



AIMPE

Australian Institute of
Marine and Power Engineers
HEAD OFFICE

STANDING COMMITTEE ON EDUCATION AND EMPLOYMENT

Inquiry into the work health and safety of workers in the offshore petroleum industry

Submission of the Australian Institute of Marine & Power Engineers

The Australian Institute of Marine and Power Engineers (AIMPE) is the union representing the industrial and professional interests of marine and power engineers in Australia.

Members of AIMPE work on tugboats, ferries, dredges, offshore oil and gas industry vessels, MODUs, cargo vessels and the power generation industry.

AIMPE is affiliated to the ACTU, Australia's peak union body, and to the International Transport workers Federation (ITF). AIMPE is also affiliated with the Nautilus Federation which represents maritime officers around the world.

AIMPE negotiates Enterprise Agreements on behalf of members and represents members in individual and collective disputes. AIMPE also acts to maintain professional standards in the maritime industry.

At the outset we acknowledge the submissions of the ACTU and its observation that AIMPE is an affiliate of the Peak Council (**ACTU par 1**). Our written submissions are confined to the issue of the jurisdictional issues that arises between NOPSEMA and AMSA-and we make no comment as to the balance of the ACTU submissions on behalf of its other nominated Offshore Oil & Gas Affiliates.

On the jurisdictional vacuum between the two Authorities, our position commends the compelling need for a delineation between propelled tonnage (AMSA) and fixed installations (NOPESMA).

We remain of course, available to address the Committee in any Senate Hearings held in due course, on all of the terms of reference, should this be of assistance and be viewed as desirable.

That NOPSEMA's effectiveness as a health and safety regulator is hindered by the vacuum between its jurisdiction and that of the Australian Maritime Safety Authority (AMSA). To address this, the Government should delineate between the two Authorities, and our submission is there should be a clear distinction between self-propelled tonnage (AMSA) and fixed installations (NOPSEMA).

NOPSEMA and AMSA

- 1. 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. The 2015 Review therefore concluded that 'It is essential AMSA and NOPSEMA work collaboratively to ensure effective management of maritime safety around oil and gas facilities.'*¹
- 2. The split jurisdiction poses particular problems. For example, the NOPSEMA Annual Report 2016/17 noted that the decline in occupational health and safety inspections conducted by the NOPSEMA in the reporting period may have been in part attributable to it being difficult for the NOPSEMA 'to access construction and diving vessels for inspection as these vessels are only facilities for a short period of time due to the type of work they often undertake'.²*
- 3. The 2015 Review found that over the preceding three years there had been limited collaboration in the working relationship between the AMSA and the NOPSEMA and that the joint inspection of vessels' certification, agreed to in the authorities' 2013 Memorandum of Understanding (MOU),³ had ceased.⁴ The Bills and Agostini report on improving the interface between (what was then) the NOPSA and the AMSA in 2009 (**Bills and Agostini report**) found that joint inspections are 'one way of integrating the ship safety inspectorate strengths of AMSA and the offshore petroleum OHS inspectorate strengths of NOPSA.'⁵*

*In addition, the disapplication of the Navigation Act 2012 (Cth) (**Navigation Act**) to vessels while facilities as defined under the OPGGS Act results in the disapplication of International Maritime Organisation and International Labour Organisation Conventions given effect by the Navigation Act. The 2015 Review found that there are a number of issues which relate to a*

¹ 2015 Review, section 8.3.2, p 69.

² Page 22.

³ 'Fatality on board the *Skandi Pacific* off the Pilbara coast, Western Australia 14 July 2015', ATSB Transport Safety Report, Marine Investigation 322-MO-2015-005, 23 November 2016, p 12.

⁴ 2015 Review, section 8.3.2, pp 69-70.

⁵ *Offshore Petroleum Safety Regulation: Marine Issues*, June 2009, paragraph 2.14, p 9.

lack of clarity in the touch points between the OPGGS Act and the Navigation Act. This finding essentially repeated many of the findings and associated recommendations of the Bills and Agostini report in respect of the disapplication of the Navigation Act. The Bills and Agostini report found, among other things, that ‘the effect of the disapplication of Commonwealth maritime legislation in its entirety was not fully thought through and consultation with stakeholders appears to have been deficient’ and that ‘the potential for Australians not to be covered by Australian maritime and OHS legislation is an unacceptable risk’.⁶

- 4. Similarly to the 2011 Review, the 2015 Review found that the relationship between the NOPSEMA and the AMSA is constrained by a lack of clarity on the touch points between the two agencies and their legislations.⁷ The 2015 Review recommended that a proactive approach from both agencies and the policy departments could be useful in clarifying the interaction between the two agencies and the two pieces of legislation and that the NOPSEMA and the AMSA should refresh their MOU and in doing so seek clarity on their commitments and responsibilities under their respective Acts.⁸ Disappointingly, although the Australian Government accepted this recommendation, the NOPSEMA’s response was simply to state that it will ‘continue to effectively collaborate with AMSA as appropriate’.⁹*
- 5. The investigation of the Australian Transport Safety Bureau into a fatality on board the Skandi Pacific in July 2015 noted that the MOU between the NOPSEMA and the AMSA had not been revised since 2013 but found that the vessel’s location and status meant that it was outside the jurisdiction of both the NOPSEMA and the AMSA.¹⁰*
- 6. These issues are not new and the fatality on the Skandi Pacific occurred despite issues of jurisdiction having been known for some time. The 2011 Review, for example, recommended that ‘agreed legislative changes should be given priority attention, including the issues of when jurisdiction ceases to apply’.¹¹ This recommendation followed a range of recommendations in the Bills and Agostini report, only some of which have been enacted Bills and Agostini found that risk can be reduced by reducing the opportunity for silos to form and by ensuring a sufficiently wide skill base.¹²*
- 7. The Ministerial Statement of Expectations of 11 April 2017 stated an expectation that the NOPSEMA will work collaboratively with the AMSA ‘in pursuit of streamlined regulation of the offshore petroleum sector and enhanced coordination of emergency response arrangements’. The CEO Statement of Intent said that it will continue to do so, but evidence of such and formal mechanisms to facilitate such appear to be lacking or are not transparent.*

{Paragraphs 1 to 7 above are an extract from the ACTU Submissions 2018}

⁶ *Offshore Petroleum Safety Regulation: Marine Issues*, June 2009, paragraph 3.53, p 23.

⁷ 2015 Review, section 8.3.2, p 69.

⁸ 2015 Review, recommendation 12.

⁹ Progress Report on Implementation of the 2015 NOPSEMA Operational Review Recommendations, p 10.

¹⁰ ‘Fatality on board the *Skandi Pacific* off the Pilbara coast, Western Australia 14 July 2015’, ATSB Transport Safety Report, Marine Investigation 322-MO-2015-005, 23 November 2016, p 12.

¹¹ Recommendation 3(b).

¹² *Offshore Petroleum Safety Regulation: Marine Issues*, June 2009, paragraph 2.23, p 11.

AIMPE Recommendations

That on self-propelled tonnage AMSA has jurisdictional purview and on fixed installations NOPESMA has jurisdiction. Inasmuch as the former, all vessels on a project within the Australian Exclusive Economic Zone (other than for a transit voyage) be required to be Australian-Flagged.

That in the interim, the NOPSEMA and the AMSA update their MOU, with particular focus on:

- (i) achieving clarity on the touch points between the two agencies and their legislations;
- (ii) reinstatement of joint inspection of vessels' certification; and
- (iii) mechanisms to facilitate access to and inspections of vessels and facilities that transfer between their respective jurisdictions, including for example dual recognition of suitably qualified inspectors.

That legislative reform be enacted to ensure the application of all International Maritime Organisation and International Labour Organisation Conventions given effect by the Navigation Act 2012 to facilities in the offshore petroleum industry.

Andrew Williamson
Assistant Federal Secretary

Dated: 13 April 2018