

## Regulating for the future

Good evening ladies and gentleman. It's a pleasure to join you tonight and have the opportunity to talk about NOPSEMA and what its establishment means for the offshore petroleum industry.

Given NOPSEMA has been up and running for ten months now, I'd be surprised if many of you haven't already come across us in some way. But, for those of you who haven't had the pleasure of dealing with "the regulator" as a matter of course, I'll first provide a brief overview of our role before addressing the implications of the transition for industry. First, I would like to talk about why we do what we do.

### *Slide 2 – Why we do what we do*

In July 1988, 167 were killed in the Piper Alpha offshore explosion. The initial hydrocarbon release was small – about 3kg.

Lord Cullen posed a challenge for industry and prompted a major change to the way in which the offshore oil and gas industry is regulated. The Cullen Inquiry clarified that those who are responsible for creating the risk are best placed to manage the risk. Operators, therefore, need to make a case for safety, to demonstrate how the risks to the health and safety of workers would be mitigated.

The role of the regulator is to provide assurance to the community, to offshore workers, to government, and to do this by challenging industry to demonstrate how the risks have been mitigated. In order to do this properly, the regulator should be independent and properly resourced with capable and competent people.

### *Slide 3 - Where are we at? (timeline slide)*

NOPSEMA is Australia's national independent regulator for the offshore industry and was formed following recommendations from the Productivity Commission (2009) and the Montara Commission of Inquiry (2010).

Since 1 January 2012, safety, well integrity and environmental management of offshore oil and gas activities in Commonwealth waters has been regulated by NOPSEMA – the National Offshore Petroleum Safety and Environmental Management Authority. NOPSEMA succeeded NOPSA, which was formed in 2005 and was responsible for safety only.

From there, the authority assumed more responsibilities in response to significant offshore accidents, both here and overseas, namely the PTTEP AA Montara Blowout in the Timor Sea and BP Macondo blowout in the Gulf of Mexico.

### *Slide 4 – PTTEP AA Montara blowout 21 August 2009*

NOPSEMA is a Commonwealth independent statutory agency and is separate from government's management of resource promotion and allocation.

The NOPSEMA Chief Executive Officer is appointed by the Commonwealth Minister for Resources and Energy. We are funded on a full cost recovery basis via levies from industry and fees from services performed for other government agencies, such as the National Offshore Petroleum Titles Administrator (NOPTA).

We have in excess of 100 staff comprising OHS specialists, well integrity specialists, environment specialists and corporate support staff. Our headquarters are here in Perth and we also have an office in Melbourne. Before moving on, I thought I might do a quick quiz. Do you recognize the accidents pictured in these slides?

*Slide 5 - (Ensko 51, Gulf of Mexico, 1 March 2001)*

*Slide 6 - (Adriatic IV, Egypt 2004)*

*Slide 7 - (KS Endavour, Nigerian coast, January 2012 - in which two people working for Chevron were killed)*

*Slide 8 - Where do we regulate?*

As I mentioned before, NOPSEMA's jurisdiction is in Commonwealth waters and also where a state or the Northern Territory has conferred functions to regulate OHS, well integrity or environmental management. At the moment, all states and Northern Territory apart from WA have conferred safety regulation functions to NOPSEMA.

*Slide 9 - What are our aims?*

#### **Vision**

A safe and environmentally responsible Australian offshore petroleum and greenhouse gas storage industries.

#### **Mission**

To independently and professionally regulate offshore safety, well integrity and environmental management.

NOPSEMA's approach focuses on being:

- **Independent and professional**
  - Transparent, coherent policies and processes, shared with industry and consistent with the requirements of the Regulations, administered by a critical mass of skilled professionals that focus on ensuring duty holders, and the regulator, comply with their obligations specified in law

We carry out our work with:

- **Respect for due process**
  - Timely and competent decisions based on criteria set out in the regulations
  - Processes outside the regulatory requirements are not created

This means that:

- Requirements and interventions by the regulator are not arbitrary
- There is greater certainty for industry and a reduction in regulatory burden
- We achieve this through ongoing dialogue

#### *Slide 10 – What gives us powers? (table of legislation)*

I realise it's a bit of a dampener to talk about legislation at the end of a long day, but it's important to briefly identify the laws that govern NOPSEMA's activities.

That's the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* and the accompanying Safety, Resource Management (Well Integrity) and Environment Regulations.

At NOPSEMA, we are focused on doing what the law says we should do in an independent and professional way. This is particularly important in an objective-based regulatory regime where the standards are less prescriptive but it's just as crucial that we do our job in a consistent and fair way. I'll expand on this a little later, but for now I'll just outline the core functions NOPSEMA performs:

#### *Slide 11 – What are our functions?*

- **To promote** the safety of people working offshore
- **To develop** and implement effective monitoring and enforcement strategies so that industry complies with the law
- **To investigate** accidents and occurrences relating to OHS, well integrity and environmental management
- **To advise** on matters relating to OHS, well integrity and environmental management
- **To make reports**, including recommendations, to the Commonwealth/state/NT minister
- **To cooperate** with other agencies or authorities

#### *Slide 12 – What does this mean for industry?*

Understandably, there's been a lot of discussion and some uncertainty arising from NOPSEMA's establishment.

Well ahead of 1 January 2012, the authority worked to explain to industry what NOPSEMA's approach to enforcing an objective-based regime would be.

For some industry stakeholders, this has felt like the rules changed overnight.

But actually, there's nothing new about industry being made responsible for planning and demonstrating good risk management.

Effectively, that means giving industry the flexibility to plan for activities and carry them out as they've promised to do, but asking some pertinent questions and taking action along the way.

So we emphasise the "hows?" **AND** the whats?". Let me explain how that might look against our functions:

### Assessment

- Independent, sampled evaluation of an operator’s submission against the Regulations
- Challenge operators: **“Have you done enough?”**

### Inspection

- Independent, sampled inspection of the petroleum activity against the accepted permissioning document and Regulations
- Challenge operators: **“Are you doing what you said you would do?”**

### Investigation

- Independent inspection to determine what went wrong and determine whether enforcement/prosecution is required
- Challenge operators: **“What wasn’t done? What can we learn?”**

### Enforcement

- Take action within powers under the Act and Regulations to secure compliance

### *Slide 13 - So what’s changed? Environmental Management*

In outlining the objective-based regime, I don’t intend to oversimplify its effect on industry planning and processes. Naturally, the transition to NOPSEMA has brought with it changes that represent both benefits and challenges for industry.

If we just look at environmental management, the transition to NOPSEMA regulation and the national objective-based regime has involved amendments to not only the Environment Regulations but to expectations of, and for, industry.

Some of the changes to the Environment Regulations mean, for example:

- Operators are required to carry out consultation with those affected by their proposed activities
- Operators are required to demonstrate that the impacts and risks of their activities are reduced to as low as reasonably practicable **and** acceptable

The shift to an independent regulator that challenges operators invariably means changes for some within industry.

For example, industry may witness an evolution of culture, be it safety culture or professional culture, in response to operating against objectives, rather than prescriptions.

Industry can, and should, embrace the principle that many of the answers lie within their own teams – so while the tendency may be to seek greater assistance from the regulator, in fact, the answers may simply depend on operators asking the right questions of themselves?



For example, operators frequently ask NOPSEMA whether they require a safety case for a particular type of vessel, when in fact they should be focusing on the particular type of activity they wish to carry out. (Is it a supply vessel or to be used for the purposes of construction?)

I'll expand on NOPSEMA's guidance and advisory role soon.

#### **Slide 14 – So what's changed? Petroleum Safety Zone and Directions Powers**

Before that, I'd like to explain the petroleum safety zone and NOPSEMA's powers to give directions – both changes which are aimed at promoting safety offshore and responsiveness to offshore incidents.

##### **First – Petroleum safety zones**

- Objective - Protect wells, structures and equipment from vessels and ensure the safety of navigation
- Mechanism - Petroleum safety zones published in the Gazette by NOPSEMA
- Criteria - A petroleum safety zone may extend to 500m around the well, structure or equipment
- Process- Established via application by operator or by NOPSEMA directly. NOPSEMA also assesses applications for entry

##### **Second – Directions powers**

- NOPSEMA has general and remedial direction-giving powers
- Ministerial directions (resource management, resource security and data management) prevail over NOPSEMA directions
- Significant incident directions enable NOPSEMA to direct a titleholder, in the event of a significant offshore petroleum incident that has caused or might cause an escape of petroleum, to:
  - take action (prevent, eliminate, mitigate, manage or remediate) or not to take an action, and
  - may be unconditional or subject to conditions
- The direction may apply either within or outside the titleholder's title area

#### **Slide 15 - How have you reduced regulatory burden?**

One area of particular interest for industry is how the transition to a single national regulator might reduce the regulatory burden.

For NOPSEMA, achieving regulatory best practice depends on the efficiency of our policies and processes, aligning them with our legislated functions and performing them in an independent and professional way, with respect for due process.

For industry, regulatory best practice means jumping fewer unnecessary hurdles.

Here are a few examples of how NOPSEMA has sought to make the process more streamlined and less burdensome on industry.

1. Removed requirements applied by DAs that lacked a clear legal basis
  - Many practices implemented by the DAs have ceased: Exemptions or revision submission for minor change in risk, weekly and daily activity progress reporting are two classic examples we found in operation on commencement
2. Removed arbitrary rules
  - unnecessary detail (e.g. vessel name, rig name )
  - unnecessary endorsement of the regulator (survey approvals outside of EPs etc, minor EP change letters and approvals, “this is not an incident but we’re telling you something has changed from the EP”)
3. Allowed multiple petroleum activities
  - in one environment plan (e.g. exploration wells)
  - without need for follow-up bridging documents
4. Single form for reporting OHS and/or environmental accident.

#### **Slide 16 – Mythbusting**

We often hear operators recount the experiences or opinions of others – as we all know, these experiences have a habit of rolling around “the terrace” and get further from the actual situation as time goes on. To address this we take opportunities such as this to address specific “myths” in order to ensure our approach as an independent and professional regulator continues to deliver benefits to industry. A few that may be of interest to this audience include:

1. Approvals timeframes:

Myth: 3 to 6 months for an approval of an EP

Fact: 21 days on average to first assessment notification

Fact: 54 days on average from 1<sup>st</sup> submission to acceptance (both NOPSEMA assessment & operator time to modify plan for resubmission)

Myth: NOPSEMA won’t let me include more than one well in an EP

Fact: NOPSEMA consistently advise that the regs are flexible and encourage strategic approaches (several operators have had EPs accepted with multiple wells across titles)

Myth: NOPSEMA has caused \$130 million in direct costs to industry since 1 January

Fact: Operators that make EP submissions that do not comply and are made very close to start of operations are not planning adequately for expensive operations

Finally, the most commonly held myth is that there is no two-way dialogue between NOPSEMA and an operator, which leads me to the final slide on communication.

#### **Slide 17 – How do we communicate?**

A frequent criticism levelled at NOPSEMA is that we don’t communicate sufficiently with our stakeholders.

We take this claim seriously and have worked continuously to build and refine the channels through which we engage, provide guidance, or clarify points.

Here you can see the number of communication tools or forums NOPSEMA has established to demonstrate responsiveness, accountability and transparency – and, most importantly, to build the capacity of industry to effectively manage risk.

We may approach our work from different angles – industry needs to consider its shareholders and commercial viability, the regulator is compelled to secure compliance by industry and promote improved safety, structural and environmental management outcomes – but clearly protecting lives and reducing harm to the environment must remain the common goal.

Sharing information and learnings goes a long way to achieving this goal.

### *Slide 18 – Questions?*

At the start of my presentation tonight, I touched briefly on what prompted NOPSEMA's establishment. Unfortunately, accidents like Montara and Macondo are not isolated, nor are they a relic of some pioneering industry that lacked the technology and experience we can draw on today.

The death of two workers on the Stena Clyde facility in the Bass Strait a little over a month ago demonstrates the painful truth - that the risks of offshore oil and gas continue to claim lives.

We all have a responsibility to ask of ourselves “what more can we do?” to transform a legacy of loss to a reputation for safety and responsibility.

Thank you very much. I'm happy to answer your questions.