

## Consideration of stakeholder comments on NOPSEMA's Compliance Strategy

### Table

Number	Summary of stakeholder comment	NOPSEMA's discussion and consideration of feedback received
1	There should be increased public disclosure of regulatory documents submitted to NOPSEMA for assessment.	<p>NOPSEMA agrees with the need to continue to review the requirements surrounding disclosure of regulatory information and documents. In the context of our environmental management function, NOPSEMA has undertaken a work program since 2014 specifically aimed at improving transparency of submissions made to NOPSEMA, and our processes and decisions. For example, we have expanded the design and functionality of our website to provide increased information to stakeholders regarding submissions made to NOPSEMA, our decisions, and when petroleum activities are undertaken.</p> <p>NOPSEMA must also ensure that it complies with the provisions of the relevant legislation and regulations we administer. To the extent this comment relates to the legislation and regulations that we administer, NOPSEMA has provided this feedback to the Department of Industry, Innovation and Science, for consideration in future policy review and legislative change considerations.</p>
2	Appropriateness of risk-based inspection processes and how inspections are prioritised.	<p>NOPSEMA agrees with the need to allocate regulatory resources in an efficient, effective and targeted manner. As noted in the Compliance Strategy, NOPSEMA focuses compliance monitoring efforts to monitor and secure compliance with obligations under the <i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i> (OPGGG Act) and the associated regulations. Inspection activities are specific and focused, using a risk based methodology and incorporating regulatory intelligence from multiple sources.</p> <p>NOPSEMA considers that a risk based approach is appropriate to inform the scoping and frequency of inspections. The frequency of environmental management and occupational health and safety (OHS) inspections are listed in the relevant subsidiary policies (N-02200-PL0973 and N-02100-PL0025), which can be accessed from our website. In addition to inspections planned in advance, NOPSEMA also conducts additional inspections where necessary as informed by a range of factors, including incidents, complaints, and information provided by third parties.</p>
3	Suggests link regarding NOPSEMA's privacy policy is not relevant to the public disclosure of inspection reports.	<p>NOPSEMA agrees that its privacy policy is not relevant to NOPSEMA's approach regarding the release of inspection reports. As a result, we have removed the link to the privacy policy within NOPSEMA's Inspection Policy N-02000-PL1523.</p> <p>In terms of the release of information regarding regulatory activities, including inspections, we publish an Annual Offshore Performance Report on our website, which provides high level details regarding inspections carried out by NOPSEMA. In preparing future reports, we will consider the level of detail regarding inspections carried out by NOPSEMA with an aim to increase transparency in relation to</p>

Number	Summary of stakeholder comment	NOPSEMA's discussion and consideration of feedback received
		<p>these activities.</p> <p>It should be noted that NOPSEMA is subject to <i>Freedom of Information Act 1982</i> (Fol Act), and is required to consider all requests for documents made under that legislation. Where a request is made, NOPSEMA will consider this on its merits and in accordance with the requirements of the Fol Act.</p>
4	<p>Clarification of the extent to which NOPSEMA requires duty holders to provide assistance to facilitate an inspection undertaken offshore, including transportation, accommodation, workspace, meals, etc. during an offshore inspection.</p>	<p>NOPSEMA agrees that such assistance is essential to ensure that our inspectors can perform their duties with regard to offshore inspections. This assistance may be requested with regard to offshore inspections conducted under Schedule 2A and Schedule 3 of the OPGGS Act. This provision is utilised by NOPSEMA for offshore inspections and as a result of this feedback, we have updated NOPSEMA's Inspection Policy N-02000-PL1523 to reference and reflect these provisions.</p>
5	<p>Applicability of company safety and security policies to NOPSEMA inspectors prior to and during an inspection.</p>	<p>NOPSEMA sees merit in reflecting our expectations of duty holders (e.g. operators and titleholders) and have updated our Inspection Policy N-02000-PL1523 accordingly. This includes NOPSEMA inspectors not being considered part of the workforce on a facility, and that our inspectors are not subject to duty holder requirements for matters such as personal protective equipment (PPE), medicals, training, inductions, or drug and alcohol testing.</p> <p>NOPSEMA inspectors are subject to NOPSEMA's own requirements, including in relation to competency, training, and PPE to ensure that they are appropriately provisioned to undertake offshore inspections.</p>
6	<p>Availability of reports and stakeholder access to NOPSEMA's Regulatory Management System (RMS).</p>	<p>NOPSEMA's Regulatory Management System (RMS) is an internal system used to record deliberations on regulatory submissions and decisions. Regulatory information about our functions, activities, and actions, including trends and key compliance matters are outlined in the Annual Offshore Performance Report and other publications. NOPSEMA will review its public disclosure of information regarding regulatory functions to determine where additional information is suitable for release, including through the Annual Offshore Performance Report.</p> <p>NOPSEMA's Environment Division recently ran a workshop within industry participants where it demonstrated RMS and how this system is used to capture assessment considerations and decisions. We will continue to look at ways to increase the transparency of our processes and decisions to assist in further building stakeholder confidence in our regulatory abilities.</p>
7	<p>Consider the need to ensure that investigations and enforcement actions are not influenced by enforcement pressures and external root cause analyses.</p>	<p>NOPSEMA agrees with this comment and has updated its Enforcement Policy N-05000-PL0067 to reflect the use of advice and promote functions to achieve a no-blame approach to secure broader industry compliance.</p> <p>Where there is a non-compliance matter identified, NOPSEMA first gives consideration to broader</p>

Number	Summary of stakeholder comment	NOPSEMA's discussion and consideration of feedback received
		<p>industry compliance. The enforcement approach chosen is based on what will best achieve that outcome. NOPSEMA has not found that enforcement pressures result in root causes being missed. As an independent regulator, external policy agendas have also not been found to influence NOPSEMA's activities.</p>
8	<p>Concerns that NOPSEMA's Compliance Strategy does not take a nationally consistent approach to OHS regulation.</p>	<p>NOPSEMA agrees that national consistency is an important objective and is an advocate for consistency to the extent that this is possible within the context of the OPGGS Act and associated regulations. The legislation that NOPSEMA administers and our regulatory activities recognise the high-hazard nature of the offshore petroleum industry and the multi-faceted regulatory responsibilities of NOPSEMA, which are not limited to OHS, but also include structural integrity (including wells) and environmental management.</p> <p>NOPSEMA places importance on maintaining good working relationships with other regulators. For example, NOPSEMA has engaged with Safe Work Australia (SWA), and its members, and has provided input into a range of SWA initiatives, including the development of the OHS Strategy and Model Work Health and Safety Regulations and Codes of Practice. NOPSEMA considers that our Compliance Strategy is consistent with SWA's Compliance and Enforcement Strategy to the extent possible under the OPGGS Act and that both contain similar activities, objectives and principles to be applied as a means of monitoring and enforcing compliance with legislative and regulatory requirements.</p>
9	<p>Aims and objectives of enforcement are not clearly outlined under the Compliance Strategy.</p>	<p>NOPSEMA agrees with the importance of clearly outlining aims and objectives under the Compliance Strategy. NOPSEMA has separated its overarching Compliance Strategy from the aims of specific regulatory activities, such as enforcement. The Compliance Strategy details the integration and concurrent nature of NOPSEMA's regulatory activities and the different purposes of these activities. Each of these activities is provided for under the OPGGS Act and has its own objectives.</p> <p>In addition to 'core' regulatory functions of assessment, inspection, investigation and enforcement, we also look to use our 'advice and promotion' function to encourage industry wide compliance and improvements in industry performance. In relation to enforcement, NOPSEMA has a range of enforcement tools available as listed in the Enforcement Policy N-05000-PL0067. In using these enforcement tools, NOPSEMA ensures that its actions are:</p> <ul style="list-style-type: none"> <li>• outcomes focused</li> <li>• proportional and responsive</li> <li>• informed</li> <li>• transparent</li> <li>• consistent</li> <li>• targeted, and</li> </ul>

Number	Summary of stakeholder comment	NOPSEMA's discussion and consideration of feedback received
10	NOPSEMA's Enforcement Policy does not mention the Commonwealth Director of Public Prosecutions' (CDPP) Prosecution Policy.	<ul style="list-style-type: none"> <li>aligned with the principles of procedural fairness.</li> </ul> <p>NOPSEMA agrees that the Prosecution Policy of the CDPP plays a key role in decisions to proceed with criminal prosecutions on behalf of the Commonwealth. As such, we will update Enforcement Policy N-05000-PL0067 to reference the CDPP's Prosecution Policy and will note that there is shared responsibility between the CDPP and NOPSEMA with regard to criminal prosecutions related to our functions and responsibilities.</p> <p>NOPSEMA and the CDPP work collaboratively to ensure that the objectives for both organisations can be met. Arrangements between NOPSEMA and the CDPP recognise that where there is a possibility of criminal prosecution as result of evidence collected by NOPSEMA, there is shared responsibility between the parties. We will continue to engage with the CDPP on a regular basis to maintain this relationship.</p>
11	NOPSEMA's Compliance Strategy should identify workers as stakeholders given their involvement in the safety case regime.	<p>NOPSEMA acknowledges the important role that workers play in contributing to our vision for a safe and environmentally responsible offshore petroleum industry. NOPSEMA does not only regulate the management of risks and hazards related to the health and safety of workers, but we also recognise the key role that workers have during day to day activities, such as:</p> <ul style="list-style-type: none"> <li>during preparation of a safety case</li> <li>the ongoing identification of OHS risks during operations</li> <li>raising OHS matters with colleagues and superiors identified during operations so that these can be appropriately addressed</li> <li>involvement in safety mechanisms (e.g. as health and safety representatives or as a member of a health and safety committee)</li> <li>promoting and encouraging a safety culture within their own companies, and</li> <li>contributing to continual improvement in the management of OHS risks in the offshore petroleum sector.</li> </ul> <p>We note that operators, the workforce and HSRs are specifically identified in the various organisation-wide policies, such as NOPSEMA's Assessment Policy, Inspection Policy, and Enforcement Policy. More specific details regarding the role of the workforce in the safety case regime can be within various policies and guidance documents in the OHS section of our website:  <a href="https://www.nopsema.gov.au/safety/">https://www.nopsema.gov.au/safety/</a>.</p>
12	Whilst Health and Safety Representatives (HSRs) have powers and functions under the <i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i> , there is no mention of	NOPSEMA agrees that HSRs have an important role in terms of their powers and functions under the OPGGS Act. As suggested in this feedback, we have made an amendment to Enforcement Policy N-02000-PL1523 to reflect the functions of HSRs, including the ability of HSRs to issue a provisional improvement notice (PIN). NOPSEMA is committed to maintaining an ongoing productive working

Number	Summary of stakeholder comment	NOPSEMA's discussion and consideration of feedback received
	the office in the NOPSEMA Compliance Strategy.	<p>relationship with HSRs. This can be seen through a range of activities which NOPSEMA undertakes, including the following:</p> <ul style="list-style-type: none"> <li>• involvement in HSR Forums</li> <li>• meeting with HSRs during inspections of offshore facilities</li> <li>• providing accreditation to HSR training course providers, and</li> <li>• publication of a HSR Handbook with associated policy and guidance documents to assist HSRs fulfil their duties.</li> </ul> <p>We note that discussion about the role of the workforce and HSRs is discussed in much greater detail in the relevant OHS specific policies and guidance material which can also be accessed at: <a href="https://www.nopsema.gov.au/safety/">https://www.nopsema.gov.au/safety/</a>.</p>
13	The NOPSEMA Compliance Strategy should explain the difference between types of inspections and how inspections occur in practice.	<p>NOPSEMA agrees that there is merit in clarifying this point and has updated its Inspection Policy N-02000-PL1523 accordingly. Although there is no differentiation between an inspection and an investigation under the OPGGS Act, for operational reasons, NOPSEMA uses these terms to reflect the different purposes of these activities.</p> <p>The majority of inspections conducted by NOPSEMA are planned in advance, either through regular scheduling or another risk based prioritisation processes. These generally focus on the duty holder's compliance with risk management permissioning documents (e.g. safety case, well operations management plan, diving safety management plan, and environment plans), the regulations, and/ or and the OPGGS Act. Further details on the relevant inspection processes can also be found in the subsidiary inspection policies for OHS, well integrity and environmental management available via our website.</p> <p>NOPSEMA uses the term 'investigation' to refer to instances where it has gathered information that justifies seeking evidence of non-compliance with the law as a basis for potential enforcement. NOPSEMA may also conduct investigations of individual events or related events with the primary aim of identifying and sharing lessons learnt with the broader industry and stakeholders. Further information regarding investigations can be found in NOPSEMA's Investigation Policy N-03000-PL1697.</p>
14	Suggestion that the requirements for operators to provide copies of inspection reports to relevant members of the workforce, members of Health and Safety Committees and/or Health and Safety Representatives be reflected in the Compliance Strategy.	NOPSEMA agrees with this comment and has updated its OHS Inspection policy to reflect this requirement. Following an inspection, the communications that accompany the inspection report also remind operators of this requirement.

Number	Summary of stakeholder comment	NOPSEMA's discussion and consideration of feedback received
15	Query regarding application of the precautionary principle during environmental management assessments.	<p>A key objective of the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (Environment Regulations) is that all offshore petroleum activities are required to be carried out in a manner consistent with the principles of ecologically sustainable development (ESD) as per section 3A of the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (EPBC Act). The precautionary principle is a key principle of ESD and is taken into account during NOPSEMA's regulatory activities.</p> <p>NOPSEMA's Environment Plan Content Requirements Guidance Note (available on our website) contains guidance on the requirements for titleholders to consider all aspects of ESD throughout the preparation of their environment plan.</p> <p>Our approach to decision making also considers whether the titleholder has appropriately detailed the impacts and risks from the activity on matters of national environmental significance, such as a world heritage area, and whether the titleholder has applied ESD principles to demonstrate that impacts and risks have been reduced to levels that are as low as reasonably practicable (ALARP) and acceptable. NOPSEMA will not accept an Environment Plan unless it is satisfied that the submission meets the requirements of the Environment Regulations.</p>
16	Query regarding assessment of cumulative impacts, particularly from seismic operations, with regard to environmental management assessments.	<p>NOPSEMA takes cumulative impacts into account through its assessment processes and is this reflected in NOPSEMA guidance, such as the Environment Plan Content Requirements Guidance Note and the Offshore Project Proposal Content Requirements Guidance Note.</p> <p>In this regard, we note that the Offshore Project Proposal Content Requirements Guidance Note requires proponents of Offshore Project Proposals to consider cumulative impacts and risks on all ecological, social, economic and cultural values of the environment over the life of the project, cumulative effects of the activities in the project, as well as cumulative impacts from other activities in the area.</p> <p>NOPSEMA applies the same requirements for environment plans submitted for seismic surveys and we note that this is reflected in the Environment Plan Content Requirements Guidance Note which states that details of all impacts and risks must be provided in an Environment Plan, including consideration of cumulative impacts.</p> <p>NOPSEMA also examines the proponent's consideration of cumulative impacts when assessing Environment Plans and the plan will not be accepted unless NOPSEMA is satisfied that the submission meets the requirements of the Environment Regulations.</p>