

## **INPUT TO THE OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE (SAFETY) REGULATIONS 2024 | EXPOSURE DRAFT**

Australian Energy Producers | 2 October 2024

Australian Energy Producers welcomes the opportunity to provide feedback on the Exposure Draft - Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2024 (draft regulations).

Australian Energy Producers supports the general intent of the changes in the draft regulations to improve safety outcomes for Australia's offshore workforce.

However, the draft regulations introduce new elements and concepts to offshore oil and gas safety and compliance requirements in Australia, and further detail and explanation is needed in a number of areas to provide clarity and certainty to industry.

Further, a number of the new safety provisions present operational challenges to industry. For example, requirements under the design notification scheme request detailed information at early stages of project design that are not practically available. There are also a number of instances of additional reporting and compliance requirements for little improved outcome and insufficient justification.

Australian Energy Producers considers that regulatory compliance efforts should continue to foster a transparent culture of reporting incidents and dangerous occurrences, where compliance strategies are underpinned by preventative measures, advice and promotion activities to reflect leading regulatory practice by the National Offshore Petroleum Safety and Environment Management Authority (NOPSEMA).

The feedback table below tracks the updated sections and subsections in the draft regulations including detailed responses for each.

Please contact Jason Medd – Director Offshore and Decommissioning for anything further at [jmedd@energyproducers.au](mailto:jmedd@energyproducers.au).

## Feedback Table

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### Workforce Health & Wellbeing

#### **Access to Safety Case**

Ensure workers can access the safety case while at work, however, it will not require that this be an electronic document (to manage facility security concerns).

Section 2.46A

#### **Response**

Health and Safety Representatives' (HSR) access to safety documentation is supported, however we are concerned that HSRs through NOPSEMA forcing Safety Case revisions could create more work than is necessary. Australian Energy Producers' member companies advise that most safety concerns that arise are raised and addressed internally, without the need for escalation. The proposed change seems to push towards escalation when it would likely be unnecessary. Clarification is also needed as to whether information is provided in hard copy or electronic format.

#### **Fatigue Management**

Fatigue management by duty holders must consider a broader range of factors that cause worker fatigue before allowing a person at an offshore facility to commence work.

Section 3.1

#### **Response**

Managing and avoiding workplace fatigue is supported by industry, where reasonable and achievable measures are available. Section 3.1(2) provides for an overly broad requirement for the minimisation of exposure to work-related and facility-related conditions that may cause fatigue.

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### Sexual Harassment – Prevention, Reporting and Investigation

#### **New Requirements in a Safety Case**

Safety case for a facility must describe measures put in place by operator to prevent sexual harassment, ensure compliance with

2.15A

#### **Response**

Australian Energy Producers notes that this approach locks titleholder into provision of detail that may not support continual improvement, particularly given longevity of safety case for particular activities. This

relevant legislation and to report incidents of sexual harassment to NOPSEMA.

requirement is not reflected in onshore safety cases e.g. provided to HICB in Queensland.

Incident reporting is included in onshore safety cases.

**New Requirements in a Safety Case**

Section 2.46B

**Response**

The operator of a facility must provide a written report to NOPSEMA regarding incidents of sexual harassment, bullying or harassment.

Reporting obligations around psychosocial matters, including sexual harassment, require a robust privacy and confidentiality regime. Further detail is needed on what reporting is being referred to, who it goes to, how it is shared and how much detail is expected. Further detail is needed on how to de-identify and de-aggregate information so as to protect the privacy of individuals. How this information is captured and worded is relevant, as is anonymity.

The report must also detail the action taken or proposed to be taken to deal with the incident and to prevent or lessen similar incidents occurring at the facility in the future.

Modernising Regulation of Diving

**Diving Safety Management System**

Sections 4.6A,  
4.11A

No comment

Establish a process and grounds for NOPSEMA to withdraw acceptance of a Diving Safety Management System (DSMS), allowing NOPSEMA to request further information on a DSMS, and requiring a DSMS to be revised every five years.

This will not introduce additional obligations on diving contractors but will align the DSMS with current expectations for the safety case.

**Diving Project Plan**

Sections 4.12 –

No comment

Offence provision for diving contractor

breaching requirements relating to a Diving Project Plan (DPP). 4.18

Operator must provide NOPSEMA with a copy of the DPP upon request.

**Diving start-up Notice**

Diving start-up notices to be submitted to NOPSEMA 28 days before diving unless agreed otherwise.

NOPSEMA may request further information on a Diving Start-up Notice.

NOPSEMA must either accept or refuse a Diving Start-up Notice.

Sections 4.24 – 4.24E

**Response:**

A diving start up notice normally requires the submission of the DPP shortly after. The DPP usually cannot be finalised until about 1 to 2 weeks prior to diving commencement. Further detail regarding DPP maturity within the extended 28-day window should be provided.

**Introduction of a Diving ‘Stop Button’**

Introducing a diving ‘stop button’ which empowers NOPSEMA to delay and/or refuse the commencement of a diving activity if there are reasonable concerns about the safety of the proposed dive.

Section 4.24C

No comment

**Reporting Obligations on Diving Supervisors**

Expand the reporting obligations on diving supervisors in the event there is no operator for a diving project.

Section 4.27

No comment

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## Facility Design and Operation

### **Design Notification Scheme (DNS)**

Introduction of a mandatory Design Notification Scheme (DNS) in the offshore safety regulatory regime to provide the proponents of new production facilities and new greenhouse gas facilities with a robust early engagement mechanism through which industry may undertake meaningful consultation with NOPSEMA on facility design and concept-selection.

Sections 2.4FA  
– 2.4K

### **Response**

Industry has generally been in favour of the introduction of formal early engagement, such as the proposed Design Notification Scheme. The proposed Regulations introduce some significant areas of concern in terms of practical and successful implementation of the scheme.

The timing of the required submission needs to balance the benefit of early engagement with the level of detail that would typically be expected at the stage in the Project lifecycle.

The proposed wording defining the timing of the submission “during concept select phase” is not consistent with the level of detail being requested.

Whilst each Operating Company will have their own lifecycle stages and definitions, the typical objective at the end of the concept select phase of the Project is to have selected a design concept, with a broad understanding of the MAE risks and how the design will manage these risks to ALARP. The development of the Basis of Design would commence in the subsequent Project phase, including the detail to support the development of Performance Standards, Project Specifications and selection of industry codes and standards.

We recommend the wording of the Regulation remove the reference to the “Concept Select Phase” and rather emphasise that the timing needs to be prior to commitment to a design concept and commencement of construction works. The Explanatory Memorandum could then provide further clarity that the intent is to ensure that the major design concepts and processes are subject to challenge whilst the opportunity to change



still exists.

We suggest that 'Concept Select' may not be an appropriate stage of a development / project to submit the Design Notification (DN).

The reasons for this include:

- Typical level of design maturity at 'Concept Select' is not sufficient to provide meaningful detail for many of the requirements defined in 2.4H.
- Likelihood of cancellation / recycle of projects at this stage. Potential for waste of Operator / Regulator resources submitting / reviewing DNs that become redundant.
- May preclude use of contracting arrangements such as competitive FEED phases.
- To provide meaningful detail for these requirements, the project would have to: Develop the Basis of Design (BOD) during Concept Definition to set out minimum design expectations and the suite of Standards to be applied.
- Implement the BOD through FEED.

Recommendation would be to develop and submit the DN during the FEED phase of a development / project.

Specific requirements, for which Concept Select level detail may be insufficient include:

- 2.4H(c)(ii) - at the concept select phase an initial list of safety critical equipment may be available, with some high-level performance requirements, but details of their design and



performance standards are not available.

- 2.4H(d)(iii)
- 2.4H(e)
- 2.4H(f) - it is unreasonable to expect that these design details will be sufficiently mature at the concept select phase.
- 2.4H(g) - it is unreasonable to expect that a materials selection report would have been completed in concept select phase.
- 2.4H(ha) - it is reasonable to request an initial list of the safety critical elements and their required performance, but 'details' of the SCEs and their performance standards is unlikely to be available.
- 2.4H(j)(i) - at the stage in the lifecycle, the specific environmental, meteorological and seabed limitations on installation, operations and decommissioning are unlikely to be defined until the design is further developed.

Further to the above, the requirement of 2.4H(h)(ii) to provide details of the SMS may not be practical at such an early stage. It is not always known at this stage whether a development would be operated by the titleholder or a 3<sup>rd</sup> party.

In relation to 2.4J the timeline and closure of the assessment process are not clearly defined; it would be beneficial if there were a defined closure point which may be that "NOPSEMA has no further comments and the Design Notification assessment has concluded."

Government to also need to advise the following:



- What the mechanism will be for an operator to seek clarification and resolution of DN comments.
- How operators are expected to address changes to concept that may occur after DN comments are provided by NOPSEMA?

Government should consider reference to the United Kingdom’s “The Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015, Sections 15, 19 and Schedule 5” as an example of a proven approach to implementing a design notification scheme. It is strongly recommended that the OPGGS Safety Regulations take cognisance of, and as far as practical within the constraints of the OPGGS regime, mirror these requirements in terms of the timing, level of detail and assessment processes.

[The Offshore Installations \(Offshore Safety Directive\) \(Safety Case etc.\) Regulations 2015 \(legislation.gov.uk\)](#)

Reference is also made to the guidance material available at: [UK HSE Guidance on Regulations](#)

The approach proposed in the current Exposure Draft will result in an excessive administrative burden on both industry and NOPSEMA in trying to comply with Regulations that do not align with the practicalities of a typical Project timeline. The result will be an erosion of the original intent of the proposal to ensure that key design concepts are suitable to manage risk to ALARP throughout a Facility’s lifecycle.

**Changes to Control Measures Critical to Safety**

Mandating that operators identify control measures (including procedures) critical to safety and the management of change

Section 2.5

**Response:**

2.5 (1A) *The safety case for the facility must also identify which of the technical and other control measures mentioned in paragraph (1)(b) are critical to safety.*





process, and submit a revised safety case when there has been, or will be, a loss or removal of a technical or other control measure identified as being critical to safety.

It is not clear if the intent of defining which of the control measures that are 'critical' to safety is intended to introduce a new requirement, or to formalise the existing practices applied in Industry.

Under the current Regulations, the Formal Safety Assessment will identify these control measures and in effect all of these are treated as necessary to manage risk to ALARP.

NOPSEMA defines safety critical equipment as "*the physical parts of the facility associated with the technical and other control measures described in regulation 2.5(2)(c) of the OPGGS(S): a) the failure of which could cause or contribute to a major accident event; or b) the purpose of which is to prevent, or mitigate the effect of, a major accident event.*" [Damage to Safety-Critical Equipment \(nopsema.gov.au\)](http://nopsema.gov.au)

It would be useful to have further explanation of the intent here (perhaps in the Explanatory Memorandum), or alternatively to formalise the definition of safety critical equipment / element (SCE) in the Regulations.

For example:

"The safety case must identify which of the technical and other control measures are the 'safety critical elements' of the facility."

Definition of Safety Critical Element:

*Safety Critical Element (SCE) means such part of a facility and such of its plant (including computer programmes) or any part there of, the failure of which would cause or contribute substantially to, or a purpose of which is to prevent, or limit the effect of, a major accident.*

**Revision of a Safety Case because of a change of circumstances or operation**

Section 2.30

2.30(1)(g)

*(1) Subject to subsection (3), the operator of a facility for which a safety case is in force must submit a revised safety case to NOPSEMA as soon as practicable if:*

*(g) if there has been, or will be, a loss or removal of a technical or other control measure identified under subsection 2.5(1A) as being critical to safety.*

**Response**

Australian Energy Producers questions the need for a safety case revision trigger associated with loss and removal of technical or other control measure (such as a procedure) as being critical to safety.

It is the operator's responsibility to ensure appropriate controls are in place to manage the risk of MAEs and health and safety of a person at or near the facility and implement appropriate management system to manage any risk escalation (such as risk assessment, change management, assurance).

The current description does not provide clarity on loss (such as permanent or temporary nature) and could create significant burden when risks can be adequately managed by operator management system.

Further clarity is required to confirm how this is intended to be applied for 'temporary loss' of critical control measures and where such a temporary situation can be reasonably managed under the Operator's management of change and risk assessment processes.

It is not clear of the intent of this new requirement, and how it differs from the existing requirements under 2.30(1)(b)(c)(d) and 2.30(2) unless the intent is to capture short term / temporary loss of control measures in a safety case revision, which is not operationally practical.

**Safety Case Revisions**

Requirement that a revised safety case be submitted at five-yearly intervals from date of acceptance.

Section 2.32

No comment

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## Operators and Titleholders

<p><b>Transfer of Operators</b> Streamline the transfer between operators for an existing facility by including the concept of a ‘proposed operator’ in the regulations.</p>	Sections 2.4A – 2.4D	No comment
<p><b>Operator Registration and Deregistration Criteria</b> Introduction of more stringent operator registration and deregistration criteria.</p>	Section 2.4E	No comment

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## Jurisdictional Coverage

<p><b>Vessels that are not Facilities and Vessels that are not Associated Offshore Places</b></p>	Sections 1.6(a) & 1.7(a)	<p><b>Response:</b> The Exposure Draft has provided some clarity on the categorisation of a Vessel as a Facility, AOP or neither, however, further clarity would be beneficial in the Regulations or Explanatory Memorandum.</p> <p>The Draft Regulations state: “the vessel is located at a site in Commonwealth waters; and (ii) while located at the site, the vessel is used only for one or more of the purposes mentioned in column 2 of the item;”</p> <p>Is the intent that the “site in Commonwealth waters” is defined by the Facility’s petroleum safety zone, or the boundary of the relevant title?</p> <p>Vessels will come and go from the ‘site’, is the intent that “while located at the site, the vessel is only used for...” would apply to each discrete visit to the site or anytime it visits the site in any given period (month,</p>
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year, contracted period, 5-year period?).

Further clarity of the intent would assist in industry's understanding of these arrangements and assist NOPSEMA in developing guidelines of the practical implementation of the proposed Vessel Activity Notification.

**Vessel Activity Notification Scheme**

Introduction of a vessel activity notification scheme to impose an obligation on operators to notify NOPSEMA when commencing or ceasing to be a facility.

The changes are intended to improve regulatory clarity and ensure that the Australian Government has visibility of which vessel-facilities are operating within the OPGGS regime at any given time.

Sections 2.42 and 2.43

**Response:**

Clarification is needed for example, if a vessel becomes a facility (and ceases to be a Facility) it is the duty of the Vessel (Facility) Operator to submit the Vessel Activity Notification. If a Vessel becomes an Associated Offshore Place – is the duty with the Vessel Master, Owner, Operator or the “Host” Facility Operator to submit the notification?

Further, how does this apply to activities outside of operational areas, i.e. undertaking port visits.

Would NOPSEMA develop vessel activity notification form for this purpose?

Does this apply to all facilities, including mobile offshore drilling units?

By way of background, there is often misalignment between production facility operators and Vessel operators as to the determination of a vessel's status, with some commercial implications, which makes it important for industry to understand where these duties sit.

**Associated Offshore Places – General**

OPGGSA Schedule 3, CI 4

The definition of a facility (Act, Schedule 3, CI 4) states that a facility includes an associated offshore place.

The NOPSEMA guidance (Facility definition includes an associated



offshore place (nopsema.gov.au)) further expands on the implications of this definition including:

*“If a vessel or structure is an associated offshore place it, together with its associated facility, is subject to the requirements of Schedule 3 to the OPGGS Act and the associated regulations, including the existing (host) facility safety case. If the activities conducted by the vessel in relation to the host facility are not covered by the existing safety case, a revision to the host facility safety case will be required.”*

And

*“The operator’s duties and obligations under the legislation include:*

- *to ensure that the facility is safe, work is safe, etc. [Schedule 3, Clause 9]*
- *to facilitate designated work groups, health and safety committees and health and safety representatives (HSRs), etc. [Schedule 3, Part 3]*
- *to provide a NOPSEMA inspector with transport, accommodation and subsistence. [Schedule 3, Clause 73]*
- *to notify NOPSEMA of accidents and dangerous occurrences at or near the facility, including those involving an associated offshore place. [Schedule 3, Clause 82]*
- *to keep records of accidents, etc. [Schedule 3, Clause 83].”*

Whilst the interpretation and guidance provided by NOPSEMA is relatively clear, the operational implementation of such a regime is at best unclear, ambiguous, confusing and impractical.



It is understood that the intent should be to ensure that the risk associated with the 'activities' carried out by the vessel for petroleum operations where risks are managed. However, the wording in the legislation and guidance implies that the 'host facility' operator is responsible for managing the ordinary marine and occupational risks on the vessel only. It is not practical to expect that the Host Facility operator be responsible to facilitate designated work groups and HSR's on a marine vessel (operating as an AOP) for what may be short duration campaigns to execute discrete tasks, as an example.

The communication of, and understanding of, these legislative requirements by marine crews is also an area of concern, noting that there is no material change to the management system or ways of working on board the vessel (in relation to 'ordinary marine' activities and operations).

It would be of great benefit if the Explanatory Memorandum could provide further clarification of the intent of the Associated Offshore Place.

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## Notifying and Reporting Accidents and Dangerous Occurrences

While under Part 4 Notifying and reporting accidents and dangerous occurrences, it is not clear whether the new "monthly reporting of operational activities" are required every month during normal operation or triggered when there is an accidents or dangerous occurrence.

Section 2.42 A

**Response:**

Australian Energy Producers recommend Government clarify the trigger of new monthly reporting as it is only required when there is an accident or dangerous occurrence, as it is under Part 4 of the regulations.

Operators will be challenged by the introduction of monthly reporting of operational activities under clause 2.42A as this introduces substantial administrative burden to operators and duplication with other



In the NOPSEMA Information Session presentation, it is stated “Clarification of notification and reporting requirements so death or serious injury notifications are separate from monthly reports.”

It also appears that there are changes to be made to the Act, as clause 2.42A refer to subclause 83A(1).

It appears that new clause 2.42A will replace the monthly summary report under current clause 2.42(4). Additionally, new clause 2.42A(3) outlines 15 specific requirements/information that must be included in the report, which is substantially more than current requirement.

notification requirement such as clause 2.42 and 2.46B.

Australian Energy Producers requests Government clarify in the regulation what “mental ill-health” incidents are covered under Clause 2.42A. Clause 2.15A covers sexual harassment, bullying and harassment.

### **2.42A Monthly Reporting of Operational Activities**

There is a concern that the information requested will place an administrative burden on Operators, and the purpose or intent of these requirements are unclear. Further clarity on the intent behind the required information may assist in ensuring that the appropriate approach is taken.

Specific concerns include:

- 2.42A(3)(a) and (b) - the details of the CEO or person who has executive oversight etc.
- It is not clear why this information is required in the context of Clause 83A of the Act, and if this is different from the requirements in 2.1(2) to nominate an Operator’s contact?
- What is meant by “assets at the facility”? Assets is a term that doesn’t appear to be used elsewhere in the Regulations.
- 2.42A(3)(c) - details of person in charge of the day-to-day management at the facility. If the intent is that “details of the person” means the “position or office” - then this is defined in the facility safety case, e.g. Offshore Installation Manager. If it is intended to be the individual assigned to that role, then it is likely that this role is rostered, and hence will change throughout the course of any given month. It is not clear why this



information is required in the context of Clause 83A of the Act.

- 2.42A (3)(d) details of the titleholder's or licensee's representative. It is not clear why this information is required in the context of Clause 83A of the Act.
- 2.42A (3) (e) and (o) 24/7 emergency contact details and email addresses for the persons mentioned in paragraphs (a) to (d). Given that NOPSEMA do not have any role in the management of emergencies at the facility, and in most cases the individuals mentioned in paragraphs (a) (b) and (d) may not have any direct emergency response roles, it is not clear why this information is required in the context of Clause 83A of the Act.
- 2.42A(3)(f) the number of workers (including contractors) at the facility during the month. It is not clear why this information is required in the context of Clause 83A of the OPGGSA, particularly noting that the number of hours is provided per 2.43(g). It is not clear why this information is required in the context of Clause 83A of the Act, particularly noting that the number of hours is provided per 2.43(g). Please note that 'the number of workers' will vary on a daily basis. Is the expectation that we provide the average number for the month or the total number of individuals that have visited during the month, or some other metric? Please clarify why this information is required and / or a clear definition of the requirement.
- 2.42A(3)(h) a record of all incidents occurring at the facility during the month where a breach of performance standards has occurred. Whilst the definition of a performance standard is provided, what is a breach of a performance standard? The Regulations (2.41) provide the interpretation of a reportable





dangerous occurrence as including 'damage to safety critical equipment'.

NOPSEMA guidance further interprets this to include "an acute or chronic occurrence resulting in the inability of a control measure (identified as being necessary to reduce the risk of one or more MAEs to ALARP) to meet its performance standard (damage to safety critical equipment)" (Title (nopsema.gov.au)). On this basis, it is understood that we are currently notifying 'breaches of performance standards' as dangerous occurrences, with the details provided in written reports per Section 2.42.

It is not clear if the requirements of the draft proposed Regulations 2.42A(3)(h) through (l) are the same as the requirements stipulated in Regulation 2.41 and 2.42 (as per Clause 82 of the Act) and if so, why this information needs to be re-submitted in a different format on a monthly basis. This would appear to be an administrative burden with no benefit.

- Alternatively, if 'breach of a performance standard' has a different meaning from that understood as above (based on the existing Regulations and NOPSEMA guidance), further definition and clarification is required.

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## Compliance and Enforcement

### **Graduated Enforcement Mechanisms**

Introduction of graduated enforcement mechanisms, including a civil penalty regime,

Sections 5.1 –  
5.5

No Comment



for instances where a breach is serious but proving the elements of an offence beyond reasonable doubt would be difficult (for technical or other reasons), or where a strong financial disincentive for contraventions is required.

**Simplified Reporting Requirements**

Clarification of notification and reporting requirements so death or serious injury notifications are separate from monthly reports. Simplify reporting requirements so monthly reports are not required where there has been nil operational activity at a facility.

Section 5.6

No Comment