

# Modernising Work Health and Safety Laws in Western Australia

## Submission by the National Offshore Petroleum Safety and Environmental Management Agency

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Stephanie Mayman  
Chairperson  
Ministerial Advisory Panel  
Work Health and Safety Reform  
Via email: [WHSreform@dmirs.wa.gov.au](mailto:WHSreform@dmirs.wa.gov.au)

Dear Chairperson

**Re: Modernising work health and safety laws in Western Australia - opportunity to streamline legislation and reduce regulatory burden**

Thank you for the opportunity to provide this submission for the Ministerial Advisory Panel's consideration. The submission has been prepared by the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA).

NOPSEMA was established with the support of the Federal, State and Northern Territory governments as the national independent regulator of offshore petroleum activities. The responsibilities of NOPSEMA include oversight of offshore petroleum for safety, well integrity and environmental management. The establishment of NOPSEMA brings benefits through economies of scale, a critical mass of expertise and greater consistency in the interpretation and application of regulations and guidelines.

The submission represents NOPSEMA's experience in administering the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act) and associated regulations and documents insights into how the OPGGS Act provides for similar outcomes to the model WHS laws, empowering health and safety representatives to respond to safety issues and advocating consultative relationships between all relevant stakeholders on improvements to safety in the workplace.

As a general principle NOPSEMA supports harmonisation that will improve regulatory outcomes and reduce inconsistency between jurisdictions. Accordingly NOPSEMA:

- supports most of the recommended changes relevant to our jurisdiction, as noted in Attachment A; and
- cautions against amendments that may reduce consistency between legislation governing offshore petroleum regulation in Western Australia versus other jurisdictions.

If you require any further information please do not hesitate to contact NOPSEMA at [communications@nopsema.gov.au](mailto:communications@nopsema.gov.au).

Yours sincerely



Stuart Smith

Chief Executive Officer

30 August 2018

| # | Recommendation  | Clauses  | Comments  |
|---|---|----------|---|
| 1 | Amend the Objects of the WHS Act (WA) to foster cooperation and consultation in the development of health and safety standards. | 3(1)(c). | Fostering consultation and cooperation are important objects of legislation and is enshrined in the offshore petroleum industry safety laws, in particular Schedule 3 to the <i>Offshore Petroleum Greenhouse Gas Storage Act 2006</i> (OPGGs Act) fosters a consultative relationship between all relevant persons concerning the health, safety and welfare of members of the workforce at those facilities. The development of health and safety standards is known to be within the remit of standards organisations and bodies. If the intent of the amended object is that standards organisations and bodies would continue to have a role in this regard, the amendment would demonstrate clear benefits for safety regulation. |
| 2 | Amend the Objects of the WHS Act (WA) to make specific reference to Western Australia.  | 3(1)(h). | Supported. The removal of the term jurisdiction to be replaced with Western Australia will remove any ambiguity.  |

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| 8  | Include a new duty of care on the providers of workplace health and safety advice, services or products.                               | New clause to be added to Division 3, Part 2 and new definitions to be added to section 4. | Supported. The offshore petroleum regulatory framework provides for a robust duty of care regime that imposes obligations on a number of different duty holders. Clause 11, of Schedule 3 to the OPGGS Act, sets out duties imposed on contractors. It is reasonable to extend a duty of care to providers of WHS advice, services or products. |
| 9  | Amend the meaning of <i>serious injury or illness</i> to include immediate treatment as an in-patient without reference to a hospital. | 36(a).   | Supported. Treatment in remote areas may occur at various facilities that are not hospitals. By removing the reference to hospitals, this may provide a clearer and more meaningful understanding of injury data in those areas.  |
| 12 | Clarify the power of HSRs to provide assistance in specified circumstances to all work groups at the workplace.                        | 69(3).   | Supported. The offshore petroleum regulatory framework recognises the importance of HSRs in providing wider assistance to the workforce. Clause 34(1)(b) of Schedule 3 of the OPGGS Act provides for HSRs to investigate complaints made by any group member about the health and safety of any of the members of the workforce.                |

| #  | Recommendation   | Clauses                                | Comments   |
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| 14 | Ensure the PCBU's obligation to ensure a health and safety representative (HSR) attends approved training is a 'requirement' rather than an 'entitlement'. | 72(1)(b).                              | Supported. This recommendation is consistent with other industry specific laws. The offshore petroleum regulatory framework supports HSR training. Clause 30 of Schedule 3 to the OPGGS Act provides that it is mandatory for a HSR to undertake training and mandatory for the operator to permit the representative to take time off work, without loss of remuneration or any other entitlements, as is necessary to undertake the training. It is not discretionary. |
| 16 | Include the common law right for a worker to cease unsafe work where there is a risk posed to another person by the work.                                  | 84                                     | Noted. The offshore petroleum regulatory framework recognises the importance of a member of the workforce having rights to cease unsafe work where there is a risk posed to another person by the work. Clause 44 of Schedule 3 to the OPGGS Act provides that HSRs may take action to direct the group member or group members to cease work where there is imminent and serious danger to the health and safety of the workforce.                                      |
| 18 | Add a requirement that a HSR is notified where a request to review a provisional improvement notice by an inspector is sought by a PCBU or person.         | New clause to be added to section 100. | Supported. The offshore petroleum regulatory framework supports HSRs being notified when the PCBU or person requests the inspector to review the PIN.  |

| #  | Recommendation  | Clauses  | Comments   |
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| 25 | Modify the power of inspectors to require production of documents and answers to questions without the prerequisite of physical entry to the workplace. | 171, Division 3 of Part 9 (heading) and Subdivision 4 of Division 3 of Part 9 (heading). | Supported. This power proves beneficial to conducting more fulsome inspections and investigations. The offshore petroleum regulatory framework provides inspectors with these powers. Under Clause 74 of Schedule 3 to the OPGGS Act, a NOPSEMA inspector has power to require the production of documents and response to questions without the prerequisite of physical entry to the workplace.                              |
| 26 | Clarify that the power of inspectors to conduct interviews includes the power to record the interview.  | 171.   | Supported. This would improve inspector's powers to document evidence for any required regulatory action. Under the offshore petroleum regulatory regime, NOPSEMA inspectors receive these powers through other enabling legislation.  |
| 27 | Include a requirement for the person issued an improvement notice to notify the Regulator of their compliance.  | 193.   | Noted. An obligation for the regulator to be informed about compliance with an improvement notice is important. Improvement notices issued to duty holders under the Offshore Petroleum Greenhouse Gas Storage (Safety) Regulations, require the duty holder to inform the regulator of their compliance. The requirement is set out in the form of the improvement notice (Form 5 of Schedule 3.1 of the Safety Regulations). |

| #  | Recommendation   | Clauses                                    | Comments   |
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| 30 | Ensure that enforceable undertakings are not available for Category 2 offences involving a fatality. | New sub-clause to be added to section 216. | <p>Noted. An amendment Bill for the OPGGS Act currently before Parliament seeks to introduce enforceable undertakings and sets out specific circumstances to accept an enforceable undertaking; they are prohibited in the following circumstances, except where exceptional circumstances exist:</p> <ul style="list-style-type: none"> <li>a. The alleged contravention is connected to a fatality;</li> <li>b. The alleged contravention involves reckless conduct;</li> <li>c. The alleged contravenor has a recent prior conviction connected to a work-related fatality; or</li> <li>d. The alleged contravenor has more than two prior convictions arising from separate investigations.</li> </ul> |