <p>November 2009: Montara Commission of Inquiry initiated.</p> <p>June 2010: Report of the Montara Commission of Inquiry provided to the Minister.</p>
2010-11	<p>September 2010: Commonwealth Government response to Reports of the 2009 Offshore Petroleum Safety Regulation Inquiry (NOPSA and marine issues) and 2008 NOPSA Operational Activities Review</p> <p>November 2010: Draft Commonwealth Government Response to the Montara Commission of Inquiry Report</p> <p>May 2011: Commonwealth Government's final response to the of the Montara Report</p> <p>June 2011: Minister initiates the second NOPSA Independent Operational Review</p>
2011-12	<p>August 2011: NOPSA to participate in the Better Regulation Ministerial Partnership legislative review arising from the Montara Report.</p> <p>October 2011: Minister asks NOPSA to evaluate its operations against a National Legislative Compliance Framework Report and to advise him on the outcomes</p>

Appendix 5: NOPSA’s actions in relation to the Government’s decisions on recommendations and findings of reviews and inquiries from 2008 onwards

In this Appendix, in a series of tables, we provide details of how NOPSA has responded or is responding to the accepted findings and recommendations of the reviews affecting NOPSA that have taken place from 2008 onwards.

For reasons of space, the tables use a shortened title for each of the reviews. The following provides the full title of the review and the brief title used in the tables.

Title of Review and Reports	Title used in tables in Appendix
Report of the Bills and Agostini Inquiry into the Occupational Health and Safety and Integrity Regulation for Upstream Petroleum Operations 2009 [<i>Offshore Petroleum Safety Regulation: Better practice and the effectiveness of the National Offshore Petroleum Safety Authority</i>]	<i>NOPSA Report</i>
<i>Report of the Review of the National Offshore Petroleum Safety Authority Operational Activities</i>	<i>Operational Report</i>

Table 1: Tasks for which NOPSAs is to report to Government

Recommendation 5: of the NOPSAs Report		Government Response: Accepted
Task	NOPSAs to develop a robust risk management system and increase NOPSAs auditing frequency and duration. The CEO is to report on steps to implement this recommendation by the end of 2010.	
Actions	<ul style="list-style-type: none"> NOPSAs's Inspection & Audit process now includes a risk matrix to guide inspection frequencies Consistent with this risk-based approach, a target of 2 inspections per annum for normally attended facilities was adopted for NOPSAs's 2010-2011 Annual Operating Plan (AOP) publically available from NOPSAs's website. Amendments to NOPSAs's inspection policy and procedures to reflect the increased target of 2 inspections per annum for normally attended facilities. Met its inspection target for the 2010-11 year Recruitment to take into account the revised target for inspection of normally attended facilities has progressed. NOPSAs has recruited 5 new OHS inspectors since 1 July 2010. 	Complete

Recommendation 7: of the NOPSAs Report		Government Response: Accepted in part
Task	This recommendation seeks to amend the safety regulations to enable assessment of safety culture, leadership, and consideration of operator past history, motivation and current capacity in approvals of safety cases. The Government does not seek to amend the safety regulations and recognises that NOPSAs has been progressively incorporating assurance of safety culture into policy on Relationship Management. The Government seeks consideration by NOPSAs of a third National Program around leadership and safety culture and a review of this recommendation by NOPSAs in 2011/12 to determine whether there has been improvement or whether a regulatory approach is required.	
Actions	<ul style="list-style-type: none"> Process Safety Culture' was a themed promotional project in NOPSAs's 2009-2010 Annual Operating Plan (AOP). This project includes senior management questions and workforce surveys with the aim of increasing the understanding of process safety culture. NOPSAs has provided process safety culture feedback to individual operators as the survey data was analysed. NOPSAs participated in a process safety culture workshop and will continue to explore further opportunities with APPEA. Process safety culture formed a part of the 2009 HSR Forum NOPSAs has continued this themed promotional project as part of the inspection program in its 2010-2011 AOP NOPSAs senior management has presented the preliminary survey data at industry conferences and in discussions with senior company officers. 	Complete

Actions	<ul style="list-style-type: none"> • NOPSAs has now completed the 2nd year of its process safety culture surveys conducted as part of its offshore inspection program. • While the surveys involve a relatively small number of persons (approx 300) in the industry, at least one survey round was done at each offshore processing facility (platform or FPSO). The results which were benchmarked against similar international surveys, showed the Australian industry generally on par save for the area of personnel training. • NOPSAs will (a) discuss the results of the surveys with the APPEA to assist industry to move toward a greater emphasis on process safety culture and (b) continue to use the individual survey results in discussion with senior company management to address specific operator shortcomings. • The bulk of the NOPSAs inspectorate will undertake human factors training in 2011 (14 in July/Aug; 16 in Sept). • Position description and recruitment plan being developed to recruit safety culture expertise into NOPSAs. • NOPSAs agrees with the Government's response that amendments to the safety regulations are currently not required 	In progress
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Recommendation 8: of the NOPSAs Report		Government Response: Accepted
Task	Recommends NOPSAs critically review its regulatory manning levels based on its current workload and the additional work proposed as part of the draft Government Response. The CEO of NOPSAs will be asked to report on steps taken to implement this recommendation and ongoing issues by the end of 2011.	
Actions	<ul style="list-style-type: none"> • Detailed analysis of current and future staffing requirements is ongoing. 	In progress
Actions	<ul style="list-style-type: none"> • An industry remuneration survey by external consultants has been completed and results utilised to improve the structure and scale of regulatory staff remuneration in particular. Combined with a review of internal Human Resources processes that has also been conducted these measures are aimed at ensuring NOPSAs has terms and conditions which will be reasonably attractive to experienced industry candidates. • NOPSAs has implemented Phase 1 recommendations from a commissioned study on optimising existing floor space to accommodate additional staff that has provided limited additional capacity for continued recruitment in the near term. Subsequently, with the proposed expansion of NOPSAs's functions, NOPSAs has moved into new offices and is negotiating long term arrangements for additional space. • NOPSAs has provided RET with estimates of the additional funding required to support a 40% to 50% increase in OHS Inspector staffing and continues to engage with RET to ensure timely action. 	Complete
Actions	<ul style="list-style-type: none"> • NOPSAs is progressively developing recruitment strategies (inclusive of targeted terms and conditions, remuneration and advertising) for each required skill category. 	In progress
Actions	<ul style="list-style-type: none"> • Implementation of a refined Well Integrity recruitment strategy commenced in early December 2010. 	Complete

Finding 2: of the NOPSA Report		Government Response: Accepted
Task	The Government will ask the CEO of NOPSA to review and consider the appropriateness of all MOUs and report by the end of 2010 on ongoing issues and options with respect to improving cooperative arrangements with other jurisdictions.	
Actions	<ul style="list-style-type: none"> Review of MOUs has been included in NOPSA's 2010-2011 Annual Operating Plan (AOP). The review to-date has identified a more efficient approach to cross agency arrangements via the National Collaboration Framework (NCF). All NOPSA MOU's have been analysed in against the NCF which consists of a system for documented cross agency arrangements utilising a tiered structure of increasing detail and formality. MOU's with Tier 1 organisations are planned to be replaced by a Stakeholder charter, with Tier 2 to be replaced by a Stakeholder charter supplemented by a specific letter of intent from the CEO with the remaining organisations being classed as Tier 3 having their MOUs revised for consistency. 	Complete
Actions	<ul style="list-style-type: none"> Specific arrangements in line with the NCF are being progressively prepared and implemented as part of discharging NOPSA's AOP commitments. 	In progress

Finding 6: of the NOPSA Report		Government Response: Noted
Task	The Government will ask the CEO of NOPSA to review and report back by the end of 2010 on any identified gaps in guidance material documentation associated with the UK HSE and its Offshore Division and the material available through NOPSA.	
Actions	<ul style="list-style-type: none"> NOPSA's website currently provides public access to over 4,400 pages of information including: 3 year Corporate and Annual Plans as well as a range of, Policies (15), Guidance (27), Presentations (22), CEO's Newsletter (94 issues), Safety Alerts (43), and Leaflets (12) that address NOPSA's functions and priorities, operational policy and advice as well as drawing attention to notable publications from other regulators. As part of the Safety Case Guidance Note project NOPSA has been actively reviewing, utilising, and referencing source material from a range of sources with recent publications drawing on: <ul style="list-style-type: none"> > Policy, guidance, research and technology reports from the UK HSE, > Australian (AS/NZS), International (ISO), Norwegian Industry (NORSOK) and International Electrotechnical Commission (IEC) Standards, > Research from the National Centre for OHS Regulation, > Publications from: Oil and Gas UK, the American Institute of Chemical Engineers, and WorkSafe Victoria. 	Complete
Actions	<ul style="list-style-type: none"> NOPSA has formalised a documented process to monitor and review guidance material from the UK HSE, Norway PSA and a subscription to the SAI Global OHS newsfeed (for domestic material). The process incorporates a quarterly review of guidance material from the defined sources and an annual review of the sources. Quarterly reviews are captured in the 2011-12 AOP 	In progress

Finding 8: of the NOPSAs Report		Government Response: Accepted
Task	The Government will ask the CEO of NOPSAs to review and report back by the end of 2010 on the frequency of operator meetings and the inclusion of those not directly operating, but influencing, operator culture and performance, for example, titleholders and contractors.	
Actions	<ul style="list-style-type: none"> • A formalised Operator Liaison process, addressing involvement of other duty holders and considerations for establishing an appropriate frequency for liaison meetings with each operator, has been developed and includes a policy and standard operating procedure. • The Operator Liaison process includes the requirement for an annual review. • The policy addressing Operator Liaison Meetings is publically available on NOPSAs website. • The standard operating procedure provides internal direction and guidance on the frequency, agenda and record keeping of liaison meetings. • The revised Operator Liaison process is being actively implemented. • It is estimated that in the order of 150 liaison meetings will be conducted in 2010-11 	Complete

Recommendation 9: of the Operational Report		Government Response: Accepted, with further consideration
Task	The recommendation asserts the need for industry in consultation with NOPSAs to establish a priority programme of accredited education modules in the Safety Case regime. The CEO of NOPSAs is to consider this recommendation further, in consultation with APPEA, and is to report on the way forward by the end of 2010.	
Actions	<p>Accredited education modules are a matter for industry. NOPSAs will provide advice and support as appropriate.</p> <ul style="list-style-type: none"> • NOPSAs has conducted, and continues to conduct, workshops with industry on specific safety case topics. • Safety case awareness is an ongoing feature of the HSR training . • NOPSAs has provided support to the APPEA Common Safety Training Program (CSTP) initiative. • The CSTP currently comprises six modules of which the first is titled "The Safety Case and Safety Management Systems". • APPEA formally launched the CSTP as a live program on 6 April 2010. 	Complete

Recommendation 10: of the Operational Report		Government Response: Accepted
Task	Industry should be encouraged to build on its training commitment now to achieve a competent and fully accredited workforce over the next five years. The CEO of NOPSA is to consider this recommendation further, in consultation with APPEA, and is to report back on future plans by the end of 2010.	
Actions	<p>This is a matter for the offshore petroleum industry.</p> <ul style="list-style-type: none"> NOPSA verifies operator commitments with respect to training and competency as a standard part of its published inspection methodology. NOPSA will continue to provide support to the APPEA Common Safety Training Program (CSTP) initiative. NOPSA will continue to actively engage with and encourage industry association efforts to develop training capacity and improve competency levels. 	Complete

Recommendation 11: of the Operational Report		Government Response: Accepted, with further consideration required
Task	The recommendation seeks to re-assess current KPI measures and performance indicators used by the Regulator and industry. The CEO of NOPSA is to review the KPIs, in consultation with APPEA and Safe Work Australia (formerly the Australian Safety and Compensation Council (ASCC)), and report back by the end of 2010 on future plans. The advice of the NOPSA Board could also be sought.	
Actions	<ul style="list-style-type: none"> NOPSA now publishes industry safety performance data and provides specific feedback to individual operators. NOPSA has promoted the use of a Key Performance Indicators (KPIs) for facility integrity in addition to those currently under development by APPEA. NOPSA has also consulted with the NOPSA Advisory Board in relation to its strategic priority regarding Industry safety performance, inclusive of a detailed analysis of the Advisory Board proposal that maps out the work done by NOPSA and APPEA on KPIs to-date. KPIs were a focus area of the NOPSA sponsored inaugural Petroleum Regulator's Forum held on 10 November 2010. NOPSA continues to consult with and engage APPEA on the subject of KPIs, noting that APPEA has, at least in the immediate future, chosen to pursue safety culture over common industry KPI's following internal trials and experience from Oil & Gas UK. NOPSA has obtained advice from, and responded to, the Advisory Board on industry KPIs. 	Complete
Actions	<ul style="list-style-type: none"> In addition NOPSA is reviewing the nature and suitability of Accident and Dangerous Occurrence information reported to NOPSA with a view to improving the analysis and feedback to industry. NOPSA continues to seek opportunities for working with Safe Work Australia on regulatory KPIs. 	In Progress

Table 2: Operational Matters for NOPSA to address

Recommendation 3: of the NOPSA Report		Government Response: Accepted
Operational Matters	Calls for NOPSA to revise its approach to interacting with operators prior and subsequently to the Safety Case assessment process. The Government proposes that as part of the 2011 review of the operations of the Safety Authority, the review will include a review of the Safety Case framework. The Government will work with the CEO to determine the process to undertake the 2011 review and will consult with stakeholders.	
Actions	<ul style="list-style-type: none"> Advice provided through Safety Case Guidance Note project and Stages in the Regime brochure. Seven of a planned series of eleven Safety Case Guidance Notes have now been published. NOPSA anticipates publishing at least two more Safety Case Guidance Notes in 2011-12 	In progress
Actions	<ul style="list-style-type: none"> Legislative arrangements for early engagement with proponents of major, complex projects have been put in place with an operational policy also published. To date NOPSA has had initial meetings with 3 proponents and commenced the assessment of one early engagement safety case from a 4th. 	Complete
Actions	<ul style="list-style-type: none"> The Safety Case Assessment process now includes arrangements for a safety case engagement plan to provide guidance to operators on a targeted, case by case basis. (See also Recommendation 8 of the NOPSA Report). 	Complete
Actions	<ul style="list-style-type: none"> The new Operator Liaison policy and procedure has been implemented. 	Complete

Finding 3: of the NOPSA Report		Government Response: Accepted
Operational Matters	Notes the importance of further work to improve industry performance on safety maintenance and backlogs. The finding holds NOPSA to drive and monitor industry progress through its Facility Integrity national program and through facility audits. The Government will be looking to the CEO of NOPSA to consider and implement further strategies to address the challenge of hydrocarbon releases.	
Actions	<ul style="list-style-type: none"> NOPSA'S 2008-2009 AOP included facility integrity and the completed Facility Integrity report has been published on NOPSA's website. NOPSA also undertook themed audits on asset integrity, using the OGP asset integrity guidance, as part of the 2009-2010 AOP. 	Complete
Actions	<ul style="list-style-type: none"> Topic based inspections focused on facilities (with potential facility integrity challenges) were included in ageing the 2010-2011 AOP and were completed to plan. Further inspections focused on ageing facilities are included in the 2011-12 AOP 	In progress
Actions	<ul style="list-style-type: none"> Topic based inspections focused on maintenance management and backlogs were included in 2010-2011 AOP and were completed to plan Further inspections focused on maintenance management are included in the 2011-12 AOP 	In progress

Finding 7: of the NOPSAs Report		Government Response: Noted
Operational Matters	Notes that NOPSAs should consider establishing an appropriate forum for consultants and those personnel within operators that undertake Safety Case development. The Government's response holds that the CEO of NOPSAs is responsible for improving the interaction between NOPSAs and its stakeholders.	
Actions	<ul style="list-style-type: none"> NOPSAs's Safety Case Guidance Note project is continuing and provides appropriate for operators, operating personnel and consultants who may be involved with safety case development. 	In progress
Actions	<ul style="list-style-type: none"> NOPSAs leads the organisation of the annual HSR forum which, in addition to members of the workforce, may include other members of industry and its consultants. 	In progress
Actions	<ul style="list-style-type: none"> NOPSAs has considered, in consultation with APPEA, whether any additional forums for consultants are appropriate and concluded there are sufficient opportunities for interaction with NOPSAs. In considering this matter NOPSAs has ensured that consultants do not replace the Operator as the party who must 'own' the safety case. 	Complete

Finding 9: of the NOPSAs Report		Government Response: Accepted
Operational Matters	The Government will ask the CEO of NOPSAs to make sure that systems are in place to ensure the Authority is able to develop and maintain knowledge of relevant and current safety standards, and that it is able to participate in standards revision and development processes, as appropriate.	
Actions	<ul style="list-style-type: none"> NOPSAs has improved the systems that ensure ready access to all relevant Standards and other technical publications via an intranet website that provides access to: NOPSAs's in-house collections of Standards and Guidelines, Hardcopy Publications, Journals, Conference Proceedings and Training Materials and miscellaneous publications categorised by functional topic NOPSAs's paid online subscription services for Standards, Professional Magazines & Journals, and petroleum abstracts database Websites for: Classification Societies, Industry Associations, Institutes and Societies, Dedicated safety initiatives, International Petroleum regulators, Designated Authorities Online Commonwealth and State Law resources 	Complete
Actions	<ul style="list-style-type: none"> NOPSAs has drafted an options paper with respect to the introduction of minimum standards in the existing objective based regime. The 2011-12 AOP includes strategy development and implementation of a selected option. 	In progress
Actions	<ul style="list-style-type: none"> NOPSAs to review the approach of other similar regulators and, if appropriate, conduct an analysis of a number of codes and standards that NOPSAs may contribute to the development of. NOPSAs continues to contribute to the ISO Asset Integrity Management Standard as part of the Australian Mirror group. As part of the 2011-12 AOP NOPSAs will prepare a paper on the experience gained as a mirror group participant, inclusive of recommendations with respect to undertaking any further, or more widespread, involvement in standards development. 	In progress

Finding 11: of the NOPSAs Report		Government Response: Accepted in part
Operational Matters	NOPSAs should expand its assessment policy to require it to use previously gathered information during the assessment process. The Government will ask the CEO of NOPSAs to review the Authority's operational policies, including the use of previously gathered information to inform the assessment process.	
Actions	<ul style="list-style-type: none"> NOPSAs's safety case assessment policy includes a requirement to consider previously gathered information in developing the scope for the detailed portion of the assessment. 	Complete

Finding 12: of the NOPSAs Report		Government Response: Accepted in principle
Operational Matters	Notes the importance of considering the safety culture of a particular operator as an inherent risk when targeting compliance. The Government asks the CEO of NOPSAs to address this finding within the context of the Government's response to Recommendations 5 and 7 of the NOPSAs Report.	
Actions	See NOPSAs's responses to Recommendations 5 (Risk Matrix) and 7 (Safety Culture) of the NOPSAs Report.	Complete with one item to report on in June 2011

Finding 13: of the NOPSAs Report		Government Response: Accepted
Operational Matters	NOPSAs should implement a robust strategy for assuring itself that the operator is complying with its Safety Case based on issues raised from previous inspection and meeting with the operator. The Government will require the CEO of NOPSAs to implement this finding in the context of the Government Response to Recommendation 5 of the NOPSAs Report.	
Actions	<p>See NOPSAs's responses to Recommendations 5 of the NOPSAs Report (Risk Matrix).</p> <ul style="list-style-type: none"> NOPSAs's planned inspection core process includes review of status of actions from previous inspections. The new Operator Liaison process includes a review of implementation of operator systems as a meeting agenda item. 	Complete

Finding 14: of the NOPSAs Report		Government Response: Accepted
Operational Matters	NOPSAs should increase its advisory and promotional functions by engaging with operators more, and in a more targeted fashion, in the early stages of the Safety Case and PSMP process. This is an operational matter for the CEO of NOPSAs which is to be implemented in the context of the Government's response to earlier Recommendations and Findings of the NOPSAs Report.	
Actions	See NOPSAs's response to Recommendation 3 of the NOPSAs Report	Complete

Finding 16: of the NOPSAs Report		Government Response: Noted
Operational Matters	The person who is to take up the position of investigator (currently vacant) will need to be trained and experienced in compliance and enforcement investigations. The CEO of NOPSAs will be required to implement this recommendation in the context of the Government’s response to Recommendation 8 of the NOPSAs Report.	
Actions	NOPSAs Regulatory Operations includes an investigation team staffed by trained and experienced inspectors and investigators.	Complete

Recommendation 1: of the Operational Review		Government Response: Accepted
Operational Matters	NOPSAs should develop guidelines with stakeholders to provide clarity and consistency to the process which will ultimately result in better safety outcomes. NOPSAs is responsible for promoting and developing, in consultation with its stakeholders, guidance notes for clarity and the CEO is responsible for improving the interaction between the Authority and its stakeholders.	
Actions	See NOPSAs’s response to Recommendation 3 of the NOPSAs Report in relation to Safety Case Guidance Note development.	Complete

Recommendation 7: of the Operational Review		Government Response: Accepted
Operational Matters	Improved and agreed guidelines for Safety Case application and assessment, including suggested structure and content, would alleviate many current problems related to Safety Case processes. This is an operational matter and the CEO is responsible for continuing this process.	
Actions	See NOPSAs’s response to Recommendation 3 of the NOPSAs Report in relation to Safety Case Guidance Note development.	Complete

Recommendation 8: of the Operational Review		Government Response: Noted, with further consideration required
Operational Matters	The initial acceptance of a new facility Safety Case should be in conjunction with inspection of a facility upon commencement of operations. The carrying out of inspections by NOPSAs staff is a matter for the CEO. The CEO is responsible for ensuring that the framework guiding the Authority’s inspection activities and audits is utilising NOPSAs resources effectively and focussing on the highest priority activities.	
Actions	NOPSAs policy currently provides for the inspection of new facilities within 6 weeks of commencement of operations. NOPSAs’s recently amended policy provides for inspection of drilling facilities within 3 weeks of entering the regime. The current regime clearly separates safety case assessment and subsequent verification through inspection and audit. Given the separation provided for within the current regime, no action is warranted.	No Action
Actions	Communicate with government and industry the separation of safety case assessment and inspection.	In progress

Recommendation 13: of the Operational Review		Government Response: Noted
Operational Matters	The industry should provide advice to NOPSAs on where the regulations do not provide sufficient clarity and consider developing broad policy/process guidelines in consultation with the regulatory to provide clarity and consistency. The Government will look to NOPSAs and industry to consider this recommendation and the CEO of NOPSAs to improve the interaction between the Authority and its stakeholders.	
Actions	See NOPSAs response to Recommendation 3 of the NOPSAs Report in relation to Safety Case Guidance Note development and Finding 6 of the NOPSAs report with respect to the full range of material NOPSAs makes available to operators via its web site.	In progress Complete

Recommendation 14: of the Operational Review		Government Response: Accepted in part
Operational Matters	NOPSAs should complete the next revision of Safety Case guidelines in consultation and agreement with stakeholders and continue its program to achieve consistency with a firmer hand from the CEO and management. The Government will look to NOPSAs and industry to consider this recommendation as part of ongoing stakeholder consultations	
Actions	See NOPSAs response to Recommendation 3 of the NOPSAs Report in relation to Safety Case Guidance Note development.	In progress

Recommendation 17: of the Operational Review		Government Response: Accepted
Operational Matters	Recommends that subsequent to the hiring of the workforce and preferably before the commencement of operations, a review of the Safety Case should take place with the new workforce to ensure they understand the accepted Safety Case, its risks and Safety Management Plan. This recommendation is supported as per the response to Recommendation 3 of the NOPSAs Report.	
Actions	Workforce consultation in the development of a safety case is an intrinsic requirement of the OPGGS (Safety) Regulations 2009. See NOPSAs response to Recommendation 3 of the NOPSAs Report in relation to Safety Case Guidance Note development.	No Action In progress

Table 3: Matters where NOPSA is to work with the Department of Resources, Energy and Tourism (RET)

Recommendation 6: of the NOPSA Report		Government Response: Further consideration required
Operational Matters	This recommendation seeks consideration to enable NOPSA to have a broader range of graduated compliance tools, including the publication of specific information concerning its enforcement actions. NOPSA and the Government will undertake further examination of the options available and their benefits, if any, including practical and legal implications for the Regulator, Government and industry. All options will be considered in consultation with stakeholders.	
Actions	<p>This is a matter for government.</p> <p>NOPSA has arranged for the inclusion of the issue of 'civil fines' on the NOPSA/RET legislative change meeting agenda, noting the following implementation Issues:</p> <ul style="list-style-type: none"> • Changes to legislation will be required to provide for a broader range of graduated compliance tools. • New processes would need to be developed. • A period of consultation with industry would be required. 	Complete

Finding 10: of the NOPSA Report		Government Response: Accepted in part
Operational Matters	The finding notes that if a validation report has been required to support a regulatory approval, the regulator should ensure that the complete report is received and considered as part of the approval process. The finding also asserts that the regulator should be able to speak directly to the validation team to discuss any issues raised within the report, which may require amendments to the legislation. The Government is in the process of consulting with stakeholders further on this matter and will seek advice from the CEO and Board of NOPSA, and RET.	
Actions	<ul style="list-style-type: none"> • Validation statements are received and considered as part of NOPSA's safety case assessment processes, in accordance with the requirements of the regulations. 	Complete

Recommendation 4: of the Operational Review		Government Response: Accepted, with further consideration required
Operational Matters	The recommendation relates to Rig Specific Safety Cases and recommends that the exploration/production operator making all major decisions related to petroleum activities should be responsible for demonstrating to the regulator that drilling operations can be conducted safely. RET will continue to consult with NOPSA and other stakeholders to review the implications and consider options to address this issue.	
Actions	<p>This is a matter for Government.</p> <ul style="list-style-type: none"> • NOPSA continues to work with RET to advise on appropriate Well Integrity and Safety Regulations. 	Complete

Recommendation 6: of the Operational Review		Government Response: Noted
Operational Matters	The recommendation relates to an emergency response that is beyond any single operator and occurs outside the title area. On this matter, RET will continue to work with NOPSA, the Department of Infrastructure, Transport, Regional Development and Local Government, the Australian Maritime Safety Authority, APPEA and other stakeholders.	
Actions	<p>NOPSA is not an emergency response agency.</p> <ul style="list-style-type: none"> This is a matter for Government, however NOPSA will continue to work with RET in relation to this recommendation 	In progress

NOTE: Items shown in italics on the tables indicate they are linked to action items in other tables and therefore do not contribute to the number of line items in terms of NOPSA's implementation plan status.

Appendix 6: Consensus findings and recommendations of 2010 IRF conference

1. Regulatory regimes function most effectively when a single entity has broad safety and pollution prevention responsibility. Gaps, overlap, and confusion are not in the interest of safety or regulatory efficiency.
2. The regulator's core responsibilities and objectives must be clearly identified. Managers must minimize distractions so that regulatory personnel can focus on these objectives.
3. Safety management and regulatory priorities should be identified through a comprehensive risk assessment program. Training and competency development programs should be updated to reflect the new risk information. Contracting strategies should be reviewed to assess their safety and risk implications.
4. Government and industry should promote an improvement mentality, not a compliance mentality. Continuous communication among regulators, operators, contractors, workers, industry associations and public interest groups is essential for continuous improvement.
5. Operators and contractors must manage their companies to achieve safety objectives and must continually assess the effectiveness of their management programs. Regulators should challenge industry to resolve potential safety problems rather than seek to resolve the problems for them.
6. Regulators should serve as catalysts for learning by distributing information, hosting workshops, participating in research, and identifying gaps in standards and best practices. Wherever possible, the best standards should be identified and applied internationally.
7. Accident investigations should be conducted independently and findings should be promptly and broadly distributed. Industry or government should maintain comprehensive and verified incident data bases. Offshore companies should regularly discuss the causes and implications of past accidents with their employees.
8. Industry and government cannot rely solely on incident data to identify risks. New indicators must be explored and assessed, particularly for major hazards and safety culture. Worker input is also essential.
9. Peer-based audit programs should be considered for both regulators and operators.
10. Industry and regulators should make better use of technology for real time monitoring of safety parameters.
11. Sustaining outstanding safety performance is critical to the reputation of industry and government. All personnel should be trained to be safety leaders and should be empowered to stop work without blame.

Industry and government should investigate other actions and programs that might help promote, sustain, and monitor a culture of safety achievement.

Appendix 7: Role of NOPSEMA and of NOPTA²⁰³

NOPSEMA will be an expanded version of NOPSA, which is a body corporate. NOPSA will be continued in existence under the new name and will have an extended range of functions in relation to petroleum and greenhouse gas operations. NOPSEMA's principal functions will be:

- OHS;
- structural integrity of facilities, wells and well-related equipment;
- environmental management; and
- regulation of day-to-day petroleum operations.

NOPSEMA will appoint and deploy OHS inspectors and petroleum (and greenhouse gas) project inspectors. NOPSEMA, like NOPSA, will be fully funded by cost-recovery levies and fees, managed by means of a Special Account under the *Financial Management and Accountability Act 1997*.

NOPTA (the Titles Administrator) will be the holder of an APS office in DRET, assisted principally by DRET staff. The Titles Administrator's principal functions will be to provide information, assessments, analysis, reports, advice and recommendations to members of the Joint Authorities and the 'responsible Commonwealth Minister' in relation to the performance of those Ministers' functions and the exercise of their powers, the collection, management and release of data, titles administration, approval and registration of transfers and dealings, and the keeping of the registers of petroleum and greenhouse gas titles.

The jurisdictional areas in which NOPSEMA and the Titles Administrator will, or may, operate are:

- **Commonwealth waters** – waters covered by the OPGGS Act, i.e., waters of the territorial sea between 3 and 12 nautical miles as well as the continental shelf, and the offshore areas of external Territories (such as Ashmore and Cartier Islands). NOPSEMA and the Titles Administrator will function in all Commonwealth waters.
- **Designated coastal waters** of each State and the Northern Territory – the waters covered by the State and Northern Territory *Petroleum (Submerged Lands) Acts*, i.e., the first 3 nautical miles of the territorial sea adjacent to each State and the NT, plus (in the case of Western Australia) some historic petroleum title areas landward of the (3-mile) territorial sea baseline but external to the State. In designated coastal waters, functions and powers may be conferred on NOPSEMA by the relevant State's or the Northern Territory's *Petroleum (Submerged Lands) Act* and regulations. Functions and powers may also be conferred on the Titles Administrator.
- **Eligible coastal waters (WA only)** – waters landward of the (3-mile) territorial sea baseline that are external to the State. Only Western Australia has any offshore resources activity in waters in this category. WA can confer functions and powers on NOPSEMA on the same basis as in designated coastal waters.
- **Any State/NT waters or onshore** – a State or the NT may contract with NOPSEMA for the provision of regulatory services. Constitutional restrictions apply to the provision of services onshore.

203 Source: Revised Explanatory Memorandum for the OPGGS Amendment (National Regulator) Bill 2011

Appendix 8: Submissions