

The Senate

Education and Employment
References Committee

Work health and safety of workers in the
offshore petroleum industry

August 2018

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Table of Contents

Members	iii
List of Recommendations	vii
Chapter 1—Introduction	1
Conduct of the inquiry	2
Structure of the report	2
Acknowledgment	2
Notes on references	2
Chapter 2—Background	5
Overview of Australia's offshore petroleum industry	5
Role of the National Offshore Petroleum Safety and Environmental Management Authority	6
Role of the Department of Industry, Innovation and Science	8
Offshore petroleum WHS regulatory framework	8
The safety case	9
Compliance and enforcement measures	10
Chapter 3—Adequacy of WHS rights and protections for offshore workers	13
Health and Safety Representatives	13
Development and accessibility of safety cases	23
Right of entry to offshore platforms for work health and safety purposes	27
Training and certification for high risk work	29
Chapter 4—Effectiveness of NOPSEMA as regulator	33
Effectiveness of stakeholder engagement	34
Effectiveness of NOPSEMA's inspection regime	38
Effectiveness of NOPSEMA's regulatory responses	44
Perceived gaps in the jurisdictional coverage of WHS legislation in the maritime industry	50
Government Senators' Dissenting Report	53
Appendix 1—Submissions and additional information	65
Appendix 2—Public hearings and witnesses	67

List of Recommendations

Recommendation 1

- 3.44 The committee recommends that the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* be amended to provide for consistency with the *Work Health and Safety Act 2011* in regard to the rights, powers and entitlements of Health and Safety Representatives (HSRs), including but not limited to matters identified in paragraph 3.27 of this report.

Recommendation 2

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

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

Recommendation 3

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

- a requirement for consultation with the relevant unions in the development of the initial safety case;
- a requirement of a review of the safety case to take place with the workforce once hired (and before the commencement of operations, where possible);
- a requirement for HSRs to be provided with a copy of the safety case; including by remote online access; and
- an ability for an HSR to trigger a review and revision of the safety case in certain circumstances.

Recommendation 4

- 3.73 The committee recommends that a right of entry for work health and safety purposes be established under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, requiring:

- the operator of the facility to, as soon as possible, facilitate transport for the permit holder for right of entry purposes;

- the cost of transport for the permit holder for right of entry purposes to be recovered from industry by a levy revenue to NOPSEMA; and
- an ability for the permit holder to exercise entry for the purposes of inquiring into multiple suspected contraventions of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, including additional contraventions identified during the course of the entry.

Recommendation 5

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

Recommendation 6

4.26 The committee recommends that the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* be amended to provide for equal representation of industry and workforce participants on the National Offshore Petroleum Safety and Environmental Management Authority Board, with the latter representatives to be nominated by the Australian Council of Trade Unions.

Recommendation 7

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

Recommendation 8

4.57 The committee recommends NOPSEMA and facility operators ensure that HSRs are present and fully engaged when NOPSEMA carries out its inspections by:

- requiring HSRs to accompany NOPSEMA inspectors on their inspections; and
- requiring NOPSEMA inspectors to meet separately and privately with HSRs during inspections.

Recommendation 9

4.77 The committee recommends that the penalties in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* be significantly increased to bring them into line with best practice responsive regulation.

Recommendation 10

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

Recommendation 11

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

Recommendation 12

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

Recommendation 13

- 4.92 The committee recommends that NOPSEMA and Australian Maritime Safety Authority update their Memorandum of Understanding, with a particular focus on achieving clarity on the common areas and interactions between the two agencies and their legislations.**

Chapter 1

Introduction

- 1.1 On 8 February 2018, the Senate referred the following matter to the Education and Employment References Committee (the committee) for inquiry and report by 14 August 2018:

Work health and safety of workers in the offshore petroleum industry, with particular reference to:

(a) the scope and necessity for amending and updating any legislative inconsistencies in the relevant work health and safety scheme, including:

- (i) any provisions in the legislation which need to be updated,
- (ii) providing for appropriate consistency between the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act) and the *Work Health and Safety Act 2011* (WHS Act),
- (iii) legislative changes required to the OPGGS Act to provide for appropriate consistency with the model work health and safety laws (as revised in June 2011), and
- (iv) legislative changes which recognise that the work is undertaken in remote locations;

(b) the effectiveness of the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) and equivalent state and territory offshore petroleum regulators (the regulators) in promoting the work health and safety of persons engaged in offshore petroleum operations;

(c) the accountability framework to which NOPSEMA is subject with respect to work health and safety matters, and whether this needs to be strengthened;

(d) the role and structure of the NOPSEMA Board and options for improving the effectiveness of their stakeholder engagement;

(e) the workings of NOPSEMA's collaboration, and working relationships, with other work health and safety regulators and bodies, including Safe Work Australia;

(f) challenges in attracting and retaining health and safety representatives;

(g) the adequacy of the protections afforded to health and safety representatives performing their functions under the relevant legislation;

(h) policies and practices which could be adopted by NOPSEMA to better support health and safety representatives;

(i) factors impacting on the work health and safety of workers in the offshore petroleum industry;

(j) Government policies at the state, territory and Commonwealth level which have a significant impact on the work health and safety of workers in the offshore petroleum industry;

(k) relevant parallels or strategies in an international context;

(l) the role of Government in providing a coordinated strategic approach to health and safety outcomes in the offshore petroleum industry; and

(m) any other related matters.

1.2 On 13 August 2018 the Senate granted an extension of time to report until 23 August 2018.

Conduct of the inquiry

1.3 Notice of the inquiry was posted on the committee's website. The committee also wrote to key stakeholders to invite submissions.

1.4 The committee received 15 submissions, as detailed at Appendix 1.

1.5 The committee held three public hearings:

- 13 June 2018 in Fremantle;
- 10 July 2018 in Sale; and
- 11 July 2018 in Melbourne.

1.6 A list of witnesses who appeared at these hearings is at Appendix 2.

Structure of the report

1.7 During the course of the inquiry the committee identified several core issues relating to the work health and safety (WHS) of workers in the offshore petroleum industry.

1.8 Chapter 2 provides background on the role and operation of the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), as well as information on the core underpinnings of Australia's offshore occupational health and safety regime.

1.9 Chapter 3 turns to matters relating to the adequacy of WHS rights and protections for offshore workers.

1.10 Chapter 4 examines the effectiveness of NOPSEMA as a regulator.

Acknowledgment

1.11 The committee thanks those individuals and organisations who contributed to this inquiry by preparing written submissions and giving evidence at public hearings. In particular the committee acknowledges those individual workers who shared their personal experiences of work health and safety in the Australian offshore petroleum industry.

Notes on references

- 1.12 References in this report to the Hansard for the public hearings are to the proof Hansard. Page numbers may vary between the proof and official Hansard transcripts.

Chapter 2

Background

Overview of Australia's offshore petroleum industry

- 2.1 The offshore petroleum industry is an important contributor to the Australian economy and national job creation. In 2016-17, the broader industry contributed \$28.5 billion to the national accounts. In the same year, the number of people employed in the sector was 20 000.¹
- 2.2 The industry is also widely recognised as inherently highly hazardous due to its technical complexity, geographic remoteness and the volatile nature of its product stream.²
- 2.3 From a historical perspective, the safety regulation of the industry globally was significantly influenced by the 1988 Piper Alpha disaster in the North Sea which resulted in 167 deaths and substantial financial impacts to the UK industry and Government.³ Over time, the regulatory response to Piper Alpha, as well as two major incidents in the Australian offshore petroleum industry, lead in 2012 to the establishment of National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA).⁴
- 2.4 According to NOPSEMA, since its establishment, no fatality or major accident event has occurred and there has been a record low rate for offshore accidents achieved for a full year in 2016 with no serious injuries reported.⁵
- 2.5 Nevertheless, it is important to recognise that an effective work health and safety (WHS) regime, which promotes continuous improvement of safety performance, is a vital contributor to the future success of the offshore petroleum industry.
- 2.6 The Australian Petroleum Production and Exploration Association (APPEA) advised that the oil and gas industry remained determined to continue to deliver improved safety performance, and noted the following areas where opportunities for improvement existed in the industry:

¹ Department of Industry, Innovation and Science, *Submission 7*, p. 7.

² Department of Industry, Innovation and Science, *Submission 7*, pp. 3 and 23; National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), *Submission 5*, p. 13; Australian Petroleum Production and Exploration Association (APPEA), *Submission 8*, pp. 5 and 11; Australian Council of Trade Unions, *Submission 11*, p. 8.

³ NOPSEMA, *Submission 5*, p. 6.

⁴ NOPSEMA, *Submission 5*, pp. 7–8.

⁵ NOPSEMA, *Submission 5*, p. 33.

- occupational health and safety performance continues to lag international benchmarks;
- process safety performance across the industry and in Australia continues to show no discernible trend of continuous improvement; and
- the Australian industry is transitioning from a capital investment phase to become the world's largest exporter of liquefied natural gas (LNG), requiring a shift of emphasis towards operations and maintenance activities.⁶

2.7 The Department of Industry, Innovation and Science told the committee of the importance of strong collaboration between government (both policy-makers and regulators), industry and the workforce (including unions), as well as the need to foster a strong culture of safety in the workplace:

The health and safety of workers involved in offshore petroleum activities is of the utmost importance to government, industry and the community. Workplace safety relies on strong collaboration between government, industry, the regulator, the workforce and unions. The Australian resources sector is a world leader in health and safety performance and Australia's offshore petroleum industry is one of the safest in the world. To ensure this continues to be the case, it is essential that both the Australian Government and industry remain committed to ensuring offshore workers are safe and free from harm, and fostering a strong workplace culture to prevent fatalities, injuries and diseases.⁷

2.8 In a similar vein the NOPSEMA Chief Executive Officer also supported the proposition that an effective regulatory system requires input from the regulator, the industry and the workforce.⁸

2.9 The APPEA Chief Executive Officer also expressed a similar sentiment:

Our starting point is that everyone involved in the offshore oil and gas industry has a personal responsibility for ensuring their safety and the safety of others. This duty of care applies equally to managers, employees, contractors and regulators. We believe that the best safety outcomes are achieved by fostering a collaborative culture which promotes problem-solving and continuous improvement at every workplace.⁹

2.10 The following sections outline the regulatory framework for the Australian offshore petroleum industry, the legislative underpinnings of the safety regime, and the safety case model.

⁶ APPEA, *Submission 8*, pp. 13–14.

⁷ Department of Industry, Innovation and Science, *Submission 7*, p. 3.

⁸ Mr Stuart Smith, Chief Executive Officer, NOPSEMA, *Proof Committee Hansard*, 11 July 2018, p. 2.

⁹ Dr Malcolm Roberts, Chief Executive Officer, APPEA, *Proof Committee Hansard*, 13 June 2018, p. 1.

Role of the National Offshore Petroleum Safety and Environmental Management Authority

- 2.11 NOPSEMA is an independent statutory authority established under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act). It is the national regulator for health and safety, well integrity and environmental management for offshore petroleum activity in Commonwealth waters, as well as in coastal waters where regulatory powers and functions have been conferred.¹⁰
- 2.12 Commonwealth waters comprise those areas beyond three nautical miles from the territorial sea baseline.¹¹ Currently Victoria is the only jurisdiction that has conferred its powers of offshore petroleum safety to NOPSEMA, although the conferral of powers is under consideration by other jurisdictions.¹²
- 2.13 According to NOPSEMA, the agency takes an 'integrated, expertise based approach' to the regulation of WHS, well integrity and environmental management to ensure that risks are reduced to a level that is 'as low as is reasonably practicable' and ensures responsible and safe offshore petroleum activities. This approach does not extend to policy development, resource promotion, or the regulation of economic factors. Such responsibilities instead rest with other government agencies to avoid the potential for conflict of interest.¹³
- 2.14 NOPSEMA's legislated WHS functions are set out in section 646 of the OPGGS Act and can be summarised as follows:
- to promote the WHS of persons engaged in offshore petroleum operations or offshore greenhouse gas storage operations;
 - to develop the implement effective monitoring and enforcement strategies to secure compliance under the OPGGS Act and regulations;
 - to investigate accidents, occurrences and circumstances that affect WHS;
 - to advise on matters relating to offshore health and safety;
 - to make reports on investigations to the responsible Commonwealth minister and each responsible state/Northern Territory minister;
 - to provide information, assessments, analysis, reports, advice and recommendations on request to the responsible Commonwealth minister;

¹⁰ NOPSEMA, *Submission 5*, p. 4. The current inquiry is limited to the regulator's role in WHS matters and does not consider its role with respect to well integrity and environmental management for offshore petroleum activities.

¹¹ NOPSEMA, *Submission 5*, p. 14.

¹² NOPSEMA, *Submission 5*, p. 4.

¹³ NOPSEMA, *Submission 5*, p. 4.

- to cooperate with Commonwealth, state and Northern Territory agencies or authorities having functions relating to regulated operations.¹⁴

2.15 Further details on the WHS regulatory framework are provided below.

2.16 In order to fulfil its legislation functions, NOPSEMA undertakes assessment, inspection, investigation, enforcement, promotion and advisory activities.¹⁵

2.17 NOPSEMA informed the committee it delivers its WHS functions through five core, interlinked regulatory activities:

- (i) assessing how the operator of the facility proposes to manage the WHS risks of their activity and determines whether the safety case is acceptable;
- (ii) inspecting the facility to determine whether the activity is being managed in accordance with the accepted safety cases and other legislation requirements;
- (iii) investigating where an incident occurs or where a potential non-compliance with the legislation is suspected;
- (iv) taking enforcement action where it is required to rectify and prevent recurrence of non-compliance;
- (v) promoting WHS and providing advice to the industry on learnings from assessments, inspections, investigations and enforcements and promoting robust WHS management practices.¹⁶

2.18 Chapter 4 of this report considers how effectively NOPSEMA executes its role.

Role of the Department of Industry, Innovation and Science

2.19 The Department of Industry, Innovation and Science (the department) is responsible for providing upstream offshore oil and gas-related policy advice to the Commonwealth Government.¹⁷ It undertakes key functions in regard to offshore oil and gas WHS matters, which include:

- providing regulatory and policy oversight for the WHS of individuals involved in offshore petroleum activities, environmental management and offshore well integrity issues; and
- leading the government's involvement and strategic response to a significant offshore petroleum incident.¹⁸

¹⁴ NOPSEMA, *Submission 5*, pp. 17–18.

¹⁵ NOPSEMA, *Submission 5*, p. 18.

¹⁶ NOPSEMA, *Submission 5*, p. 18.

¹⁷ Department of Industry, Innovation and Science, *Submission 7*, p. 3.

¹⁸ Department of Industry, Innovation and Science, *Submission 7*, p. 5.

Offshore petroleum WHS regulatory framework

2.20 Since 2006 the legislative framework for the offshore petroleum industry has been based on the OPGGS Act. The OPGGS Act and associated regulations provide for a WHS regulatory framework characterised as an 'objective-based regime', rather than a prescriptive regulatory regime. NOPSEMA submitted that such an approach allows for continuous improvement from both industry and regulator, and it is internationally accepted as being the most appropriate regulatory framework for major hazard industries.¹⁹

2.21 According to NOPSEMA, an objective-based safety regime:

- establishes a framework based on specific objectives and requires operators of facilities to demonstrate how they will achieve those objectives;
- ensures that those who create risks are responsible for identifying and managing that risks, including the need to reduce WHS risks to a level that is 'as low as reasonably practicable';
- is adaptable, flexible and scalable to the petroleum activities proposed to be undertaken;
- provides the opportunity for the offshore petroleum industry to adopt advances in technology and apply WHS risk control measures that are best suited to the individual circumstances of the activity;
- encourages adoption of best practice and continuous improvement in all aspects of the operator's WHS performance; and
- is recognised as international regulatory best practice for major hazard industries such as offshore petroleum, onshore petroleum, petrochemical and nuclear industries.²⁰

2.22 The department outlined the benefits to employing an objective-based regime:

The outcome of an objective-based regime is that costs and implications to health, safety and the environment are considered as part of a company's investment decisions. In this regard, objective-based regulation encourages continuous improvement to achieve appropriate health and safety and environmental outcomes. It ensures flexibility in operational matters to meet the unique nature of different activities, and avoids a 'one size fits all' approach to regulation, allowing industry to determine the most effective and efficient way to operate.²¹

The safety case

2.23 One of the key elements of NOPSEMA's regulatory regime is the preparation by the operator of a safety case. A safety case is a document produced by the duty holder to describe the facility, identify the hazards and risks, the risk controls and the safety management systems which provides for the continual

¹⁹ NOPSEMA, *Submission 5*, p. 11.

²⁰ NOPSEMA, *Submission 5*, p. 12.

²¹ Department of Industry, Innovation and Science, *Submission 7*, p. 19.

identification and assessment of hazards and how risks will be minimised on an offshore facility.²²

2.24 As the department stated:

A safety case is a sophisticated, comprehensive, integrated risk management system which must identify the safety-critical aspects of the facility, both technical and managerial, and defines appropriate performance standards for the operation of the safety-critical aspects.²³

2.25 An offshore facility cannot be constructed, installed, operated, modified or decommissioned without a safety case in force for that stage in the life of the facility.²⁴

2.26 NOPSEMA advised that a safety case prepared by the operator of a facility must describe four key elements:

- (i) the facility;
- (ii) the activities expected occur at the facility;
- (iii) the assessments carried out regarding any potential 'major accident events', including technical or other controls to reduce risk to a level that is as low as reasonably practicable;
- (iv) the system for managing safety that is to be implemented by the operator.²⁵

2.27 Importantly, the department recognised the role that the workforce plays in the development of the safety case:

Genuine, quality worker involvement and consultation on health and safety issues is of key importance to achieving positive safety outcomes. Under the offshore OHS [occupational health and safety] regime, the involvement of members of the workforce is essential to the development of safety cases and operators must demonstrate effective consultation with and participation by the workforce in the preparation of safety cases.²⁶

2.28 Chapter 3 of this report examines the development and accessibility of safety cases for offshore facilities in more detail.

Compliance and enforcement measures

2.29 In 2011 the Commonwealth Government undertook a review of compliance and enforcement measures in the OPGGS Act and associated regulations. The review concluded that the enforcement mechanisms, sanctions and penalties available at that time needed to be more effective and meaningful deterrents

²² Department of Industry, Innovation and Science, *Submission 7*, p. 20.

²³ Department of Industry, Innovation and Science, *Submission 7*, p. 20.

²⁴ APPEA, *Submission 8*, p. 22.

²⁵ NOPSEMA, *Submission 5*, p. 25.

²⁶ Department of Industry, Innovation and Science, *Submission 7*, p. 4.

against non-compliance. As a result, a broader range of graduated enforcement tools for NOPSEMA to use were introduced, commencing on 1 October 2014.²⁷

2.30 The NOPSEMA submission described the new compliance measures for the committee:

The resulting amendments to the OPGGS Act (introduced through the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures) Act 2013*) included:

- the introduction of a civil penalty regime
- increases to the criminal penalty levels under the OPGGS Act, consistent with major hazard industry legislation penalties, including custodial penalties, for OHS offences under the OPGGS Act were harmonised with, or made greater (as appropriate) than the *Commonwealth Work Health and Safety Act 2011*, to reflect the greater consequences in a major hazard industry
- NOPSEMA's inspectorate powers were redrafted to provide greater clarity and consistency between the various powers of each category of inspector and to remove unnecessary procedural requirements that impeded NOPSEMA's ability to effectively perform its enforcement functions.

Further enforcement measures were introduced through the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures No. 2) Act 2013* which included:

- the introduction of alternative enforcement mechanisms (infringement notice, daily penalties for continuing offences and civil penalty provisions, injunctions and adverse publicity orders) into the offshore petroleum regulatory regime
- requiring NOPSEMA to publish on its website improvement and prohibition notices issued by NOPSEMA's inspectors under schedule 3 of the OPGGS Act [which relates to OHS matters]
- enabling matters relating to the service of documents under the OPGGS Act or legislative instruments to be provided for in regulations under the OPGGS Act. Specifically, this allowed for documents to be served by electronic means which we deemed to be particularly important in situations of potential emergency, where notices were issues under Schedule 3 of the OPGGS Act.²⁸

2.31 Chapter 4 of this report examines the efficacy with which NOPSEMA utilises the compliance and enforcement measures available to it.

²⁷ NOPSEMA, *Submission 5*, p. 11.

²⁸ NOPSEMA, *Submission 5*, pp. 11–12.

Chapter 3

Adequacy of WHS rights and protections for offshore workers

- 3.1 This chapter examines the evidence received during the inquiry which demonstrates that Australian workers' work health and safety (WHS) rights and protections in the offshore petroleum industry are inferior to those of onshore workers.
- 3.2 The key issues contributing to this situation include:
- the challenges in attracting and retaining Health and Safety Representatives on offshore platforms;
 - the development and accessibility of safety cases for offshore platforms;
 - the current rights of entry to offshore platforms for WHS purposes; and
 - the current training and certification requirements for workers performing high risk work.
- 3.3 This chapter will examine each of these issues in turn.

Health and Safety Representatives

- 3.4 Health and Safety Representatives (HSRs) are workers within the offshore oil and gas industry who have been elected or have volunteered to represent a designated work group. Their crucial role in improving WHS was widely recognised by inquiry participants. For instance, according to NOPSEMA, HSRs:
- ...contribute to improving the safety of the offshore workforce by representing their fellow workers, understanding their health and safety concerns and assisting them to participate in decisions that affect them.¹
- 3.5 The Department of Industry, Innovation and Science (the department) also recognised the important role HSRs play in representing the workforce and providing views and concerns on health and safety to employers:
- HSRs can make a real difference in having health and safety issues addressed and help achieve better health and safety outcomes.²
- 3.6 Similarly the Australian Council of Trade Unions (ACTU) submitted that 'HSRs play a critical role in securing work health and safety.'³ The ACTU

¹ NOPSEMA, *Health and Safety Representatives*, www.nopsema.gov.au/safety/health-and-safety-representatives/ (accessed 26 July 2018).

² Department of Industry, Innovation and Science, answers to questions on notice, 11 July 2018 (received 30 July 2018), p. 2.

³ Australian Council of Trade Unions, *Submission 11*, p. 6.

submission also contained references to several Australian and international studies which demonstrate the benefits of worker involvement in WHS and in particular a 2007 UK Government report which 'concluded that workplace HSRs caused cost savings of between £136m and £371m (in 2004 prices) due to around 161,000 to 241,000 fewer working days lost in 2004.'⁴

Challenges in attracting and retaining HSRs

3.7 The Australian Petroleum Production and Exploration Association (APPEA) informed the committee that feedback from its member companies indicated that attracting and retaining HSRs did not appear to be a prevalent issue in the industry. It noted that while contractor turn-over could present challenges for retaining HSRs, there did not appear to be a challenge in attracting individuals to the positions.⁵

3.8 APPEA noted:

Companies have reported that HSRs indicate they generally feel supported by their colleague and management to undertake their role. The work force and HSRs have reached a level of confidence in processes and culture that they feel empowered to raise issues with management.⁶

3.9 APPEA also stated that its member companies 'indicated a strong level of support for HSRs, including providing avenues of communication through to the most senior levels of companies.'⁷

3.10 However, the committee received evidence from other inquiry submitters that directly contradicted APPEA's assertions. This evidence identifies that there are in fact significant difficulties in attracting and retaining HSRs, stemming from casual, insecure employment conditions coupled with a lack of support from employers and the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA).

3.11 In regard to the prevalence of contractor and other insecure employment arrangements, the committee heard from Mr Glenn McLaren of the Western Australia branch of the Australian Manufacturing Workers' Union (AMWU) that a significant component of the workforce on offshore facilities were contractors:

Senator O'NEILL: How many of the workforce are contractors now?

Mr McLaren: I would say 95 percent-plus.

Senator O'NEILL: Tell me: how many people are on one of these rigs?

⁴ Australian Council of Trade Unions, *Submission 11*, p. 2.

⁵ APPEA, *Submission 8*, p. 19.

⁶ APPEA, *Submission 8*, p. 19.

⁷ APPEA, *Submission 8*, p. 19.

Mr McLaren: Currently, on the Prelude facility, it has bedspace for about 800 people. Of those 800 people, I would say probably over 700 were contractors—

Senator O'NEILL: And proportionally that would be similar across the other offshore sites?

Mr McLaren: That was during the installation commissioning stage of that project—

Senator O'NEILL: And now we're moving into—

Mr McLaren: Operational.

Senator O'NEILL: Yes. What's the scale there—what are we talking about?

Mr McLaren: Production and operation: I would still say probably 90 per cent contract.⁸

- 3.12 Mr McLaren also stated that regardless of the stage a facility was at, the ratio of direct employees to contractors did not change:

I don't think the ratio changes. You've got the OIM [offshore installation manager] and the senior management, the senior engineer, electrical engineer—they're company people; everyone else underneath is contract.⁹

- 3.13 The ACTU characterised the impact of the nexus between insecure employment and the lack of support for workers from employers and NOPSEMA as follows:

The effect of insecure work on attracting and retaining HSRs is that workers are fearful that taking on the role of HSR, or being active in their role as HSR, will threaten their job security...

Raising an issue in the workplace is commonly known among workers in the industry as 'booking a window seat on the next flight out of here'; meaning that the worker will be removed from the roster or the worksite for speaking up.¹⁰

- 3.14 Mr McLaren gave an overview of the situation in Western Australia that tallied with the ACTU assessment:

The last dozen or so years have seen rapid expansion in growth in offshore oil and gas and the hydrocarbons industry in Western Australia, as we all know, which is a significant investment in Australia. It has also seen the involvement of a large number of third-party contractors in that sector who have been engaged by some of the previous witnesses [offshore oil and gas companies] to install or complete their projects. We would estimate that well over 90 per cent of those employees of the third-party contractors are in precarious work. They are casuals. Being casual—and

⁸ Mr Glenn McLaren, Assistant State Secretary, Western Australian Branch, Australian Manufacturing Workers' Union, *Proof Committee Hansard*, 13 June 2018, p. 33.

⁹ Mr Glenn McLaren, Assistant State Secretary, Western Australian Branch, Australian Manufacturing Workers' Union, *Proof Committee Hansard*, 13 June 2018, p. 33.

¹⁰ Australian Council of Trade Unions, *Submission 11*, p. 16.

transient casuals from time to time—leads to a culture of fear of reporting and of raising one's head above the parapet.¹¹

- 3.15 Mr Jeffery Sharp, an organiser for the Victorian branch of the Australian Workers' Union (AWU) put forward an example demonstrating the culture of fear arising out of insecure work:

HSRs are a really big issue offshore. People are not prepared to stick their hands up... we recently had a meeting with an offshore contractor with about 160 people and we spent half an hour trying to encourage them to take on a HSR role. We were extremely unsuccessful. It was pretty poor—not so much on the guys, but on the fact that that threat lies there. If they're sticking their head out of the trench, so to speak, it endangers them and their future employment because the workforce is mainly casual.¹²

- 3.16 Mr Dane Coleman, a former offshore HSR with eight years' experience in the offshore petroleum industry, made similar observations regarding the tenuous position of HSRs:

We're seeing an ever-growing increase in the casualisation and precarious nature of employment through labour hire contracting. The people concerned about safety issues who are willing to speak up seem to be getting black-banned, which is effectively removing these people from their positions in the workforce... The reporting culture of incidents and near misses by a casualised workforce is heavily reduced due to the simple fact that an employee can be terminated without reason for simply following workplace rules.¹³

- 3.17 Mr Coleman also described the victimisation of workers who raise work health and safety concerns:

The protections around the company's own employees are different to the protections around the contract maintenance workforce, which is a major part of the workforce. So you've got the majority of the workforce on a casualised contract basis and, because of the casualised and precarious nature of that work, they are victimised. People who are seen to be speaking up are victimised and they are to not return to the [offshore] platforms—as easily as saying, 'Well, here's a problem; he's bringing up issues that are costing me money over productivity. We don't want him back on this facility.'¹⁴

- 3.18 The committee also received disturbing evidence about a restricted industry database, the Employment Relations Management System (ERMS), used to check people's participation as HSRs and their record around raising safety concerns on a facility. Mr McLaren explained his understanding of the ERMS:

¹¹ Mr Glenn McLaren, Assistant State Secretary, Western Australian Branch, Australian Manufacturing Workers' Union, *Proof Committee Hansard*, 13 June 2018, p. 23.

¹² Mr Jeffery Sharp, Organiser, Victorian Branch of Australian Workers' Union, *Proof Committee Hansard*, 10 July 2018, p. 3.

¹³ Mr Dane Coleman, private capacity, *Proof Committee Hansard*, 10 July 2018, p. 7.

¹⁴ Mr Dane Coleman, private capacity, *Proof Committee Hansard*, 10 July 2018, p. 5.

ERMS has been around for over 10 years. It was developed by for local chamber of commerce and industry by a company called Bright People Technologies and is still in use today. Yes, it talks about travel management plans and competencies, but it also has an employability rating scale—from 'would re-employ' through to 'would not re-employ'.¹⁵

3.19 When asked about the ERMS, three industry representatives (Mr Niall Myles, Senior Vice President of the Australia Operating Unit for Woodside Energy, Mr Christopher Ross, Health and Safety Team Lead of Operations for Chevron Australia, and Mr Graham Salmond, General Manager of Australian Petroleum for BHP Billiton) stated that they had not heard of the database.¹⁶

3.20 The Chief Executive of APPEA, Dr Malcolm Roberts, stated that he was aware of a database and detailed that his understanding was that it was 'used by some operators as a travel booking system and maybe extended to capturing some competency in induction training information used during major capital projects'.¹⁷

3.21 The committee sought further clarification on the existence of such a database from APPEA. In an answer to a question notice, APPEA stated that the system is the 'Electronic Resource Management System', also known as 'Enable', which is operated by Bright People Technologies Pty Ltd:

Enable is used by Asset Owners (predominately Operators) to provide assurance that the workforces coming to site are properly qualified and inducted to perform the work they are coming to site to do.

Once these compliance requirements are met, mobilisation activities including, but not limited to, flight and camp bookings are managed by the software.

Asset Owners do not have access to other Asset Owners data, similarly, Contractors do not have access to other Contractors data.

Each Asset Owner only has access to the records of personal who have been submitted for mobilisation by a Contractor with a contract to provide services to that Asset Owner.¹⁸

3.22 APPEA emphasised that each individual who has been mobilised via Enable had a right to access their information under the *Privacy Act 1988*, and that Bright People Technologies had established a process to provide this service.¹⁹

¹⁵ See for example Mr Glenn McLaren, Assistant State Secretary, Western Australian Branch, Australian Manufacturing Workers' Union, *Proof Committee Hansard*, 13 June 2018, p. 23.

¹⁶ See *Proof Committee Hansard*, 13 June 2018, p. 12.

¹⁷ Dr Malcolm Roberts, Chief Executive, APPEA, *Proof Committee Hansard*, 13 June 2018, p. 12.

¹⁸ APPEA, answers to questions on notice, 13 June 2018, (received 8 August 2018), p. 1.

¹⁹ APPEA, answers to questions on notice, 13 June 2018, (received 8 August 2018), p. 1.

Legislative disadvantages for HSRs

3.23 The committee was informed offshore HSRs are disadvantaged in terms of their protections and rights under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act), relative to onshore HSRs who are covered by the *Work Health and Safety Act 2011* (WHS Act).²⁰

3.24 The ACTU submission emphasised the arbitrary nature of the differences between the two acts, stating:

HSRs play a critical role in securing work health and safety. There is no objective justification for why HSRs in the offshore petroleum industry are not afforded the same rights, powers and entitlements as HSRs under the national uniform system [the WHS Act].²¹

3.25 WorkSafe Victoria also pointed out the incongruity of offshore workers being afforded lesser protections than their onshore counterparts. As Mr Michael Coffey, Head of Hazardous Industries and Industry Practice for WorkSafe Victoria stated:

There is no valid reason for any disparity between the health and safety standards that apply to workers based onshore or offshore. Workers who work on offshore sites should be afforded the same protections and representation as those on land.²²

3.26 In addition to this, the Victorian Government indicated its support for legislative amendments to improve equity between offshore and onshore workers:

Victoria supports appropriate amendments to the OPGGS Act to improve consistency with the model WHS regulatory framework, where such alignment will improve standards of OHS at offshore petroleum and gas storage facilities.²³

3.27 The ACTU submission provided a long list of deficiencies in the OPGGS Act compared to the WHS Act. For example:

- (a) The WHS Act allows for workers to autonomously determine the manner in which they elect an HSR. The OPGGS Act does not.
- (b) The WHS Act requires that an HSR be a member of the health and safety committee, if he or she consents. The OPGGS Act does not contain an equivalent provision.
- (c) The WHS Act requires that the person conducting the business or undertaking (PCBU) prepare and maintain a list of HSRs for each group of workers carrying out work. The list must be displayed in a manner that is

²⁰ Australian Council of Trade Unions, *Submission 11*, p. 6.

²¹ Australian Council of Trade Unions, *Submission 11*, p. 6.

²² Mr Michael Coffey, Head of Hazardous Industries and Industry Practice, WorkSafe Victoria, *Proof Committee Hansard*, 11 July 2018, p. 49.

²³ Victorian Government, *Submission 15*, p. 1.

readily accessible to the relevant workers, and must also be provided to the regulator as soon as practicable after it is prepared. While the OPGGS Act requires the operator of a facility to prepare and maintain such a list and ensure that it is available to the workforce and inspectors, there is no requirement for it to be provided to NOPSEMA.

- (d) The Work Health and Safety Regulations 2011 (WHS Regulations) entitle an HSR to an initial training course in WHS of up to five days, and up to one day's refresher training each year. The OPGGS Act contains no equivalent prescription for the period of initial or refresher training.
- (e) The WHS Act allows an HSR to choose the approved HSR training course that they undertake (in consultation with the PCBU), and requires the PCBU pay the course fees and other reasonable costs associated with attendance at the training. The OPGGS Act contains no equivalent provisions allowing an HSR to choose their course, nor requiring the operator to cover reasonable costs.
- (f) Section 70(1) of the WHS Act requires that the PCBU provide an HSR with certain rights and benefits to assist and support them in performing their role. The equivalent provision of the OPGGS Act, Section 40(1), is comparatively deficient in some respects. For example, s 70(1) of the WHS Act provides for facilities and other assistance afforded to HSRs, which s 40(1) of the OPGGS Act does not contain.
- (g) Under the WHS Act, only a court can disqualify an HSR. Under the OPGGS Act, NOPSEMA may disqualify an HSR. Although under the WHS Act a court can disqualify an HSR indefinitely, under the OPGGS Act, NOPSEMA can only disqualify an HSR for a period not exceeding five years.²⁴

3.28 In regard to point (a), the department sought to correct information provided by the ACTU and the Victorian Government:

...they stated that the OPGGS Act does not allow for workers to autonomously determine the manner in which they elect an HSR. This claim is incorrect. The OPGGS regime does not preclude workers from autonomously determining the manner in which they elect their HSR. Instead, the [OPGGS] Act allows for the workforce to control the process for selecting an HSR for a designated work group...²⁵

3.29 Relating to points (d) and (e), the Victorian Government also drew the committee's attention to the differences between the WHS Act and OPGGS Act regarding the selection of HSRs and the support to be provided in terms of training course choices and costs. It stated:

Workers should be entitled and encouraged to be represented in relation to health and safety issues. The model WHS Act and the OHS Act

²⁴ Australian Council of Trade Unions, *Submission 11*, pp. 6–7.

²⁵ Department of Industry, Innovation and Science, *Submission 7.1*, p. 4.

[Occupational Health and Safety Act 2004 (Vic)] provide a more robust framework for employee participation and representation. Victoria supports further alignment of the OPGGS Act with the model WHS Act participation and representation provisions.²⁶

- 3.30 In regard to the training arrangements for offshore HSRs under the OPGGS Act, the committee heard from Mr Troy Carter, a member of the AMWU, who outlined his experience:

As a HSR who worked offshore, I was not able to choose a HSR training course; I was only provided with one option, which was with Federation Training. This was carried out at the ExxonMobil training facility in Longford, where our teacher spend more time telling us stories and showing us personal videos that explaining our rights as HSRs, showing us how to read and interpret the act or explaining what to do should we need to challenge the employer on failing to provide a safe, as low [risk] as reasonably practicable, workplace. If I was an onshore worker in Victoria, under section 67(3) of the OH&S Act [Occupational Health and Safety Act 2004 (Vic)] and section 72 of the model Work Health and Safety Act, I would have had the right to choose, in consultation with my employer, who I would like to complete my training with. The right to choose is an important democratic right, which is denied to us and is out of step with all other H&S regimes.²⁷

- 3.31 NOPSEMA noted that although the OPGGS Act does not prescribe that the operator or employer must pay for OHS training for HSRs, it does mandate that the operator or employer must permit the HSR to take time off work to attend training, without loss of remuneration or other entitlements. On this matter, NOPSEMA also stated that to the best of its knowledge, in the majority of instances, employers of HSRs pay for OHS training.²⁸

- 3.32 Mr Christopher Ross, Health and Safety Team Lead for Chevron Australia, who was appearing as part of the APPEA panel advised:

Industry has to provide the time for the HSRs to complete that [HSR] training, but, in most cases, we fund that training too.²⁹

- 3.33 In relation to point (c), during the inquiry the committee received evidence that NOPSEMA did not keep a register of HSRs on offshore facilities. The AWU observed:

Our members understand that the NOPSEMA also does not keep a consolidated list of all HSRs currently working in the industry, and by implication a list of HSRs on each site, contact details, and other generic

²⁶ Victorian Government, *Submission 15*, pp. 3–4.

²⁷ Mr Troy Carter, Member, Australian Manufacturing Workers' Union, *Proof Committee Hansard*, 10 July 2018, p. 15.

²⁸ NOPSEMA, *Submission 5*, p. 28.

²⁹ Mr Christopher Ross, Health and Safety Team Lead, Operations, Chevron Australia, *Proof Committee Hansard*, 13 June 2018, p. 3.

information. For this reason there is limited scope for the NOPSEMA to oversee any potential behaviour from employers in favouring an HSR that will tolerate [WHS] breaches in exchange for job security.³⁰

- 3.34 Mr McLaren of the AMWU also commented that NOPSEMA does not keep a consolidated list of all offshore HSRs:

Something that has always struck me as absolutely bizarre is that NOPSEMA is one of the only regulators who does not capture who the HSRs actually are—when their term of office commenced, whether they were elected by the workforce, when their period of office starts and finishes, when they did training, who they do their training with or any direct communications with HSRs. When NOPSEMA attends a facility to conduct an inspection, they have to ask the employer who the HSRs are. The HSRs are the eyes and ears of the regulator on the shop floor and so they should be. But NOPSEMA does not do that. The only thing NOPSEMA does in relation to HSRs is accredit the registered training organisation that delivers the HSR training. It doesn't even have an email database to communicate directly with them [HSRs] about emerging trends or findings. I find that extremely disturbing.³¹

- 3.35 NOPSEMA confirmed that it does not have a register of HSRs. It did however note that each facility operators is required to maintain a list of all HSRs which NOPSEMA inspects when it conducts an inspection at the facility.³²

- 3.36 The department provided the following information on the legislative requirements relevant to this matter:

Under the OPGGS Act, the operators of a facility must prepare and keep up to date a list of all the HSRs of a designated work group and ensure the list is available for inspection, at all reasonable times, by the members of the workforce at that facility and NOPSEMA inspectors (Schedule 3, Clause 27). While the OPGGS regime does not require the operator to provide updated lists of HSRs to the regulator (like the WHS Act does), the department notes that the model WHS laws were amended on 21 March 2016, with a focus on reducing regulatory burden and streamlining or simplifying without compromising safety outcomes. As part of this, the Council of Australian Governments WHS ministers agreed to remove the requirement under section 74 of the Model Work Health and Safety Bill for persons conducting the business or undertaking to provide a list of HSRs to the regulator. The OPGGS Act is thus now consistent with the WHS model laws in this respect.³³

³⁰ Australian Workers' Union, *Submission 14*, pp. 2–3.

³¹ Mr Glenn McLaren, Assistant State Secretary, Western Australia Branch, Australian Manufacturing Workers' Union, *Proof Committee Hansard*, 13 June 2018, p. 24.

³² Mr Stuart Smith, Chief Executive Officer, NOPSEMA, *Proof Committee Hansard*, 11 July 2018, p. 3.

³³ Department of Industry, Innovation and Science, answers to questions on notice, 11 July 2018 (received 30 July 2018), p. 4.

Committee view

- 3.37 The committee is greatly concerned that workers' WHS rights and protections in the offshore petroleum industry are inferior to those of onshore workers. In an industry that is inherently hazardous and remote such as offshore petroleum, it is highly perverse that inferior WHS rights and protections are afforded to workers. At the very least workers in the offshore petroleum industry should be afforded the same WHS rights and protections as other Australians.
- 3.38 To that end, the committee is recommending a number of legislative changes designed to bring the rights and protections for offshore workers in line with those afforded to onshore workers.
- 3.39 One area where this inconsistency is particularly acute is the involvement and treatment of HSRs. In this respect, the committee observes there is a significant gap between HSR arrangements as claimed by industry participants, and the reality of the situation as experienced by workers on the offshore facilities.
- 3.40 The committee is of the strong opinion that the workplace culture generated by insecure work makes the need for adequate and effective support and protection for HSRs absolutely critical. In addition to the recommendations contained in this chapter, Chapter 4 of the report highlights and makes recommendations in regard to serious concerns about NOPSEMA's approach to engaging and supporting HSRs.
- 3.41 The committee acknowledges the evidence from the department that the model WHS Act no longer requires for persons conducting a business or undertaking to provide of list of HSRs to the regulator.³⁴
- 3.42 However, in light of the evidence received during the inquiry indicating a distinct lack of engagement between NOPSEMA and offshore HSRs, the committee is convinced that a centralised HSR register managed by NOPSEMA is warranted. Given that operators are already required to maintain and display lists of HSRs on their facilities, it would not be an onerous undertaking for these lists to be provided to NOPSEMA.
- 3.43 The committee also notes that the department is currently undertaking a review of the offshore safety regulatory regime which will consider all safety issues relevant to the Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009 and the Schedule 3 of the OPGGS Act, which will include the HSR framework and right of entry provisions for work health and safety

³⁴ Department of Industry, Innovation and Science, answers to questions on notice, 11 July 2018 (received 30 July 2018), p. 4.

purposes.³⁵ The committee is supportive of this initiative and looks forward to following the progress of the review which is due to report in mid-2019.

Recommendation 1

3.44 The committee recommends that the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* be amended to provide for consistency with the *Work Health and Safety Act 2011* in regard to the rights, powers and entitlements of Health and Safety Representatives (HSRs), including but not limited to matters identified in paragraph 3.27 of this report.

Recommendation 2

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

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

Development and accessibility of safety cases

3.46 During the inquiry the development and accessibility of safety cases was raised as an issue requiring regulatory improvement.

3.47 As outlined in Chapter 2, an offshore facility cannot be constructed, installed, operated, modified or decommissioned without a safety case in force for that stage in the life of the facility.³⁶

3.48 NOPSEMA stated that while preparing a safety case, operators must ensure that there is effective consultation with, and participation by, members of the workforce. It also stated that when assessing a safety case, it takes into consideration the extent to which this has been demonstrated.³⁷

3.49 The ACTU emphasised the importance of workforce understanding and involvement in a safety case in order to ensure risk is properly managed and facilitate continuous improvement in health and safety outcomes.³⁸

³⁵ Department of Industry, Innovation and Science, answers to questions on notice, 11 July 2018 (received 30 July 2018), p. 2.

³⁶ APPEA, *Submission 8*, p. 22.

³⁷ NOPSEMA, *Submission 5*, p. 25.

³⁸ Australian Council of Trade Unions, *Submission 11*, p. 3.

- 3.50 The department also put forward a similar argument for why the involvement of the workforce is 'essential' in the development of a safety case:

Workforce involvement is necessary so they [workers] are able to arrive at informed opinions about the risks and hazards to which they may be exposed, and in turn, means they are more likely to do the right thing regarding safety because they know and understand why it is required.³⁹

- 3.51 However, the ACTU raised concerns that in some situations, adequate consultation was not undertaken with the actual workforce employed during the operation of the facility. As Mr Michael Borowick, ACTU Assistant Secretary explained:

To set up a facility in Australia, you need a safety case. It's done at the very beginning of the process when very few hands-on workers are yet employed. That's done by contractors typically, later. So the safety case is developed and approved with almost no workforce involvement. It's only able to be reviewed after a five-year period, and of course that's beyond the life of most offshore petroleum facilities in Australia. As I said, a review can't be triggered by a HSR. It's almost a recipe for self-regulation; that's what it amounts to. I understand it's an important document. We're not opposed to it, but it needs drastic reform if it's to continue.⁴⁰

- 3.52 NOPSEMA offered the committee the following information 'to correct the claims made within the ACTU statement':

For new facilities, NOPSEMA can advise that for the facilities most recently constructed in the Australian offshore petroleum regime, members of the workforce employed onboard those facilities were also employed during the building stages in Korea. Members of the workforce had demonstrably been consulted for the various safety cases submitted to NOPSEMA for assessment well after the majority of the workforce had been employed. The evidence for workforce engagement provided with the safety case submissions demonstrated that these engagement activities included technicians at the 'shop floor' level.

- 3.53 Regarding the revision of safety cases, NOPSEMA submitted:

For existing facilities, there are a range of triggers for the revision of a safety case that must be submitted to NOPSEMA which are broadly characterised as 'change of circumstances or operations' (Refer Regulation 30 of the OPGGS (Safety) Regulations. Since 2005 a total of 1,239 safety case submissions have been made to NOPSEMA covering 356 facilities (pipeline facilities excluded). Revised safety case submission due to changes in circumstances or operations account for 76% (799) of these revised safety case submissions (1,051) whereas 5-year revisions only account for 18.5% (194). In the same period 188 new safety case

³⁹ Department of Industry, Innovation and Science, *Submission 7*, p. 20.

⁴⁰ Mr Michael Borowick, Assistant Secretary, Australian Council of Trade Unions, *Proof Committee Hansard*, 11 July 2018, p. 34.

submissions were also made and 34 revisions were requested by NOPSEMA.⁴¹

- 3.54 The committee put these concerns to industry representatives, noting that it had received evidence that the development of a safety case at the beginning of a project only involves a limited number of people and did not involve people representing the bulk of the workforce that would be working under those conditions. Mr Christopher Ross of Chevron Australia responded:

It's not entirely accurate to say that the workforce isn't involved in the development of an initial safety case. We have to understand that there are multiple safety cases that would exist in the lifetime of the facility. Quite often the first safety case that is drafted is around the installation and construction of that facility and at that point the management system that is described within that safety case speaks largely to the health and safety risks of carrying out that black trade type of work, of which the bulk of the documentation within the safety case around that is workforce delivered or written information, whether it be safe work practices, procedures or things like that. During the course of installing and constructing and commissioning these facilities you would be at the same time writing your start-up and operations safety case, and at that point in time that's when you're talking about the majority of your major accident events, and at the same time you have already recruited your operations workforce and are training them ready to operate that facility. So they are in fact quite heavily involved in the longest applicable safety case that applies to the facility.⁴²

- 3.55 To address its concerns, the ACTU recommended that the relevant unions be involved in the development of the initial case as the representative of the workforce.⁴³
- 3.56 Another issue raised was the accessibility of the NOPSEMA-approved safety case. The committee heard that safety cases on offshore facilities were often kept in a manager's office, or in the radio operator's room; locations where HSRs or other employees must advise the manager they wish to look at the safety case.⁴⁴
- 3.57 When queried directly on whether HSRs have access to the safety case on an offshore facility, Mr Shane Roulstone, National Organiser for the AWU answered:

The short answer is: technically, yes, but you'd be a very brave health and safety rep in the offshore industry to go and see the safety case. You'd have

⁴¹ NOPSEMA, answers to questions on notice, 11 July 2018 (received 25 July 2018), p. 11.

⁴² Mr Christopher Ross, Health and Safety Team Lead, Operations, Chevron Australia, *Proof Committee Hansard*, 13 June 2018, p. 9.

⁴³ Australian Council of Trade Unions, *Submission 11*, p. 5.

⁴⁴ Mr Shane Roulstone, National Organiser, Australian Workers' Union, *Proof Committee Hansard*, 11 July 2018, p. 29. See also Mr Troy Carter, Member, Australian Manufacturing Workers' Union, *Proof Committee Hansard*, 10 July 2018, p. 20.

to speak to the shift manager on duty, and he would ask you why. And then if you checked the safety case and you raised a safety concern, you would not be required back if you were contract employee. If you were a full-time employee, you would be highly likely to be targeted and managed appropriately.⁴⁵

3.58 The AWU written submission also provided evidence of these concerns:

In many instances, HSRs cannot adequately recognise a breach on an offshore facility without reference to the site's safety case. The process to review safety cases at most facilities is formal and require oversight from management, as well as the logging of personal that access the safety case. As such, there is no unidentifiable access to a safety case by HSRs, which, alongside the predictable nature of a NOPSEMA inspection, exacerbates fear of persecution and reduces the capability of HSRs to conduct their job effectively.⁴⁶

3.59 To alleviate this fear of victimisation and persecution, the ACTU suggested that a copy of the safety case should be available to each facility's HSRs, including by remote online access.⁴⁷

Committee view

3.60 The committee sees merit in requiring consultation with the relevant unions in the development of the initial safety case for a facility, as well as requiring a review of the safety case to take place once the operational workforce is hired. The committee is of the opinion that such requirements would ensure meaningful consultation around safety cases, create workforces better informed about safety cases, and facilitate improved health and safety outcomes for all offshore stakeholders.

3.61 The committee is concerned by the evidence it received that indicates that HSRs are wary of accessing safety cases on offshore facilities for fear of being questioned or persecuted by management. It is of the strong view that such a fear is detrimental to achieving positive health and safety outcomes. As such, the committee sees merit in requiring that a copy of the safety case should be genuinely accessible to HSRs, including by remote online access.

Recommendation 3

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

- a requirement for consultation with the relevant unions in the development of the initial safety case;**

⁴⁵ Mr Shane Roulstone, National Organiser, Australian Workers' Union, *Proof Committee Hansard*, 11 July 2018, p. 29.

⁴⁶ Australian Workers' Union, *Submission 14*, p. 3.

⁴⁷ Australian Council of Trade Unions, *Submission 11*, p. 4.

- a requirement of a review of the safety case to take place with the workforce once hired (and before the commencement of operations, where possible);
- a requirement for HSRs to be provided with a copy of the safety case; including by remote online access; and
- an ability for an HSR to trigger a review and revision of the safety case in certain circumstances.

Right of entry to offshore platforms for work health and safety purposes

3.63 Part 7 of the WHS Act contains the work health and safety entry permit system for workplaces. This provides union officials with the ability to enter a workplace to inquire into safety issues and consult with and advise workers on WHS matters in certain circumstances.⁴⁸

3.64 The OPGGS Act does not establish equivalent right of entry arrangements in relation to offshore petroleum and gas storage facilities.⁴⁹

3.65 Several submitters, including the ACTU, Victorian Government, the AMWU and the AWU observed that there was no justification for offshore workers to be treated differently from onshore workers under the national uniform system on this issue.

3.66 In this regard the submission from the Victorian Government stated:

Victoria recognises the positive role that employee organisations play in supporting employees and employers to identify and resolve OHS issues. Victoria supports increased alignment between the OPGGS framework and the model WHS framework in regards to entry by authorised representatives of employee organisations.⁵⁰

3.67 The ACTU noted that the WHS Act right of entry provisions cannot be directly transposed to the offshore petroleum industry due to the remote locations of the work. It emphasised that parts of the WHS Act right of entry provisions would need to be modified for the offshore industry:

Right of entry provisions in the OPGGS Act will need to require the occupier to facilitate transport of the permit holder to the facility for right of entry purposes. Part 3-4, Division 7 of the *Fair Work Act 2009 (Cth)* provides an example of the way in which this requirement might operate, although cost has posed a barrier to the effectiveness of this system. The cost issue could be avoided in the offshore petroleum industry context

⁴⁸ Department of Industry, Innovation and Science, answers to questions on notice, 11 July 2018 (received 30 July 2018), p. 3.

⁴⁹ Department of Industry, Innovation and Science, answers to questions on notice, 11 July 2018 (received 30 July 2018), p. 3.

⁵⁰ Victorian Government, *Submission 15*, p. 4.

because the cost of transport should be recovered from industry by the levy revenue to the NOPSEMA under the 'user pays' system.⁵¹

3.68 The ACTU also flagged that under the WHS Act, a permit holder may only enter a workplace for the purpose of inquiring into a suspected contravention of the WHS Act. In light of the difficulties of accessing remote offshore work locations, the ACTU suggested this limitation would need to be removed in a right of entry system implemented in the OPGGS Act. It recommended that the system be designed so that a permit holder could investigate multiple suspected contraventions in one entry, including additional contraventions identified during the course of the entry.⁵²

3.69 NOPSEMA indicated to the committee that it was not opposed to a specific class of person accessing a facility, provided all safety requirements were met:

As the regulator, NOPSEMA does not have a view on any specific class of person gaining access to a facility, subject to that person meeting all safety requirements set by the industry operator and that the person does not unreasonably increase the safety risk to an aspect of themselves, offshore workers or the facility. Where arrangements for union access to offshore facilities exist in other international jurisdictions such as the regulatory model in Norway, the regulator is not typically involved in decision-making on access to offshore facilities.⁵³

3.70 The ACTU submission also pointed out that access to offshore facilities is part of WHS regulation in other jurisdictions internationally.⁵⁴

Committee view

3.71 The committee is of the opinion that there is no reason why the OPGGS Act should not establish a suitably modified right of entry framework for offshore petroleum facilities based on the model provided for onshore workers in the WHS Act.

3.72 The committee notes that NOPSEMA does not take issue with a specific class of person gaining access to a facility, providing all safety requirements are met and the person does not unreasonably increase the safety risk to themselves, the offshore workers or the facility.

Recommendation 4

3.73 The committee recommends that a right of entry for work health and safety purposes be established under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, requiring:

⁵¹ Australian Council of Trade Unions, *Submission 11*, p. 8.

⁵² Australian Council of Trade Unions, *Submission 11*, p. 8.

⁵³ NOPSEMA, *Submission 5*, p. 29.

⁵⁴ Australian Council of Trade Unions, *Submission 11*, p. 7.

- the operator of the facility to, as soon as possible, facilitate transport for the permit holder for right of entry purposes;
- the cost of transport for the permit holder for right of entry purposes to be recovered from industry by a levy revenue to NOPSEMA; and
- an ability for the permit holder to exercise entry for the purposes of inquiring into multiple suspected contraventions of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, including additional contraventions identified during the course of the entry.

Training and certification for high risk work

3.74 Submitters to the inquiry raised the issue of lack of, or deficiencies in training and certification for high risk work required under the OPGGS regime.

3.75 The ACTU advised the committee that in the majority of Australian work health and safety jurisdictions, the operation of specific high risk work is governed by a system of certification or licensing designed to minimise the risk of adverse consequences associated with a lack of competency. In the broader WHS Act this system requires completion of a VET course to obtain the requisite licence. However, the 'permit to work' system in the OPGGS Regulations is 'far less rigorous' and does not require certification or licensing:

It [the OPGGS regime] does not require certification or licensing, but simply requires that the 'safety case for a facility must provide for the operator of the facility to establish and maintain a documented system of coordinating and controlling the safe performance of all work activities of members of the workforce at the facility'.⁵⁵

3.76 The Victorian Government identified the same issue:

Unlike model WHS and OHS regulatory frameworks, the OPGGS framework does not provide for a high risk work licensing scheme. There are no requirements to use licensed operators for any high risk equipment at offshore facilities. This effectively means that workers at offshore petroleum facilities are able to operate equipment without a licence, such as a forklift, which would ordinarily require a high risk work licence under model WHS or OHS regulator frameworks.⁵⁶

3.77 Similarly, the AMWU noted:

There is no high-risk work licensing for high-risk work offshore, whether that be a rigger, a crane operator and so on. If that same person was to work on land, they would need to have a high-risk license.⁵⁷

⁵⁵ Australian Council of Trade Unions, *Submission 11*, p. 7.

⁵⁶ Victorian Government, *Submission 15*, p. 2.

⁵⁷ Mr Glenn McLaren, Assistant State Secretary, Western Australian Branch, Australian Manufacturing Workers' Union, *Proof Committee Hansard*, 13 June 2018, p. 24.

- 3.78 Mr Peter Mooney, State Organiser for the Victorian branch of the Electrical Trades Union (ETU) provided further detail on this issue from his personal experience:

There's not a standard in the offshore industry to guarantee that people have the necessary training and skills. One of the things that I would like to see come out of this [inquiry] and be added to the act [OPGGS Act] is that there be a strong emphasis on people's qualifications. We're seeing people in the electrical and instrument trade in particular who go off and do what we call a dual-trade. They go off and do a course that goes for about eight weeks in relation to instrumentation, and they think they're qualified for instrumentation. Most apprentices who take on instrumentation do a four-year apprenticeship, and you need to meet certain criteria. These people don't have the skills to calibrate important instrumentation that ensures the operation of the platform through those things. We're seeing people with skills who would not be allowed to operate onshore but are allowed to operate offshore.⁵⁸

- 3.79 Additionally, the committee was given a specific example by Mr Sam McNeill of the Victorian branch of the AWU:

Earlier this year Esso engaged a subcontractor called Busicom to employ contract operators. That brought concerns for its members, full-time Esso and operators. We're hearing that in a safety capacity it did bring more issues over and above that. [...]

I investigated along with my members and guys that have been doing this job for 20, 30 or 40 years and asked them about the system for the training, regarding where you get to for your level that you're on, whether you're a tech 1 or 2. It was constantly told to me that even someone who's worked for Esso onshore who's then moving to offshore, to get to the so-called standard that Esso would want, it's a minimum of a year and sometimes two years. If you're coming off the street, so to speak, and you haven't worked for a while previously, it could definitely take up to 18 months or two years...

These contractors were told by Busicom that they would have the full training and they'd be at the top-rate capacity, as were the guys up top who had 20, 30 or 40 years experience, in six months. When I brought that issue to Esso I was told, in no uncertain terms, 'That's our policy. We can show you the policy. We're going to put these [contractors] through this training and, yes, in six months time they'll be classed.' There are two standards. To me, that was a safety concern to bring to NOPSEMA's attention.⁵⁹

⁵⁸ Mr Peter Mooney, State Organiser, Victorian Branch, Electrical Trades Union of Australia, *Proof Committee Hansard*, 10 July 2018, p. 6.

⁵⁹ Mr Sam McNeill, Organiser, Victorian Branch, Australian Workers' Union, *Proof Committee Hansard*, 10 July 2018, pp. 7–8.

3.80 Both the ACTU and the Victorian Government supported the establishment of a high risk work licensing scheme within the OPGGS regulatory framework.⁶⁰

3.81 The Victorian Government submission summarised the logic behind this recommendation as follows:

The operation of high risk equipment requires a licence to ensure that appropriate training is undertaken to operate the equipment safely. This not only protects the operator, but also those working within the vicinity of the high risk equipment. The risks associated with high risk equipment are inherent and are not confined to particular industries. Therefore, it is appropriate that equipment which requires a licence to operate onshore should require a comparable licence to operate offshore.⁶¹

Committee view

3.82 The committee is concerned that it appears that individuals without appropriate qualifications are being put into offshore environments that are by their nature high risk environments.

3.83 The committee is of the strong opinion that individuals working offshore must have the same calibre of qualifications as those required by individuals working onshore.

3.84 For this reason the committee is of the view that the high risk work licensing requirements under the OPGGS framework must be made consistent with those in the WHS Act that govern onshore work.

Recommendation 5

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

⁶⁰ Australian Council of Trade Unions, *Submission 11*, p. 8; Victorian Government, *Submission 15*, p. 2.

⁶¹ Victorian Government, *Submission 15*, p. 2.

Chapter 4

Effectiveness of NOPSEMA as regulator

4.1 The committee received evidence during the course of the inquiry that indicated that the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) was not regarded as a fully effective or engaged regulator by workforce stakeholders in the offshore petroleum industry.

4.2 The committee was informed that this perception had a detrimental effect on work health and safety (WHS) outcomes, with workers not feeling adequately supported by the regulator. For example Mr Michael Borowick, an Assistant Secretary at the Australian Council of Trade Unions (ACTU) submitted:

...NOPSEMA is poorly regarded by the workforce. This creates a poor safety culture where workers and health and safety reps do not have the confidence to call out safety issues, because they do not have confidence in the regulator. Workers are so scared that, if they raise an issue with NOPSEMA, their identity could become known. This is a problem confounded [compounded] by the growth in insecure work, which further discourages not only people volunteering as health and safety reps, but health and safety reps raising issues when they have them.¹

4.3 Additionally, Mr Peter Mooney, the State Organiser for the Victorian branch of the Electrical Trades Union (ETU) outlined the lack of faith his members have in the regulator:

Unfortunately, among our membership, NOPSEMA is seen as a toothless tiger. It is seen as a body that doesn't engage—it doesn't engage directly with OHS reps and it doesn't engage with the workforce—to the extent that our membership believes they [NOPSEMA] don't even take the time to come and speak to them [ETU members] about issues.²

4.4 Mr Michael Doleman, International Executive Officer for the Maritime Union of Australia (MUA), argued that NOPSEMA was viewed by workforces as a captured regulator, an impression which severely undermined the trust and effectiveness of the regulator:

I have heard of the soft touch [regulator], we say they're captured by the big end of town in the oil and gas industry and are at their beck and call.³

¹ Mr Michael Borowick, Assistant Secretary, Australian Council of Trade Unions, *Proof Committee Hansard*, 11 July 2018, p. 33.

² Mr Peter Mooney, State Organiser, Victorian Branch, Electrical Trades Union of Australia, *Proof Committee Hansard*, 10 July 2018, p. 1.

³ Mr Michael Doleman, International Executive Officer, Maritime Union of Australia, *Proof Committee Hansard*, 11 July 2018, p. 37.

- 4.5 The key issues raised by witnesses leading to this perception include:
- the effectiveness of NOPSEMA's stakeholder engagement;
 - the effectiveness of NOPSEMA's inspection regime;
 - the effectiveness of NOPSEMA's regulatory responses; and
 - perceived gaps in the jurisdictional coverage of industry specific WHS legislation between offshore petroleum industry and the maritime industry.
- 4.6 This chapter will look at each of these matters in turn.

Effectiveness of stakeholder engagement

- 4.7 The committee heard concerns from various submitters about the lack of meaningful stakeholder engagement from NOPSEMA, in particular with workforce stakeholders.
- 4.8 While industry participants expressed general satisfaction with NOPSEMA's approach,⁴ the ACTU submission exemplified the concerns of many submitters:

One of the objects of Schedule 3 of the OPGGS Act is 'to foster a consultative relationship between all relevant persons concerning the health, safety and welfare of members of the workforce at those facilities'. Yet multiple reviews of the NOPSEMA and its predecessor constituent body, the NOPSA [National Offshore Petroleum Safety Authority], has found poor stakeholder engagement and a failure to earn a social licence to regulate.⁵

- 4.9 To illustrate this, the ACTU pointed to the 2015 Operational Review of NOPSEMA undertaken by the then Department of Industry and Science, which despite finding no indication of regulatory capture, identified a need for NOPSEMA to balance stakeholder engagement without compromising its regulatory independence, as well as build its social licence to regulate.⁶
- 4.10 The ACTU summarised its frustration with NOPSEMA's engagement strategy with the offshore workforce:

The ACTU repeats the concerns that it has raised over many years in several reviews and inquiries into work health and safety in the offshore petroleum industry: the NOPSEMA is subject to regulatory capture by industry. Engagement with the workforce and its representatives is token at best. In contrast, best practice work health and safety regulation adopts a tripartite approach between the regulator, industry and the workforce

⁴ For example, Dr Malcolm Roberts, Chief Executive Officer, APPEA, *Proof Committee Hansard*, 13 June 2018, p. 2.

⁵ Australian Council of Trade Unions, *Submission 11*, p. 11.

⁶ Department of Industry and Science, *2015 Operational Review of the National Offshore Petroleum Safety and Environmental Management Authority: Report for the Minister of Industry and Science*, September 2015, p. 67, www.nopsema.gov.au/about/people-planning-and-performance/2015-operational-review-of-nopsema/.

and ensures participation by workers and their representatives in the management of work health and safety.⁷

4.11 Specifically, a number of submitters raised concerns about the lack of workforce representation on the NOPSEMA Board (the board), which was viewed as a lack of commitment to a tripartite approach to health and safety issues in the offshore petroleum sector and ultimately an obstacle to NOPSEMA being seen as a trusted regulator.

4.12 The board is an advisory board of six individuals, with specific functions prescribed under section 654 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs) Act. These functions included advising and making recommendations to the CEO of NOPSEMA about the operational policies and strategies of NOPSEMA; and advising and making recommendations to the Commonwealth, state and territory petroleum ministers, and the Council of Australian Governments Energy Council, on the WHS of persons in offshore petroleum operations, the integrity of facilities and wells, environmental management, and NOPSEMA's performance.⁸

4.13 On the matter of stakeholder representation, the board's submission stated:

The [OPGGs] Act provides for individual members to be appointed by the Commonwealth Minister and makes no provision for stakeholder representation on the Board. Board members are not intended to represent any particular stakeholder group or interest, they are appointed for their extensive industry and Government expertise so they may provide advice to the Government on strategies to improve safety and environmental management performance of the industry.⁹

4.14 NOPSEMA advised that in appointing members to the board, the responsible minister may take a range of factors into account, including skills, experience, geographic location and gender:

Nominations are sought from candidates that have relevant skills and expertise appropriate to the needs of the Board and that would assist in delivering gender and occupational balance to its constitution. Current Board members demonstrate a broad mix of competencies to include:

- detailed knowledge of the petroleum industry
- extensive legal knowledge of legislation and operations of regulatory organisations
- an understanding of the safety case approach in regulating major hazard industries
- senior operational experience in a major hazard industry (onshore or offshore)

⁷ Australian Council of Trade Unions, *Submission 11*, p. 11.

⁸ National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) Advisory Board, *Submission 2*, p. 3.

⁹ NOPSEMA Advisory Board, *Submission 2*, p. 3.

- an understanding of the political environment within which NOPSEMA operates in particular the importance of its relationship with the COAG Energy Council.¹⁰

4.15 NOPSEMA further noted that 'any changes to the Board's composition and functions are a matter for Government and NOPSEMA will work with any persons appointed as members'.¹¹

4.16 The current board chair, Ms Erica Smyth, advised the committee that she had spent a large part of her career seeking approvals for minerals extraction projects, including in the oil and gas industry. More recently, she has been a 'professional company director' for over a decade:

I'm now a professional company director and have been for the last 14 years, and I have been chair and non-executive director for ASX-listed government not-for-profit boards and advisory boards. I currently sit on about seven or eight boards or advisories of some sort.¹²

4.17 All of Ms Smyth's co-board members have held senior executive roles or have held positions funded by major oil and gas corporations. Not one of the board members appears to have experience in WHS matters from a workforce perspective.¹³

4.18 Mr Borowick argued that the composition of the NOPSEMA board was a clear example of NOPSEMA's ineffective engagement strategies and lack of commitment to a tripartite approach to health and safety issues:

We're told that it [the board] can't be tripartite—that it represents only people with particular skills and knowledge. Funnily enough, the government of the day can only seem to find five former offshore petroleum executives with the requisite skills and knowledge. It appears that, notwithstanding the numerous representations that we've made, the government hasn't been able to find merit in appointing anyone with a union background, because, principally, we're told there's no-one, according to their view, that has the requisite skills and knowledge to merit their appointment.¹⁴

4.19 The Australian Workers' Union (AWU) also raised similar concerns about NOPSEMA's stakeholder engagement, highlighting that the composition of the board did not include any individuals with a background in the offshore workforce:

¹⁰ NOPSEMA, *Submission 5*, pp. 40–41.

¹¹ NOPSEMA, *Submission 5*, p. 41.

¹² Ms Erica Smyth, Chair, NOPSEMA Board, *Proof Committee Hansard*, 10 July 2018, p. 17.

¹³ NOPSEMA Board, *Submission 2*, p. 5 and NOPSEMA Board website, www.nopsema.gov.au/about/nopsema-advisory-board/ (accessed 10 August 2018).

¹⁴ Mr Michael Borowick, Assistant Secretary, Australian Council of Trade Unions, *Proof Committee Hansard*, 11 July 2018, p. 34.

The NOPSEMA chief executive is advised by the NOPSEMA advisory board, which includes both independent academic representatives as well as ex-executives with a long history of working in the oil and gas industry. However, despite the several thousand employees [who have] worked in the industry, the workers employed in the sector have no representative on the NOPSEMA advisory board.¹⁵

- 4.20 To alleviate the above concerns, the ACTU recommended that the OPGGS Act be amended to allow for equal industry and worker representation on the NOPSEMA board. In making this recommendation, the ACTU asserted that the board's advisory function made it an 'appropriate mechanism' by which the regulatory approach of NOPSEMA could be informed and guided by 'the unique experience of the workforce'.¹⁶
- 4.21 The AWU made a similar recommendation, suggesting that the NOPSEMA board include at least one representative of workers, with the individual to be appointed in consultation with the ACTU, relevant unions and the workforce.¹⁷

Committee view

- 4.22 While acknowledging reassurances by NOPSEMA and the NOPSEMA board that board members are 'not intended to represent any particular stakeholder group or interest'¹⁸, the committee highlights that the current composition of the board only includes individuals with experience working for industry participants.
- 4.23 The committee finds it disturbing that, given the NOPSEMA board chair's statement that '...the way the board contributes is as a group of experts in their own fields providing challenge and advice to the CEO and to the minister'¹⁹, there are no individuals from the offshore workforce on the board to contribute their expert knowledge.
- 4.24 Furthermore, the committee observes that this board composition does not assist in challenging the perception held by the workforce that NOPSEMA and the board are 'captured' by industry. The committee is also concerned about the board being comprised of largely corporatised professional board members. In the committee's view this does not satisfy the need for a tripartite approach to effectively promote strong WHS practices across the industry.
- 4.25 As such, the committee is of the opinion that equal representation of industry and workforce participants on the NOPSEMA board is required to assist in

¹⁵ Australian Workers' Union, *Submission 14*, p. 5.

¹⁶ Australian Council of Trade Unions, *Submission 11*, pp. 12–13.

¹⁷ Australian Workers' Union, *Submission 14*, p. 5.

¹⁸ NOPSEMA Advisory Board, *Submission 2*, p. 3.

¹⁹ Ms Erica Smyth, Chair, NOPSEMA Advisory Board, *Proof Committee Hansard*, 10 July 2018, p. 20.

addressing the lack of trust and perception of regulatory capture of NOPSEMA, particularly as experienced by workforce stakeholders.

Recommendation 6

- 4.26 The committee recommends that the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* be amended to provide for equal representation of industry and workforce participants on the National Offshore Petroleum Safety and Environmental Management Authority Board, with the latter representatives to be nominated by the Australian Council of Trade Unions.**

Effectiveness of NOPSEMA's inspection regime

- 4.27 As part of its WHS regulatory functions, NOPSEMA conducts WHS inspections to monitor compliance with relevant laws, including ongoing implementation and compliance with accepted safety cases. According to NOPSEMA, the inspections are scoped and scheduled using a risk-based methodology, which takes into account matters such as relevant risks factors, previous performance and compliance history and current industry incident trends.²⁰

- 4.28 NOPSEMA's written submission elaborated on the inspection regime:

Given the complexity and high hazard nature of offshore petroleum operations, on most occasions advance notice of inspections is given to ensure that appropriate transport logistical arrangements are facilitated and that facility personnel and areas of activity are made accessible to NOPSEMA to carry out its functions. This approach is not unique within Government where arranged attendance and early notification is also practiced by others such as the Australia's Maritime Border Command before approaching any of Australia's security regulated offshore production facilities. NOPSEMA also conducts unannounced inspections, in the form of investigations which typically take place at regulated business premises where the situation warrants the formal collection of evidence.²¹

- 4.29 NOPSEMA stated that the conduct of inspections considers 'normally attended production facilities' (i.e. those that provide accommodation for the workforce during routine operations) and mobile offshore drilling units as higher risk than other kinds of facilities, and that the minimum frequency for inspecting these facilities is typically twice per year.²²

- 4.30 NOPSEMA advised that it typically undertakes over 100 inspections per year which focus on targeted areas of WHS risk. It noted that this figure was the

²⁰ NOPSEMA, *Submission 5*, p. 19.

²¹ NOPSEMA, *Submission 5*, p. 19.

²² NOPSEMA, *Submission 5*, p. 19.

five year average number of inspections, calculated on data from 2013 to 2017.²³

- 4.31 NOPSEMA provided the committee with the following information in regard to its inspection model:

NOPSEMA has the legislative powers to require access to facilities at any time. In order to avoid disruption or inadvertent risk creation, NOPSEMA usually conducts planned inspections where the operators is provided notification of the inspection, and the main purposes/scope of the inspection prior to the inspection. If NOPSEMA detects a potential breach of compliance that could present a significant increase in health or safety risks, NOPSEMA may make arrangements for arrival on the facility at short notice.²⁴

- 4.32 NOPSEMA also informed the committee that:

- NOPSEMA does not own helicopters to attend a facility unannounced; and
- access to most offshore facilities requires two forms of transport (for example, a fixed wing aircraft to Karratha, Darwin or Broome, followed by a rotary transport out to the facility).²⁵

- 4.33 Since the establishment of NOPSEMA in 2012, operators of offshore petroleum facilities have always been advised of an inspection prior to NOPSEMA staff arriving on board the facility. NOPSEMA emphasised that 'this practice is the only realistic and safe approach when helicopter travel is involved to access a facility'.²⁶

- 4.34 Mr Niall Myles, Senior Vice President of the Australian Operating Unit of Woodside Energy also provided details on this process from an operator's perspective:

They [NOPSEMA inspectors] are required to come to site via helicopters provided by the operators. NOPSEMA will inspect each facility twice per year and they will flag to us the nature of those inspections. That's an important element of the inspection. Generally, when NOPSEMA are coming to the facility they're coming to look at the quality of the controls against major accident events, and that requires preparation and documentation from our safety management systems. So when they arrive on site we will be prepared with the right information in order to help them collate the documentation that they need. But that is not the extent of the inspection.²⁷

²³ NOPSEMA, *Submission 5*, p. 19.

²⁴ NOPSEMA, answers to questions on notice, 11 July 2018 (received 25 July 2018), p. 4.

²⁵ NOPSEMA, answers to questions on notice, 11 July 2018 (received 25 July 2018), p. 4.

²⁶ NOPSEMA, answers to questions on notice, 11 July 2018 (received 25 July 2018), p. 4.

²⁷ Mr Niall Myles, Senior Vice President, Australian Operating Unit, Woodside Energy, *Proof Committee Hansard*, 13 June 2018, p. 4.

- 4.35 Unions raised concerns with NOPSEMA's planned inspections regime. For example the ACTU submission proffered two core reasons for its concerns about the model:

Currently, the NOPSEMA conducts planned safety inspections of offshore petroleum facilities at least twice per year, where practicable. The NOPSEMA will generally issue an inspection brief not less than two weeks prior to the inspection, which we are advised provides the duty holder with information as to what will be inspected. Our affiliates advise that their members have reported two serious problems with the planned inspection model. Firstly, the duty holder is able to cover up or hide issues before the inspector arrives. Secondly, if and when the NOPSEMA does perform an unannounced inspection, the duty holder often assumes that it was triggered by a report from an HSR and puts pressure on the HSRs for allegedly approaching the regulator.²⁸

- 4.36 The AWU submitted that that planned inspection regime allowed employers to unfairly game the system:

...by issuing an inspection brief that, as our members understand, includes a detailed scope of work of what will be inspected, management at the facility has a minimum of two weeks to prepare the site in effort to ameliorate potential breaches.²⁹

- 4.37 The AWU also argued that the planned inspection model and rarity of 'unscheduled' inspection allowed management to too easily identify and pressure Health and Safety Representatives (HSRs), should the HSRs raise safety concerns with NOPSEMA and trigger an 'unscheduled' inspection:

...an offshore facility will have approximately 1–3 HSRs on site at any one time. In addition, many of these HSRs are contracted by labour hire companies and as such are not protected by any employment contract restricting employers against wrongful dismissal. Any inspections occurring outside of a scheduled and customary inspection, as well as inspection briefs containing specific information on what breaches will be investigated, allows management considerable scope in identifying which representative has raised a breach with the NOPSEMA. Our members note that this provokes a culture of fear of persecution from management if a breach is to be raised by a HSR.³⁰

- 4.38 When asked for details on the unannounced inspections conducted, NOPSEMA responded:

If NOPSEMA takes the term unannounced to mean an inspection scope or issue is explored by a NOPSEMA OHS inspector, where the operator has no advance warning of this matter, NOPSEMA can confirm that for OHS inspections there are a number of matters a NOPSEMA OHS inspector will look into that the operator is not advised of in advance. These additional

²⁸ Australian Council of Trade Unions, *Submission 11*, p. 10 (citations omitted).

²⁹ Australian Manufacturing Workers' Union, *Submission 14*, p. 2.

³⁰ Australian Manufacturing Workers' Union, *Submission 14*, p. 2.

matters are included as additional scope items during the inspection and are documented in the inspection report. A review of all inspection reports from 2017 identified that 86% of 2017 inspections addressed matters not contained within the inspection brief provided to the operator.³¹

- 4.39 During the public hearings NOPSEMA's CEO, Mr Stuart Smith gave evidence that NOPSEMA had undertaken at least seven offshore short notice inspections in the past three to five years where notification was provided to the operator within one to three days of the inspection.³²
- 4.40 After the hearing NOPSEMA clarified the number of 'short notice' inspections it has conducted since 2012:

Since 2012, NOPSEMA has conducted at least eleven (11) short notice inspections [emphasis in original text] where the operator has had five (5) days or less notification. Five of these were office-based inspections, and one was in response to a provisional improvement notice (PIN) issued by a HSR. Of these 11 inspections, one was in 2013, two were in 2015, six were in 2017 and two were in 2018.³³

- 4.41 Mr Myles, a Senior Vice President of Woodside Energy explained the kind of information an operator receives from NOPSEMA in the event of an unannounced 'ad hoc' inspection:

If, for reasons, there have been HSRs reporting directly to NOPSEMA through the communication protocols that are available, or if they have had other reasons for a line of inquiry, they will request of us an ad hoc inspection. They may only give us a very broad definition of what that investigation will be, and we will do everything in order to facilitate that inspection and visit.³⁴

- 4.42 As outlined earlier in this section, the committee received evidence from unions that one of the problems with NOPSEMA's planned inspection model was that it compounded a situation where offshore workers and HSRs were wary of raising WHS concerns with the regulator due to fears of negative repercussions from operators. This evidence was consistent with the material relating to concerns about the treatment and protections for HSRs that was discussed in chapter 3 of this report.
- 4.43 The ACTU described the situation offshore as one of 'a pervasive culture of fear and reprisal' in which workers believed that raising WHS issues and being seen speaking with NOPSEMA officials may cost them their jobs.³⁵

³¹ NOPSEMA, answers to questions on notice, 11 July 2018 (received 25 July 2018), p. 4.

³² Mr Stuart Smith, Chief Executive Officer, NOPSEMA, *Proof Committee Hansard*, 11 July 2018, p. 5.

³³ NOPSEMA, answers to questions on notice, 11 July 2018 (received 25 July 2018), p. 4, emphasis in original.

³⁴ Mr Niall Myles, Senior Vice President, Australian Operating Unit, Woodside Energy, *Proof Committee Hansard*, 13 June 2018, p. 4.

³⁵ Australian Council of Trade Unions, *Submission 11.1*, p. 1.

- 4.44 The committee had the following exchange with NOPSEMA representatives which clearly illustrates that the regulator is aware of the fear experienced by workers, due to the fact that workers often request clandestine meetings with NOPSEMA inspectors during inspections:

Mr Gunn: [...] We'll [NOPSEMA inspectors] have informal meetings [with HSRs]. We have workers who say, 'Can I come and see you behind this door and have a chat?' That happens quite often.

CHAIR: You take their health and safety representatives on the inspections with you?

Mr Gunn: They're invited and they do come on inspections with us at the facility—

CHAIR: When the employer allows it. Why don't you insist that they come?

Mr Gunn: Because the act says that they can. We always tell the particular HSR and the operator that they're welcome to come.

CHAIR: But my question is: why don't you insist that they come?

Mr Gunn: It's voluntary.

CHAIR: They're health and safety representatives and you put them in the position where they have to defy their employer and come with you?

Mr Gunn: No, it's up to the HSR.

CHAIR: And you fly back. You do understand the reality of the workplace, don't you?

Mr Gunn: Yes. HSRs do attend and spend time with us at the facility, walking around—just us, the inspectors and the HSRs—during the course of the inspection, and we do a full walk-around. We meet with them privately and formally, and they attend the inspection with us.

CHAIR: At one of these facilities, how to meet privately with someone?

Mr Gunn: They say, 'Can you meet me after tea in my room or at the back of the control room?' They arrange the private meeting because obviously, as you can say, they don't want to be seen talking to—

CHAIR: Self-protection.

Mr Gunn: Yes. That does occur [...] ³⁶

- 4.45 The ACTU recommended that in order to combat this fear of persecution and encourage HSRs to speak confidently with inspectors, better protections must be provided to HSRs during NOPSEMA inspections. It suggested making it compulsory for HSRs to accompany inspectors on inspections; and making it compulsory for NOPSEMA inspectors to meet separately and privately with HSRs during their offshore visits. ³⁷

³⁶ Mr Rodney Gunn, Manager Assessment and Inspection Melbourne, NOPSEMA, *Proof Committee Hansard*, 11 July 2018, p. 6.

³⁷ Australian Council of Trade Unions, *Submission 11.1*, p. 1.

- 4.46 Another issue related to NOPSEMA's inadequate engagement with the workforce during inspections was highlighted when the committee received evidence that indicated that there were instances where there were no HSRs on board the facility during an inspection.
- 4.47 During the course of the inquiry NOPSEMA supplied the committee with nine confidential inspection reports that were prepared by NOPSEMA inspectors in response to the 2015 West Tuna platform battery fire.
- 4.48 While keeping the contents of the inspection reports confidential, the committee notes that of the nine inspections which were carried out on nearby installations in the six months following the West Tuna incident, three inspection reports note that 'no HSRs were on the facility at the time of the inspection'.³⁸

Committee view

- 4.49 The committee was surprised to learn that since 2012, NOPSEMA has only carried out six short notice (i.e. less than five days' notice to operators) inspections on offshore facilities.³⁹ On average this is one offshore short notice inspection per annum.⁴⁰ The committee notes that NOPSEMA typically carries out over 100 inspections annually.⁴¹ This equates to approximately one per cent of NOPSEMA's inspections being carried out on short notice.
- 4.50 While the committee understands the logistical transportation constraints that must be taken into account when visiting offshore platforms, it considers this rate of unannounced inspections to be far too low.
- 4.51 Additionally, the committee is highly concerned with the evidence received from unions asserting that when NOPSEMA does perform an unannounced inspection of an offshore facility, the HSRs on that facility are then pressured by the operators for allegedly approaching the regulator.
- 4.52 The committee is also greatly troubled by the evidence from unions and NOPSEMA itself indicating that HSRs are afraid to speak with NOPSEMA inspectors, and that it is commonplace for HSRs to surreptitiously seek meetings with inspectors for fear of the repercussions arising from being seen talking to the regulator by management.

³⁸ Confidential NOPSEMA inspection reports.

³⁹ NOPSEMA's answer to question on notice indicates that five of the eleven short notice inspections were 'office-based', meaning that only six were on offshore facilities.

⁴⁰ The committee notes that the total inspection figure includes both offshore and office-based inspections and as a result the two figures are not directly comparable.

⁴¹ NOPSEMA, *Submission 5*, p. 19.

- 4.53 The committee considers this culture of fear and reprisal extremely detrimental to achieving positive health and safety outcomes in the offshore petroleum industry.
- 4.54 In light of these issues, the committee thinks it is critical that NOPSEMA undertake more unannounced, short notice visits to offshore facilities, as well as provide greater support and protection for HSRs to speak to inspectors. This would 'normalise' such inspections, for both operators and the workforce, and work to alleviate the fear HSRs experience of being pressured by operators for speaking with NOPSEMA. Such measures would ensure that workers feel protected enough to bring WHS concerns to the attention of the regulator.
- 4.55 Finally, the committee notes that of the nine NOPSEMA inspections carried out following the 2015 West Tuna incident, on three occasions there was no HSR present on the facility for the inspectors to consult with. The committee notes that NOPSEMA inspectors had some level of engagement with other members of the workforce during the inspections where no HSRs were present. Nevertheless, given the importance the committee places on effective engagement between NOPSEMA and HSRs, it is of great concern that NOPSEMA inspectors were not able to hear the safety concerns HSR may have raised in one-third of the inspections. It is unclear to the committee if this situation is representative of NOPSEMA's broader inspection system, however if it is, it would demonstrate a major flaw in the inspection regime.

Recommendation 7

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

Recommendation 8

- 4.57 The committee recommends NOPSEMA and facility operators ensure that HSRs are present and fully engaged when NOPSEMA carries out its inspections by:**

- requiring HSRs to accompany NOPSEMA inspectors on their inspections; and**
- requiring NOPSEMA inspectors to meet separately and privately with HSRs during inspections.**

Effectiveness of NOPSEMA's regulatory responses

- 4.58 The committee received evidence expressing dissatisfaction with NOPSEMA's regulatory responses and use of penalties.
- 4.59 The ACTU argued that the offences and penalties regime of the OPGGS Act are 'woefully inadequate' and that NOPSEMA had demonstrated an 'overreliance on the lower levels of the regulatory pyramid'. It asserted that

this was demonstrated by the regulator's unwillingness to escalate its regulatory response to repeat offenders.⁴² The AWU also echoed these points.⁴³

4.60 The ACTU further argued:

The NOPSEMA needs to improve its strategic enforcement activity to achieve maximum impact. We note that the NOPSEMA Enforcement Policy provides that the NOPSEMA 'will consider prosecution action in circumstances where...there has been repeated non-compliance with the legislation.' We would like to see the NOPSEMA putting this policy into action and utilising its more serious available sanctions, including prosecution, where there is repeated non-compliance with the legislation. Such action would be more effective in achieving cooperative compliance.⁴⁴

4.61 The Victorian Government observed that the penalty provisions for non-compliance under the OPGGS regulatory framework are significantly lower than under the model WHS Act and the Victorian OHS framework:

Penalties under the OPGGS regulatory framework should reflect the gravity of respective offences and should be sufficient to operate as effective deterrents. Victoria supports increased alignment between the OPGGS regulatory framework and the model WHS regulatory framework in regards to the penalty framework under those Acts.⁴⁵

4.62 Representatives of the ACTU also explained that the level of penalties 'are so insignificant relative to the shutdown costs that operators are financially better off risking a fine than stopping work for safety matters.'⁴⁶

4.63 Union witnesses drew upon a significant safety incident on the West Tuna platform in the Bass Strait in 2015 which had the potential to be a catastrophic situation in order to illustrate NOPSEMA's inadequate regulatory responses to such situations. Mr Dane Coleman a former offshore HSR with eight years' experience in the offshore petroleum industry, relayed his experience of the West Tuna battery room fire to the committee:

Mr Coleman: ...My own situation in which I was involved was on West Tuna Platform. On 9 September 2015, I woke up to an alarm at approximately 0045 hours after a 12-hour shift on an ExxonMobil platform in the middle of Bass Strait. The winds were blowing 50 knots and there were eight-metre seas. The alarm was real. There was a fire in the battery room, an extremely critical room for the hydrocarbon industry. At 5.30 in the morning, the platform was de-manned of non-critical personnel by helicopters that were 45 minutes away. The escape capsules would not be

⁴² Australian Council of Trade Unions, *Submission 11*, p. 9.

⁴³ Australian Workers' Union, *Submission 14*, pp. 3–4.

⁴⁴ Australian Council of Trade Unions, *Submission 11*, p. 9, citations omitted.

⁴⁵ Victorian Government, *Submission 15*, p. 3.

⁴⁶ Mr Michael Borowick, Assistant Secretary, Australian Council of Trade Unions, *Proof Committee Hansard*, 11 July 2018, p. 34.

launched into eight-metre seas. To give an indication, we were at the emergency evacuation assembly area. Some of the alarms that go off during the night are nuisance alarms. Every time we go down to that area, we look overboard and see what the sea state's like and if it's a realistic attempt to get away from the platform in a real incident. This one was real.

CHAIR: Just before you go on, we're at this stage where the incident is so serious that they're attempting to evacuate the platform.

Mr Coleman: Correct. Yes. With a number of the guys in the email of the incident report, we can see here that the company reduced their view on that by saying that it was a small fire isolated to the battery room... It was crew change day the day that I woke up and we were there assembling for this response. We were supposed to be heading home to see our families, yet we stayed over cycle to give the opposite shift a list of isolations and indications as to what had occurred during the night.

I returned after my week away, so I returned on 17 September [2015], the following trip, to be constantly asked to re-use some of the equipment inside that battery room. The equipment had been exposed to an environment, for well over six hours, above a temperature of 90 degrees Celsius. These readings were taken from a thermo gun from the outside of a firewall of that room. To give an indication of how thick that firewall is, there's five millimetres of steel, batteries on the side of that, insulation and another five millimetres of steel. The temperature was still 96 or 97 degrees on the other side. It was very hot—extremely hot. The intense atmosphere inside that room had created carbon tracking along with molten lead and copper slagging across electrical connections due to a number of lead-acid batteries, with the combination of a short-circuit current of 2,100 amps exploding.⁴⁷

4.64 Mr Coleman continued to explain what happened in the aftermath of the fire:

...There were discussions of what we could do to that room. I was involved in the incident investigation and what outcomes we could come to. On 22 December [2015] I sent an email to the battery manufacturer to force the company to at least listen to our concerns that the equipment in that room needed to be stripped out and replaced to prevent another catastrophe. The cause of the fire had been put down to a failure of maintenance, including the change out of expired batteries throughout ExxonMobil platforms right across Bass Strait. It wasn't an isolated incident. It was a failure to one of the batteries that led to the fire expanding across to the other batteries in that bank.

In one sense it could be considered lucky that the fire had occurred on West Tuna platform due to the make-up of the room itself. The ExxonMobil internal investigation process outlined battery expiry dates as a fix across all platforms. This still remains insufficient due to the potential of disastrous risk factors involved specifically with battery rooms across the other sites in Bass Strait. Pressurisation, ventilation alarms, isolation and fire ratings that were considered a fix on the West Tuna platform were

⁴⁷ Mr Dane Coleman, private capacity, *Proof Committee Hansard*, 10 July 2018, pp. 7–8.

not shared to all of the other platforms. This can only be put down to self-regulation of this industry.⁴⁸

- 4.65 Mr Peter Mooney of the ETU asserted that NOPSEMA did not conduct its own investigation of the West Tuna fire, but rather relied on the internal ESSO investigation:

...If you go to NOPSEMA's website, you'll actually see the fire incidents on West Tuna. They adopted the investigation carried out by Exxon Mobil, I believe, so they never had any direct involvement in interviewing employees who were on the platform and they didn't visit the platform.⁴⁹

- 4.66 He also expressed concern that NOPSEMA did not ensure that the recommendations from that investigation were implemented:

NOPSEMA never actually visited the actual platform after the incident or anything like that. They relied on Esso doing their own investigation, which they then adopted as the outcome from that. Recommendations came out of that, and they have not been back to any of the other platforms to check to see if that work had been done on those platforms to bring them up to that security. They don't check in with the health and safety representatives to see if that work has been done.⁵⁰

- 4.67 NOPSEMA disputed this characterisation of the situation and asserted that its inspectors did inspect the West Tuna platform in November 2015, several months after the fire.⁵¹ In an answer to a question on notice, NOPSEMA further detailed the actions it took after the incident:

The platform was shut down (i.e. production ceased and the facility was blown down) and NOPSEMA immediately commenced enquires with the operator into the incident and at the same time prioritised inspections of other Bass Strait producing platforms with regards to: "Control of electrical hazards. Focus on Battery room in response to [West Tuna facility] Battery room fire".⁵²

- 4.68 In response to the West Tuna incident, NOPSEMA published a three page Safety Alert in November 2015, entitled 'Risks associated with electric storage batteries'. The document outlined 'key lessons' to take from the incident which involved a list of suggested actions for operators to take. For example:

⁴⁸ Mr Dane Coleman, private capacity, *Proof Committee Hansard*, 10 July 2018, p. 8.

⁴⁹ Mr Peter Mooney, State Organiser, Victorian Branch, Electrical Trades Union of Australia, *Proof Committee Hansard*, 10 July 2018, p. 10.

⁵⁰ Mr Peter Mooney, State Organiser, Victorian Branch, Electrical Trades Union of Australia, *Proof Committee Hansard*, 10 July 2018, p. 5.

⁵¹ NOPSEMA, answers to questions on notice, 11 July 2018 (received 25 July 2018), p. 18.

⁵² NOPSEMA, answers to questions on notice, 11 July 2018 (received 25 July 2018), p. 18.

- Battery rooms **should** be provided with smoke and/or heat detection. In addition, provision of gas detection **should also be considered** for battery rooms.⁵³

4.69 When queried on what regulatory action it took as a result of the West Tuna incident and specifically the language used in the related Safety Alert, the following information was provided:

CHAIR: ...Did you conclude that battery rooms should have gas detection systems? You say you are not a soft-touch regulator, but I assume—and I will read the report—that you did conclude that. But instead of then saying that everyone will put gas detection in their battery rooms you put out a safety alert—the only one for 2015, by the way—to say they should 'consider' putting it in. And then you tell me three years later that you put on several improvement notices because there was another incident. Why? Why when you concluded the first time didn't you just say as a regulator that the industry 'will' do this?

Mr O'Keefe: We operate on the basis of maintaining risks as low as is reasonably practicable. We are an objective based regime, not a prescriptive regime. We push the risk back to the owners of the facilities and have them demonstrate to us that, whatever they put in place, the risks are as low as reasonably practicable.⁵⁴

4.70 NOPSEMA later provided clarification on why it did not mandate specific actions in response to the West Tuna incident:

Under Australia's objective-based regulatory regime NOPSEMA doesn't mandate specific controls. The duty rests with the operator to ensure that all reasonable practicable steps are taken to ensure a facility is safe and without risk to the health of any person at or near the facility.⁵⁵

4.71 This response however appears to contradict NOPSEMA's own written submission which highlights NOPSEMA's more prescriptive compliance powers which it chose not to pursue after the West Tuna battery fire:

In circumstances of non-compliance not resulting in a fatality or serious injury, NOPSEMA proactively applies a wide range of enforcement options under the OPGGS Act. Options such as notices and directions are often pursued in preference to prosecution as these options can be more effective in lifting industry performance. Notices and directions may typically, for example, impose more timely legal obligations on duty holders to correct unsafe infrastructure, systems and behaviours.⁵⁶

⁵³ NOPSEMA, *Safety Alert 61: Risks associated with electric storage batteries*, November 2015, www.nopsema.gov.au/assets/Safety-alerts/Alert-61-Risks-associated-with-electric-storage-batteries.pdf, p. 2, emphasis added.

⁵⁴ Mr Derrick O'Keefe, Head of Division Safety and Integrity, NOPSEMA, *Proof Committee Hansard*, 11 July 2018, pp. 9–10.

⁵⁵ NOPSEMA, answers to questions on notice, 11 July 2018 (received 25 July 2018), p. 18.

⁵⁶ NOPSEMA, *Submission 5*, p. 21.

Committee view

- 4.72 The committee was disturbed to hear of NOPSEMA's timid response to the 2015 West Tuna platform fire, an event that required the emergency evacuation of non-critical personnel in eight metre seas and 50 knot winds. NOPSEMA's response is that it oversees an objective-based regulatory regime; however, this ignores the fact that NOPSEMA has a range of enforcement powers for example the ability to issue notices and directions.
- 4.73 The committee considers NOPSEMA's tendency to opt for a 'guide dog'⁵⁷ regulatory response too lax, in particular where an incident, such as the West Tuna battery room fire, could have resulted in catastrophic consequences.
- 4.74 The committee is of the opinion that NOPSEMA ought to strike a better balance in its regulatory responses and take a stronger stance where necessary.
- 4.75 The committee is of the view that publishing a non-enforceable document such as a Safety Alert with 'key lessons' and suggestions about safety improvements, as was done with the West Tuna incident, is not an adequate response to what could have been a disastrous situation, particularly when the same situation had the potential to occur on other nearby facilities with similar equipment.
- 4.76 The committee has been persuaded by the evidence received from union stakeholders and sees merit in the recommendations put forward by the ACTU to address these issues.⁵⁸

Recommendation 9

- 4.77 The committee recommends that the penalties in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* be significantly increased to bring them into line with best practice responsive regulation.**

Recommendation 10

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

Recommendation 11

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

⁵⁷ Mr Stuart Smith, Chief Executive Officer, NOPSEMA, *Proof Committee Hansard*, 11 July 2018, p. 9.

⁵⁸ Australian Council of Trade Unions, *Submission 11*, p. 10.

Perceived gaps in the jurisdictional coverage of WHS legislation in the maritime industry

4.80 The committee was informed by the ACTU that NOPSEMA's effectiveness as a health and safety regulator is hampered by the split between NOPSEMA's jurisdiction and that of the Australian Maritime Safety Authority (AMSA). The ACTU submission explained:

Currently vessels and facilities in the offshore petroleum industry often move between the NOPSEMA and the AMSA jurisdictions and the responsibility for regulating activities transfers between the two agencies.⁵⁹

4.81 The ACTU drew attention to the findings of the 2015 Operational Review of NOPSEMA (2015 review) which found that:

...some oil and gas facilities, such as floating production storage and offloading units, are floating vessels that can be classified as either a 'facility' under the OPGGS Act when being operated, or a 'vessel' under the Navigation Act at other times. It is essential AMSA and NOPSEMA work collaboratively to ensure effective management of maritime safety around oil and gas facilities.⁶⁰

4.82 The 2015 review also found that there were a number of issues which 'relate to a lack of clarity in the touch points between the OPGGS Act and the Navigation Act'. These included a lack of clarity of which regulator has control over a ship close to an offshore facility; and a lack of clarity of when a vessel swaps from a facility to a ship and the transfer of control on and off the riser.⁶¹

4.83 In addition, the 2015 review detailed:

The [review] Panel also understands NOPSEMA and AMSA have previously held joint inspections of vessels' certification, however we understand these have now ceased. This is of concern. AMSA needs to ensure ongoing certification of vessels to comply with its obligations under the Navigation Act and the International Maritime Organisation (IMO) standards. Certification involves AMSA inspectors boarding an offshore facility, such as a floating production, storage and offloading unit to ensure the facility's maintenance is sufficiently adequate for certification when it ceases operation and again becomes a vessel, at which point responsibility changes from the OPGGS Act to the Navigation Act.⁶²

⁵⁹ Australian Council of Trade Unions, *Submission 11*, p. 13.

⁶⁰ Department of Industry and Science, *2015 Operational Review of the National Offshore Petroleum Safety and Environmental Management Authority: Report for the Minister of Industry and Science*, September 2015, p. 69.

⁶¹ Department of Industry and Science, *2015 Operational Review of the National Offshore Petroleum Safety and Environmental Management Authority: Report for the Minister of Industry and Science*, September 2015, p. 69.

⁶² Department of Industry and Science, *2015 Operational Review of the National Offshore Petroleum Safety and Environmental Management Authority: Report for the Minister of Industry and Science*, September 2015, p. 70.

- 4.84 The 2015 review recommended that NOPSEMA and AMSA refresh their Memorandum of Understanding (MoU) and in doing so seek clarity on their commitments and responsibilities under their respective acts.⁶³
- 4.85 The ACTU observed that this recommendation had not been carried out.⁶⁴
- 4.86 In relation to the 2009 MoU between the two agencies, AMSA clarified:
- NOPSEMA has established and maintains a strong and collegiate relationship with AMSA on a range of matters related to the functions and regulatory activities of each agency including the regulation of offshore safety. The relationship is firmly embedded in a number of ongoing bilateral activities, standing meetings and national plan arrangements. The extent of engagement maintained between NOPSEMA and AMSA, and the strength of the joint agency relationship if independent of the MoU.⁶⁵
- 4.87 The AWU and the Australian Institute of Marine and Power Engineers also emphasised the 'jurisdictional vacuum' between NOPSEMA and AMSA, as well as the findings of the 2015 review in their submissions.⁶⁶
- 4.88 In order to fix the perceived gaps in jurisdictional coverage, the three unions recommended a comprehensive review of the coverage of Australian safety regulation in the maritime industry be conducted. It was also recommended that NOPSEMA and AMSA work to update the 2009 MoU.

Committee view

- 4.89 The committee considers it essential for NOPSEMA and AMSA to clearly articulate and agree upon their respective commitments and responsibilities in regard to their jurisdictional reach.
- 4.90 The committee considers that this clarity would assist in providing better outcomes for offshore WHS in both petroleum-extraction and related maritime activities.

Recommendation 12

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

⁶³ Department of Industry and Science, *2015 Operational Review of the National Offshore Petroleum Safety and Environmental Management Authority: Report for the Minister of Industry and Science*, September 2015, p. 70.

⁶⁴ Australian Council of Trade Unions, *Submission 11*, p. 13.

⁶⁵ NOPSEMA, additional information received 27 June, p. 2.

⁶⁶ Australian Workers' Union, *Submission 14*, pp. 5–6. Australian Institute of Marine and Power Engineers, *Submission 13*, pp. 2–3.

Recommendation 13

- 4.92 The committee recommends that NOPSEMA and Australian Maritime Safety Authority update their Memorandum of Understanding, with a particular focus on achieving clarity on the common areas and interactions between the two agencies and their legislations.**

**Senator Gavin Marshall
Chair**

Government Senators' Dissenting Report

- 1.1 The safety of workers and operations is of the utmost importance and it is critical that the offshore petroleum industry is supported by an effective and robust health and safety regime. Whilst the inquiry process gathered much useful information through submissions and public hearings the majority report does not adequately reflect the balance of evidence which has demonstrated the effectiveness of Australia's existing system under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act).
- 1.2 At the hearings some witnesses raised concerns about the effectiveness of National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) as an independent regulator, and made claims that the offshore OHS regime is inferior to the onshore WHS laws. However, a robust evidence base to support these claims or justify major changes to Australia's existing offshore safety regime was not provided. A number of the issues identified were supported either by non-specific examples or anecdotes which could not be verified, or simply by assertion.
- 1.3 Consequently, in the view of Government Senators a number of the recommendations do not constitute the best policy response for ensuring the strongest possible safety outcomes for workers in the offshore petroleum industry.

Effectiveness of Australia's safety regime

- 1.4 Australia's offshore regime is highly regarded internationally and Australia's offshore industry is one of the safest in the world with some of the lowest injury and fatality rates. This point was recognised in the 2017 Senate inquiry into oil and gas exploration in the Great Australian Bight when ALP Senators Chisholm and Urquhart stated:

The Australian offshore oil and gas industry is subject to one of the most rigorous environmental and safety regulatory regimes in the world.¹
- 1.5 In its submission to this inquiry NOPSEMA confirmed that since 2005, three fatalities have occurred in the offshore petroleum regime associated with two separate incidents, there have been no further fatalities since 2012.²
- 1.6 Safe Work Australia's data for industries where the WHS laws have been applied indicate that in comparison the offshore petroleum industry has very

¹ www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Oilorgasproduction45/Report/d03

² NOPSEMA, *Submission 5*, p. 20.

low injury rates.³ In 2016 there were 53 offshore petroleum injuries reported to NOPSEMA, only seven of these injuries resulted in lost time at work, and no major injuries.⁴ In 2016, Safe Work Australia statistics provide there were 3,510 injury claims made in agriculture, forestry and fishing, 12,670 in construction and 12,740 in manufacturing.⁵ In 2017, the number of injuries reported to NOPSEMA across the offshore petroleum industry represents similar numbers to 2016, the key difference being four major injuries in 2017.⁶

- 1.7 The most recently available (2016) comparative data from the International Regulators' Forum (IRF) confirms Australia's safety record compares favourably to other jurisdictions, with the number of major injuries per million hours worked at 0.00 for Australia, NOPSEMA's analysis of the IRF data shows all IRF nations are at 0.31 and comparable IRF nations are at 0.62.⁷
- 1.8 By all measures, both domestic and internationally, NOPSEMA administers a regulatory regime that is world-class and delivers leading outcomes for safety, well integrity and environmental management.

Legislation and framework

- 1.9 While broadly consistent with the national WHS Act, Australia's offshore oil and gas OHS regime has additional requirements to address the high-hazard, high-risk nature of offshore activities and it applies duties of care to a more specific set of persons and in more detail.
- 1.10 The regime sets out broad performance objectives with respect to the identification and management of hazards and risks. The operator must take all reasonably practicable steps to ensure the facility and its activities are safe and without risk to health.
- 1.11 When the Commonwealth, state and territory governments committed to the harmonisation of the WHS laws in 2008, the responsible ministers agreed that

³ Safe Work Australia, *Key Work Health and Safety Statistics 2017*, p. 10, www.safeworkaustralia.gov.au/news-and-events/news/key-whs-statistics-australia-2017 (accessed 22 August 2018).

⁴ NOPSEMA, Tables – Annual Performance 2009 to 2018, www.nopsema.gov.au/resources/data-reports-and-statistics/ (accessed 22 August 2018).

⁵ Safe Work Australia, *Key Work Health and Safety Statistics 2017*, p. 10, www.safeworkaustralia.gov.au/news-and-events/news/key-whs-statistics-australia-2017 (accessed 22 August 2018).

⁶ NOPSEMA, Tables – Annual Performance 2009 to 2018, www.nopsema.gov.au/resources/data-reports-and-statistics/ (accessed 22 August 2018).

⁷ www.irfoffshoresafety.com/country/performance/IRF_Country_Data_2016.pdf (accessed 22 August 2018). The International Regulators' Forum (IRF) is a group of 10 countries' independent regulators of health and safety in the offshore upstream oil and gas industry, Australia is represented by NOPSEMA. Comparable IRF Nations (with similar regimes to Australia) include Canada, Netherlands, Norway and the UK.

industry-specific laws, in particular for high risk industries, should continue where objectively justified.⁸

- 1.12 It was determined that the offshore petroleum regime requires a more tailored form of regulation to address its high hazard work environment, characterised by low frequency, yet potentially catastrophic consequence, accident events. For this reason, the OPGGS was maintained as specific health and safety legislation for the offshore petroleum industry.
- 1.13 Other high risk sectors with industry-specific health and safety legislation include the aviation, agricultural and veterinary chemicals, and radiation and nuclear industries.^{9 10}
- 1.14 Testimony by Safe Work Australia at the inquiry hearings in Melbourne on 11 July 2018 indicated that it has not identified issues associated with the OPGGS Act through the implementation of their program. Further, Safe Work Australia's work program as an agency is set by its members comprising representatives from the Commonwealth, the states and territories, two from the ACTU and two employer representatives and an independent chair.¹¹
- 1.15 Overall the OPGGS Act has comparable provisions to the key elements of the WHS laws. The similarities include provisions for a duty of care regime, a risk management framework, workplace-based consultation, participation and representation, provisions for enforcement and compliance, regulation-making powers, and a defined role of the OHS regulatory agency. The OPGGS Act is also reinforced by the OPGGS Safety Regulations that provide in detail the obligations, systems and workplace arrangements for a robust safety regulatory framework.

⁸ NOPSEMA, *Submission 5*, p. 24.

⁹ The submission to the inquiry by the Department of Jobs and Small Business recognised that "alongside the principal WHS Acts in the Commonwealth and each state and territory, there are a number of separate and specific health and safety Acts that have been developed to deal with particular industries or hazards including the *Occupational Health and Safety (Maritime Industry) Act 1993* (the OHS (MI) Act) and the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act)". Department of Jobs and Small Business, *Submission to the inquiry into WHS of workers in the offshore petroleum industry*, 2018, p. 3.

¹⁰ Further, the submission by the Department of Jobs and Small Business noted that "industry-specific health or safety laws usually apply to higher-risk industries, where the hazards present may require a more prescriptive or tailored form of regulation", and that "industry-specific health and safety Acts may operate concurrently, or to the exclusion of the principal WHS Act". Industry specific laws include: the *Civil Aviation Act 1988*, the *Australian Radiation Protection and Nuclear Safety Act 1998* (Cth), and the *Industrial Chemicals (Notifications and Assessment) Act 1989* (Cth). Department of Jobs and Small Business, *Submission to the inquiry into WHS of workers in the offshore petroleum industry*, 2018, p. 4.

¹¹ Safe Work Australia, *Proof Committee Hansard*, 11 July 2018, p. 25.

- 1.16 Key differences are that the application of the OPGGS Act is specific to offshore petroleum activities—its objects are more narrowly defined, and its duties are expressed to apply to specific classes of persons, taking into account the specific roles of these persons in the offshore petroleum industry, rather than being grounded in one overarching duty of care.
- 1.17 The OPGGS regime also establishes a single independent offshore regulator, through NOPSEMA, to regulate health and safety, well integrity and environmental management, and apply a consistent approach to the regulation of all petroleum activities.

NOPSEMA's independence and effectiveness

- 1.18 During the hearings some witnesses raised concerns about the effectiveness of NOPSEMA as an independent regulator. This is not supported by independent evidence. Since 2005, the National Offshore Petroleum Safety Authority and later NOPSEMA have been subject to three independent statutory operational reviews, plus reviews by the Productivity Commission and the Australian National Audit Office (ANAO), along with scrutiny by various state government reviews.¹²
- 1.19 The 2011 independent statutory operational review of NOPSA's performance found that, "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".¹³
- 1.20 In 2014, the ANAO conducted an independent review on the establishment and administration of NOPSEMA and established that NOPSEMA "has appropriately integrated administrative arrangements for the new function of environmental management and has established a sound framework for the regulation of the offshore petroleum industry".¹⁴
- 1.21 The 2015 independent statutory operational review of NOPSEMA's performance concluded that NOPSEMA is "an effective regulator that has made positive contributions to improving safety and well integrity, and managing Australia's offshore environment."¹⁵

¹² NOPSEMA, *Submission 5*, pp. 35–36.

¹³ *Second Triennial Review of the Operational Effectiveness of the National Offshore Petroleum Safety Authority Report*, November 2011, p. 1; and *Final Government Response to the Review Report*, May 2012, p. 3.

¹⁴ ANAO, *Establishment and Administration of National Offshore Petroleum Safety and Environmental Management Authority*, 2014, p. 22.

¹⁵ *2015 Operational Review of the National Offshore Petroleum Safety and Environmental Management Authority*, September 2015, p. 89.

- 1.22 The 2015 independent EPBC Act Streamlining Review found that “Program commitments have been met”, and “the required processes and procedures are in place for the Program commitments to continue to be met in the future”.¹⁶
- 1.23 The 2016 Australia State of the Environment Report, by the Department of the Environment and Energy found that, “with the implementation of NOPSEMA, there has been an increased level of scrutiny of offshore petroleum environmental management through assessment processes and compliance inspections. Investigation and enforcement powers for environmental management have also been strengthened, which has resulted in better understanding of the impacts of activities, greater focus on industry compliance and better preparedness for unplanned events.”¹⁷

Workforce participation

- 1.24 Evidence presented by NOPSEMA to the inquiry demonstrates that NOPSEMA promotes communication with the workforce and provides advice and guidance through various mechanisms. Examples of such mechanisms include:
- (a) a dedicated website pages covering the OHS regime and specific pages for HSRs; each page containing a number of resources for the workforce on safety guidance and advice.
 - (b) a dedicated NOPSEMA inspector that acts as a focal point for each facility. That focal point contacts the HSR and makes themselves known and supports HSR contact at any time. Conversations are confidential.
 - (c) a dedicated hotline number that can be used by any member of the workforce, this is in addition to our own direct phone numbers given out by NOPSEMA inspectors.¹⁸

Compliance and penalties

- 1.25 The Victorian Government claimed in their submission to the inquiry that the penalty provisions under the OPGGS regime are significantly lower than under the model WHS and Victorian OHS regimes.
- 1.26 Under the OPGGS regime, a graduated range of enforcement tools are available to the Regulator, to encourage and support improved compliance with the regime. Prosecution is not the only enforcement mechanism at the top of the enforcement pyramid. There is also provision for NOPSEMA to withdraw acceptance of a permissioning document (which means that the titleholder/operator cannot legally continue to undertake operations), or for

¹⁶ *EPBC Act Streamlining Review Report*, August 2015, p. v.

¹⁷ *Australia State of the Environment Report 2016*, Department of the Environment and Energy, 2017, Marine Environment chapter, p. 15.

¹⁸ NOPSEMA, answers to questions on notice, 11 July 2018 (received 25 July 2018).

the Joint Authority to decide not to renew or to cancel a title. Arguably, these would result in a much higher financial loss and reputational damage for a company.

- 1.27 While the regime provides for a hierarchy of sanctions and regulatory strategies, the way in which the regulator moves within these hierarchies is determined by NOPSEMA. The OPGGS penalties are framed in accordance with the Attorney-General's Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers. The OPGGS regime's penalty units for a breach of primary WHS duties, with a fault element of recklessness or negligence, are higher than both the model WHS laws and the Victorian OHS Act.
- 1.28 The penalty for recklessness is over double the amount under the OPGGS regime compared to the model WHS and Victorian OHS laws, with the exception of the penalty for a body corporate under the model WHS Act (compared to which the penalty in the OPGGS regime is still higher).¹⁹

Conclusion

- 1.29 The inquiry has not established a compelling case for substantial change to Australia's regime for worker safety in the offshore petroleum industry.
- 1.30 However, the inquiry process has generated substantial useful input through the submissions and public hearing and the Committee Secretariat are to be commended for their efforts in supporting the inquiry. We note that the Department of Industry, Innovation and Science (DIIS) is reviewing the regulatory regime for the OHS of offshore workers ahead of the relevant regulations sunset in 2020 to ensure it remains contemporary, fit for purpose and represents leading international practice. Relevant material from this inquiry should feed into this process.

¹⁹ Specifically, the OPGGS regime contains offences for recklessness and negligence, when a person, subject to a health and safety requirement, omits to do an act and breaches the requirement. The penalty for recklessness is 3 500 penalty units and negligence 1 750 penalty units, which currently equates to \$735 000 and \$367 500 respectively for an individual. For a body corporate these equate to \$3 675 000 for recklessness and \$1 837 500 for negligence. The model WHS laws have lower penalties than the OPGGS regime. For example, for a health and safety offence committed with a fault element of recklessness (Category 1), the maximum penalty is \$300 000 or 5 years imprisonment or both for an individual and \$3 000 000 for a body corporate. The strict liability offences (of which there are two categories) are also lower than the OPGGS regime penalties for either recklessness or negligence, at \$150,000 for an individual and \$1 500 000 for a body corporate (Category 2) and \$50 000 for an individual and \$500 000 for a body corporate (Category 3). According to the Victorian Government submission, under the Victorian OHS Act, the maximum penalty is 1 800 penalty units (\$285 426) for an individual and 9 000 penalty units (\$1 427 130) for a body corporate.

Comments on recommendations

Recommendation 1

1.31 This recommendation is not supported. As discussed above, Australia's offshore safety regime is tailored to a high hazard operating environment and is working well. Based on the evidence collected during the course of the inquiry no case for a change of this significance has been made. Harmonisation simply for the sake of consistency with model laws is not supported. We note that a comprehensive review of offshore safety regulations is being undertaken by the DIIS which will assess these issues further.

Recommendation 2

1.32 This recommendation is supported in principle, subject to the findings of the current DIIS review not identifying any substantial impediments to its adoption.

Recommendation 3

1.33 Noted. Evidence presented to the inquiry did not provide a robust case supporting the need for legislative amendments to the OPGGS Act provisions relating to review of the safety case. The evidence provided to the committee gives confidence in the consultation processes in place in the existing arrangements as well as processes for review and assessment of safety case over time.²⁰

1.34 The current object in the OPGGS Act "to foster a consultative relationship between all relevant persons concerning the health, safety and welfare of members of the workforce at those facilities", provides for tripartite engagement as unions and employer organisations are recognised as "relevant persons".

1.35 The OPGGS regulatory regime provides for extensive workforce engagement. This includes involvement in the development and access to safety cases and procedural documentation, the ability to appoint people to represent their interests, protection of the workforce against threats and the ability to participate in governance arrangements and forums on health and safety issues. Some of these are explicit in the legislation (like worker involvement in safety cases and appointment of HSRs), while those at the strategic level are

²⁰ For example, the 2014 Western Australian Parliamentary Inquiry into safety-related matters relating to FLNG projects off the coast of Western Australian coast found "The National Offshore Petroleum Safety and Environmental Management Authority's Early Engagement Safety Case policy allows the Authority to engage with an operator proposing a new technology facility during the design process, and thus, contribute to the safer design of the proposed facility, *FLNG Safety Matters*, Western Australian Legislative Assembly Economics and Industry Standing Committee, 2015, Finding 19, p. xv.

not (such as Schedule 3 object (e) to “foster consultative relationship between all relevant persons”, and NOPSEMA Board membership).

- 1.36 However, HSRs can play an important role in assisting with worker safety and providing input to safety cases. There is merit in the DIIS examining whether there are improvements that could be made as part of its review of safety regulations.

Recommendation 4

- 1.37 This recommendation is not supported. Australia’s safety regime is tailored to the high hazard operating arrangements of the industry which requires a special regime and arrangements to best manage the risks. While recognising the positive role unions can play in entering a workplace to inquire into safety issues and take a constructive role in promoting OHS improvements, it is noted however, that there are ongoing concerns about union entry rights being used for other purposes, including industrial purposes. This is also evidenced by documented Federal Court decisions and Royal Commissions.
- 1.38 While the OPGGS regime does not currently provide for unions’ right of entry, it does allow an HSR to receive assistance from a consultant, who could be a union official. Subject to approval from the operator or NOPSEMA, the consultant can assist an HSR, be provided with information and attend any health and safety-related interview with the HSR.

Recommendation 5

- 1.39 This is unnecessary. In relation to permitting work, under the OPGGS regime the safety case must provide for the operator to establish and maintain a documented system for coordinating and controlling the safe performance of all work activities of members of the workforce i.e. a ‘Permit to Work’ system. The PTW system must identify the persons having the responsibility to authorise and supervise work and describe how the operator will ensure members of the workforce are competent in the application of the PTW system.
- 1.40 This system places the onus on industry to ensure competency of their employees undertaking high-risk work, and must be assessed and accepted by NOPSEMA through the safety case.
- 1.41 The differing system does not imply that the training and qualifications required of offshore workers is inferior to a formal licensing system.
- 1.42 In regards to determining whether the onshore licensing system could be applied offshore, relevant consideration would need to be made on whether the underlying courses are relevant to and appropriate for the offshore sector. This would require careful evaluation of the course and assessment material, and relevant VET providers. This system can be examined further as part of the DIIS Safety review.

Recommendation 6

- 1.43 This recommendation is not supported as it misunderstands the role of the NOPSEMA Board, which is advisory and does not make policy decisions. As a legislated statutory advisory board, members are selected for appointment by the COAG Energy Council prior to being formally appointed by the responsible Commonwealth Minister. The Board is skills based and members are not there as representatives for different groups. Members are selected on the basis of the skills they bring and anyone can be appointed regardless of affiliation, if they have the requisite skills needed by the Board. Candidates must prove they can suitably contribute to the legislated functions of the Board, which includes providing advice on policy or strategic matters relating to OHS. There is nothing in the legislation that precludes workforce representatives or representatives of employer organisations from being considered for nomination so long as they can demonstrate they are suitably qualified.

Recommendation 7

- 1.44 Noted. NOPSEMA already carries out inspections both unannounced and announced as part of its monitoring and inspection regime. However, NOPSEMA's evidence to the inquiry makes clear that it does not possess or have access to the helicopters required to undertake unannounced inspections of offshore facilities. However, NOPSEMA's evidence demonstrated that operators do not have advance warning of all matters under inspection, with 86% of all inspections undertaken in 2017 having inspection scope items added following issuance of the inspection brief to the operator, with the additional inspection items not being advised to the operator prior to arrival.²¹
- 1.45 The risks of carrying out unannounced inspections to offshore facilities can be expected to outweigh the benefits. Given the practical and logistical difficulties associated with offshore facilities, unannounced inspections may pose a barrier to effective regulatory inspections and also create inadvertent safety risks to workers at or near the facility.
- 1.46 Process safety hazards, those that can cause potentially catastrophic incidents, typically have controls that cannot be seen (as opposed to personal safety hazards). Hence, examination of management plans, documents, technical data, as well interviews with workers are an important part of inspections. These cannot be arranged with no or little notice. Nor is it feasible that a duty holder can 'cover up or hide' process safety related issues in a relatively short time (2 weeks' notice or less).
- 1.47 Site visits and inspections should be structured and planned in a way that allows information and intelligence from multiple sources to be accessed and

²¹ NOPSEMA, answers to questions on notice, 11 July 2018 (received 25 July 2018).

applied by NOPSEMA inspectors. Unannounced inspections do not allow for this.

Recommendation 8

- 1.48 This recommendation is supported in part. The OPGGS Act provides numerous protections to HSRs and provides HSRs with the authority to accompany a NOPSEMA inspector during any inspection. In addition, HSRs have the authority to be present at interviews between NOPSEMA inspectors and group members. HSRs may also engage external consultants to assist them on any OHS matters, without prejudice. Under the OPGGS Act there are protections for the offshore workforce if they make a complaint about a matter concerning OHS.²²
- 1.49 If HSRs are present on a facility during a NOPSEMA inspection, the operator is advised by the NOPSEMA inspector to invite HSRs to inspection meetings. NOPSEMA inspectors will also independently seek opportunities to speak with HSRs. Further, in recognition of the role that unions play initiates bilateral meetings with union representative bodies on OHS matters in addition to and similar engagement with employer organisations.²³
- 1.50 While mandating HSRs to accompany NOPSEMA inspectors on their inspections is an overly prescriptive approach there may be merit in the recommendation for requiring NOPSEMA inspectors to meet separately and privately with HSRs during inspections and should be tested further with all relevant stakeholders during the Departmental review of safety regulations.

Recommendation 9

- 1.51 Noted. Australia's OPGGS regime is compliant with all Commonwealth regimes and has stronger penalties than in some other regimes.
- 1.52 In 2013, the OPGGS Act was strengthened to ensure the compliance, monitoring, investigation and enforcement powers of the regulator and enforcement measures for contraventions of the Act are appropriate in the context of a high-hazard industry. Specifically, this: introduced a civil penalty regime; increased criminal penalty levels under the Act, consistent with major hazard industry legislation; and harmonised, or made greater, the penalties, including custodial penalties, for OHS offences under the Act with the WHS Act to reflect the greater consequences in a major hazard industry.
- 1.53 The criminal penalty increases were determined following careful consideration of the penalties that apply under comparable legislation,

²² Under the OPGGS Act it is an offence if an employer (whether operator or other person) dismisses or prejudices the employee that has complained or proposes to complain about a matter concerning OHS or has assisted in a matter about OHS. Maximum penalty of \$126 000 per person and \$630 000 for a body corporate (Schedule 3, Clause 88, OPGGS Act).

²³ NOPSEMA, answers to questions on notice, 11 July 2018 (received 25 July 2018).

including the WHS Act and the *Environment Protection and Biodiversity Conservation Act 1999*, and were designed to ensure that the penalty applied is appropriate to reflect the potentially severe consequences of non-compliance.

Recommendations 10 and 11

- 1.54 These recommendations are not supported as this inquiry has not provided evidence to suggest such an approach is necessary. Best practice regulatory policy requires employing a risk based approach and toolkit with graduated enforcement responses. This is currently available to NOPSEMA under the existing regime. NOPSEMA has a range of powers to use as is required to ensure offshore worker safety and required environmental outcomes are achieved.²⁴

Recommendation 12

- 1.55 Noted. A comprehensive assessment of coverage of Australian safety regulations in the maritime industry requires consideration by all relevant stakeholders, including DIIS, NOPSEMA, the Australian Maritime Safety Authority (AMSA) and the Department of Jobs and Small Business and the Department of Infrastructure, Regional Development and Cities. This would include clarifying touch points between the OPGGS regime, the Navigation Act and the OHS (MI) Act—or WHS Act following passing of current 2016 Bill (refer Seafarers and Other Legislation Amendment Bill).

Recommendation 13

- 1.56 This is appropriately an issue for NOPSEMA and AMSA to address as and when required. Best practice regulatory practices require that agencies working in related and potentially overlapping or adjoining fields of regulation need to ensure clarity on common areas and interactions between agencies on an ongoing basis as required.

Senator Lucy Gichuhi
Deputy Chair

Senator James Paterson
Member

²⁴ NOPSEMA is responsible for the regulation of more than 150 offshore petroleum facilities and more than 900 wells, NOPSEMA, *Submission 5*, p. 17. Since its establishment in 2012, NOPSEMA has taken 196 enforcement actions, NOPSEMA, *Proof Committee Hansard*, 11 July 2018, p. 7.

Appendix 1

Submissions and additional information

Submissions

- 1 Danish Working Environment Authority
- 2 National Offshore Petroleum Safety and Environmental Management Authority Board
- 3 Canada-Nova Scotia Offshore Petroleum Board
- 4 Safe Work Australia
- 5 National Offshore Petroleum Safety and Environmental Management Authority
- 6 Department of Jobs and Small Business
- 7 Department of Industry, Innovation and Science
- 8 Australian Petroleum Production and Exploration Association
- 9 AMMA Australian Resources and Energy Group
- 10 Northern Territory Government
- 11 Australian Council of Trade Unions
- 12 Australian Manufacturing Workers' Union - Western Australia Branch
- 13 Australian Institute of Marine and Power Engineers
- 14 Australian Workers' Union
- 15 Victorian Government

Additional Information

- Additional information provided by the National Offshore Petroleum Safety and Environmental Management Authority on 27 June 2018.
- Additional information provided by the Australian Maritime Safety Authority on 6 July 2018.
- Additional information provided by Woodside Energy on 1 August 2018.

Answer to Question on Notice

- Answers to questions on notice by the Australian Institute of Marine and Power Engineers. Asked at a public hearing in Fremantle on 13 June 2018; received 4 July 2018.
- Answers to questions on notice by the Department of Jobs and Small Business. Asked at a public hearing in Melbourne on 11 July 2018; received 24 July 2018.
- Answers to questions on notice by Safe Work Australia. Asked at a public hearing in Melbourne on 11 July 2018; received 25 July 2018.
- Answers to questions on notice by the National Offshore Petroleum Safety and Environmental Management Authority. Asked at a public hearing in Melbourne on 11 July 2018; received 25 July 2018.

- Answer to question on notice (2) by the National Offshore Petroleum Safety and Environmental Management Authority. Asked at a public hearing in Melbourne on 11 July 2018; received 25 July 2018.
- Answers to questions on notice by the Department of Industry, Innovation and Science. Asked at a public hearing in Melbourne on 11 July 2018; received 30 July 2018.
- Answers to questions on notice by the Australian Petroleum Production and Exploration Association. Asked at a public hearing in Fremantle on 13 June 2018; received 8 August 2018.

Tabled Documents

- Report tabled by Dr Malcolm Roberts, Chief Executive of the Australian Petroleum Production and Exploration Association at a public hearing in Fremantle on 13 June 2018.
- Opening statement tabled by Mr Sam McNeill, Organiser for the Australian Workers' Union Victorian Branch at a public hearing in Sale on 10 July 2018.
- Opening statement tabled by Mr Jeff Sharp, Organiser for the Australian Workers' Union Victorian Branch at a public hearing in Sale on 10 July 2018.
- Report tabled by Mr Michael Borowick, Assistant Secretary of the Australian Council of Trade Unions at a public hearing in Melbourne on 11 July 2018.
- Letters tabled by Mr Michael Borowick, Assistant Secretary of the Australian Council of Trade Unions at a public hearing in Melbourne on 11 July 2018.
- Poster tabled by Mr Michael Borowick, Assistant Secretary of the Australian Council of Trade Unions at a public hearing in Melbourne on 11 July 2018.
- Opening statement tabled by Ms Lisa Schofield, General Manager, Offshore Resources Branch, Resources Division at the Department of Industry, Innovation and Science at a public hearing in Melbourne on 11 July 2018.

Appendix 2

Public hearings and witnesses

Wednesday, 13 June 2018

Carnac Room

Esplanade Hotel

Corner of Marine Terrace and Essex Street

Fremantle

Australian Petroleum Production and Exploration Association

- Mr Malcolm Roberts, Chief Executive

BHP Billiton Petroleum

- Mr Graham Salmond, General Manager, Australia

Woodside Energy

- Mr Niall Myles, Senior Vice President Australia Operating Unit

Chevron Australia

- Mr Chris Ross, Health & Safety Team Lead – Operations

AMMA Australian Resources and Energy Group

- Mr Simon White, Principal Workplace Relations Consultant
- Mr David Parker, Head of West Coast Workplace Relations

Australian Institute of Marine and Power Engineers

- Mr Andrew Williamson, Assistant Federal Secretary

Australian Manufacturing Workers' Union - Western Australia Branch

- Mr Glenn McLaren, Assistant State Secretary

Electrical Trades Union of Australia

- Mr Matthew Murphy, National Industry Coordinator
- Mr Damian Clancey, City and Apprentice Organiser, WA branch

Tuesday, 10 July 2018

Quest Sale

180/184 York Street

Sale

Electrical Trades' Union - Victorian Branch

- Mr Peter Mooney, State Organiser

Mr Dane Coleman, Private Capacity

Australian Workers' Union - Victorian Branch

- Mr Sam McNeill, Organiser
- Mr Jeffrey Sharp, Organiser

Australian Manufacturing Workers' Union

- Mr Stephen Dodd, State Organiser
- Mr Troy Carter, Member

Construction, Forestry, Maritime, Mining and Energy Union

- Mr Michael Cross, National Safety and Training Officer

Wednesday, 11 July 2018

Legislative Council Committee Room

Parliament of Victoria

Spring Street

Melbourne

National Offshore Petroleum Safety and Environmental Management Authority

- Mr Stuart Smith, Chief Executive Officer
- Mr Derrick O'Keeffe, Head of Safety and Integrity
- Mr Karl Heiden, Head of Regulatory Support
- Mr Rodney Gunn, Manager Assessment and Inspection Victoria Office

National Offshore Petroleum Safety and Environmental Management Authority Board

- Ms Erica Smyth, Chair

Safe Work Australia

- Ms Amanda Johnston, A/g Deputy Chief Executive Officer
- Ms Bianca Wellington, A/g Branch Manager, Enabling Services
- Mr Kristopher Garred, Director, Evidence

Australian Workers' Union

- Mr Shane Roulstone, National Organiser

Australian Council of Trade Unions

- Mr Michael Borowick, Assistant Secretary
- Ms Elyane Palmer, Industrial Officer
- Mr Michael Doleman, International Executive Officer, Maritime Union of Australia

Department of Jobs and Small Business

- Mr Adrian Breen, Branch Manager, Work Health and Safety Policy Group
- Ms Kelly Hoffmeister, Senior Executive Lawyer, Workplace Relations Legal Group

Department of Industry, Innovation and Science

- Ms Lisa Schofield, General Manager, Offshore Resources Branch, Resources Division

Victorian Government

- Mr Michael Coffey, Head of Hazardous Industries and Industry Practice, WorkSafe Victoria