



# Offshore workers need better protection

Submission by the Australian Council of Trade Unions to the  
Offshore Oil and Gas Safety Review – Draft Policy Framework  
(August 2020)

ACTU Submission, 29 October 2020  
ACTU D. No 54/2020

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## About the ACTU

Since 1927 the Australian Council of Trade Unions (ACTU) has been the peak trade union body in Australia. There is no other national confederation representing unions.

The ACTU has consulted with governments in the development of almost every legislative measure concerning employment relations over its 93-year history.

The ACTU consists of 43 affiliated unions and State and regional trades and labour councils, who between them have approximately 2 million members who are engaged across a broad spectrum of industries and occupations in the public and private sector.

All of the unions that represent the interests of workers in the offshore oil and gas industry are affiliated to the ACTU.

## Executive Summary

1. The ACTU welcomes this opportunity to provide our response to the Draft Policy Framework Offshore Oil and Gas Safety Review [the Review]. An itemised response to each of the Reviews proposal is appended to this submission, see Parts A and B.
2. The ACTU has consistently supported harmonisation between offshore and onshore work health and safety regulatory framework. With the imminent passage of the Western Australian WHS Act, the difference between the regulatory protections provided to offshore workers only widens.
3. In accordance with the harmonisation principle, the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) (OPGGS) regime should only differ from the model WHS laws only where objectively justified and to the extent that they are tailored to address the industry's specific requirements.
4. In December 2018 [Boland Review of the Model WHS laws](#) was tabled and in December 2020 the Decision Regulatory Impact Statement was published. As previously submitted the ACTU supports all 34 recommendations of that review and maintains that in the interests of harmonisation and provision of the best protections for offshore workers these recommendations need to be considered in this Review.
5. The case for harmonisation has been further bolstered further by the government's development of an Offshore Clean Energy Infrastructure Bill in 2020, and the proposal that it should be administered by NOPSEMA.<sup>1</sup> This would regulate offshore wind and transmission projects, with the first offshore wind project slated to being construction in

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<sup>1</sup> <https://consult.industry.gov.au/offshore-exploration/offshore-clean-energy-infrastructure/>

2023 in Victoria and others being developed in NSW and WA. The government has so far not given any indication what WHS framework would cover these workers – but they are not proposing that they be covered by the OPGGS Act. The ACTU and affiliates have argued that the development of this bill accelerates the importance of harmonising WHS jurisdictions,<sup>2</sup> particularly the OPGGS Act and the Occupational Health and Safety (Maritime Industry) Act. Otherwise, the number of WHS jurisdictions in Australia will continue to multiply.

6. Whilst the ACTU does not oppose any of the proposals of the Review, we are disappointed that the Review has not taken the opportunity to harmonise with onshore WHS regulatory frameworks. As previously argued, there are no policy reasons why offshore workers, who work in a dangerous industry, are not afforded the same rights and protections as on shore workers.
7. Workers are exposed to many major physical and psychosocial hazards, exacerbated by the remoteness of work sites, the conditions which the work is conducted which for many are exacerbated by the precarious nature of their working arrangements – labour hire and casual work arrangements.
8. This review ought to have built on the significant work undertaken by the Senate Inquiry<sup>3</sup> and by stakeholder participants, previous submissions to the Review, the 2018 Review of the Model WHS laws and the draft WHS Act currently before the Western Australian parliament.<sup>4</sup>
9. The low oil price and the reduction in demand due to Covid restrictions has created a situation where the risks to workers offshore are multiplying. Rosters have been changed to include quarantine periods and extended time offshore, increasing fatigue and psychosocial hazards. Cuts have been made to maintenance and other facility workers, increasing work intensity and contributing to a maintenance backlog and potentially unsafe work environment.
10. At the same time many offshore facilities are reaching the end of their life and need to be properly decommissioned. It is projected that 65 offshore platforms and seven floating facilities will cease production by 2026, and that the number of facilities needing decommissioning will increase each year and continue beyond 2050.<sup>5</sup> Worryingly, a Wood Mackenzie report commissioned by APPEA appears to advocate for facilitating ‘asset divestment and decommissioning liabilities’ including facilitating ‘late-life M&A

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<sup>2</sup><https://www.actu.org.au/our-work/policies-publications-submissions/2020/submission-to-offshore-clean-energy-infrastructure-regulatory-framework-discussion-paper>

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[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/WHSinoffshorepetroleum/report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/WHSinoffshorepetroleum/report)

<sup>4</sup> Add in references

<sup>5</sup> Wood Mackenzie, [Australia Oil and Gas Industry Outlook Report](#), 9 March 2020.p.14

transactions' and tax measures 'which could be particularly useful for Majors that are looking to divest and currently own large proportion of mature fields'.<sup>6</sup> It is actions like these that have led to the *Northern Endeavour* fiasco, which led to NOPSEMA having to shut down the facility due to its unsafe operation, and then the DISER taking on responsibility for the facility at the cost of taxpayers. This cannot be repeated and this review of regulation must implement reforms necessary to ensure the safe decommissioning of facilities.

11. A number of the changes proposed in this review appear to reflect recommendations arising from the Walker review of *the Northern Endeavour*.<sup>7</sup> It would have been preferable if the consultation document had explicitly referred to this review, rather than leaving this to stakeholders to draw the connections themselves.<sup>8</sup> We support the recommended changes, but stronger action is clearly needed to prevent facilities from deteriorating into an unsafe condition, and with decommissioning plans not carried out. We have made some recommendations to this effect in the table enclosed in our submission and look forward to robust recommendations to address this problem in the ongoing DISER Offshore Oil and Gas Decommissioning Framework Review.
12. Several recommendations are to improve diving safety. We suspect that these arise from the scandalous DOF Subsea rapid descent incident in 2017, which resulted in at least 15 divers presenting with symptoms of neurological damage, now known as high-pressure nervous syndrome (HPNS).<sup>9</sup> Yet there is still very little information on the public record about this incident that would allow us to make an informed decision about the proposals. NOPSEMA said its autonomous Investigation Unit would make inquiries into the incident;<sup>10</sup> but we are not aware of any report subsequently being released. Such an internal investigation is potentially problematic as NOPSEMA's Regulatory Assessment division had given approval to DOF Subsea's Diving Project Plan,<sup>11</sup> and DOF Subsea has since stated that the dive was conducted in accordance with NOPSEMA's Diving Operations Manual.<sup>12</sup> NOPSEMA first said 'details of the specifics of an incident are not provided while the matter is under review', and subsequently have only announced that the Commonwealth DPP is prosecuting DOF Subsea in relation to the incident, with a first appearance on 14 August 2020 in Perth Magistrates Court.<sup>13</sup> The next 'mention date' is on 20 November 2020.

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<sup>6</sup> Wood Mackenzie, [Australia Oil and Gas Industry Outlook Report](#), 9 March 2020, p.20.

<sup>7</sup> Steve Walker, [Review of the Circumstances that Led to the Administration of the Northern Oil and Gas Australia \(NOGA\) Group of Companies](#), Commonwealth of Australia – Executive summary and recommendations, June 2020. Full report released through FOI [here](#). Peter Milne, [Federal Govt regulates poorly and gets \\$360M Northern Endeavor clean-up bill](#), 2 Oct 2020

<sup>8</sup> We are also disappointed that the Department initially only released the executive summary and recommendations, and then only a redacted version of the full report after an FOI. Full disclosure on this matter is in the public interest.

<sup>9</sup> The saturation dive took place in late June 2017 in Australian waters. DOF Subsea blew a total of 15 divers down to a depth of 234 metres in two separate groups. It was the deepest occupational diving job in Australian waters. The dive was commissioned by Inpex, who hired engineering company McDermotts International who, in turn, hired DOF Subsea to perform the diving work, which took place on the DOF offshore supply vessel, the Skandi Singapore. The work took place in the Ichthys gas field located in the Timor Sea, off the north-western coast of Australia. The task was to deal with some clamps and several dozen bolts that were failing.

<sup>10</sup> NOPSEMA, [Media Reporting on Diving Incident](#), 2 January 2018.

<sup>11</sup> John Flint, [Australia's deepest ever commercial dive leads to brain injuries, mental scarring](#), *Perth Now*, April 22, 2018.

<sup>12</sup> David Foxwell, DOF divers suffering prolonged high-pressure neurological syndrome, *Offshore Support Journal*, 2 January 2018.

<sup>13</sup> NOPSEMA, [UPDATE ON DOF INVESTIGATION AND PROSECUTION](#), 1 July 2020. NOPSEMA, [Media Reporting on Diving Incident](#), 2 January 2018.

13. As a result of the DOF Subsea incident, any confidence that offshore divers may have had in NOPSEMA's role as a regulator has been significantly eroded. Offshore divers are not confident in NOPSEMA as the safety regulator. They are not confident to report safety incidents to NOPSEMA and are not confident in NOPSEMA's ability to enforce compliance. The fact that the Department appears to be making recommendations to address the incident while providing virtually no information on the public record about it continues to erode confidence.
14. The ACTU calls on the Department of Resources and NOPSEMA to convene a tripartite Diving Safety Working Group that includes representatives of the diving workforce and unions to establish minimum safety standards for all offshore diving in Australia, particularly saturation diving and Exceptional Exposure diving<sup>14</sup> - detail is provided below In Part B, page 21. Much clearer minimum standards are required in the Australian diving industry, and we understand that NOPSEMA has already issued directions to diving operators on compression times in the wake of the DOF Subsea incident. However this process needs to be formalised and made more inclusive in order to rebuild the trust of divers, and ensure their safety.
15. There is still a lack of transparency in NOPSEMA's investigation of fatalities and safety incidents, and no recommendations to improve this situation in the review. In the case of the deaths of Barry Denholm and Peter Meddens on the drilling platform the *Stena Clyde* on 27 August 2012, NOPSEMA published a 1.5-page summary later that year, announcing an investigation. No further detailed information was published until 10 December 2015 – and this was the Summary of Facts submitted to the Magistrates Court of Victoria.<sup>15</sup> As this was a document prepared for court, it is not written in such a way as to provide advice to other operators or workers in the industry to prevent future incidents. The investigation into the DOF Subsea incident seems to be following a similar pattern.
16. This approach contrasts sharply to the investigation into the death of Andrew Kelly, an MUA member also killed in the offshore oil and gas industry. Andrew Kelly was killed on 14 July 2015 on board the *Skandi Pacific*, an offshore supply vessel which was not under NOPSEMA's jurisdiction (although the vessel was located only 30m from an oil platform when Andrew Kelly was killed). As a result, the Australian Transport and Safety Bureau (ATSB) investigated the fatality and published a detailed 38-page report on 23 November 2016 (16 months after the incident), including consultation with vessel crew, unions, and

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<sup>14</sup> The DOF Subsea incident was the first planned Exceptional Deep Saturation with Unlimited Duration Excursion in Australian waters. Exceptional Exposure Diving is a Low Frequency, (Exceptionally) High Risk activity that carries a greater risk of decompression illness and this risk increases with time of exposure. AS NZ 2299.1:2015 *Occupational Diving Operations - Standard Operational Practice* (which covers the normal working limits of AIR Diving) defines Exceptional exposure dive as: 'A dive where the maximum recommended dive time for a particular depth (sometimes shown by a limiting line in decompression tables) is exceeded by a diver at that depth'. Where the diver may have Exceeded Limits (unplanned exceptional exposure) in emergency circumstances, this triggers an emergency procedure response in an exceptional exposure dive. The *US NAVY Diver Manual* says that 'Exceptional exposure dives require lengthy decompression and are associated with an increased risk of decompression sickness and exposure to the elements. Exceptional exposure schedules should be provided only in case of unforeseen circumstances. The NDC variant used must match the rig/diluent/dive method being performed. Catastrophic decompression sickness could result if the wrong NDC is selected.'

<sup>15</sup> The documents produced by NOPSEMA are collected here: NOPSEMA, [Major Offshore Incidents – Stena Clyde Fatalities](#), Bass Strait, 27 August 2012.

next of kin,<sup>16</sup> safety recommendations to both the vessel operator and the wider industry, and followed up with a clear Safety Advisory Notice to the industry on the key risks identified.<sup>17</sup>

17. The ACTU supports the proposed changes contained in sections numbered 1- 22. See Part A. If adopted, these changes should see positive change in health and safety performance, but do not extend far enough.
18. The key areas where the proposals fall short of best practice and harmonisation with current WHS laws and recommendations for change include
  - a. consultation during the Design Notification Scheme for new production facilities, election processes for selection of HSRs, ability for HSRs to choose their own training provider, role and participation of HSRs on Health and Safety Committees and adoption of shift rostering practices that would ensure good communication between HSRs
  - b. improved arrangements for union official right of entry provisions. There is no policy reason why the rights and protections afforded to onshore workers are not provided to offshore workers
  - c. adoption of regulations and notification provisions for psychological injuries. The COVID 19 pandemic has exacerbated the risks that offshore workers face and highlights the need for these workers, like on shore workers, to have the risks to psychological health controlled, as for physical injuries.
  - d. failure to the OPGGS Act to be closer to the draft WA WHS Act industrial manslaughter provisions. Given the number of operators off the West Australian coast this would provide consistency between onshore and offshore and would be simpler for operators who currently operate in both areas.
19. The ACTU supports the introduction of graduated enforcement mechanisms, including a civil penalty regime (section 21 of Draft Policy framework] if it is supported by an assurance of enforcement.
20. The ACTU detailed response to each of the Reviews proposals is provided in the table in Part B and refers the Review to previous ACTU recommendations in Part C.

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<sup>16</sup> Australian Transport Safety Bureau, [Fatality on board Skandi Pacific, off the Pilbara coast, Western Australia on 14 July 2015](#), 23 November 2016.

<sup>17</sup> Australian Transport Safety Bureau, [Fatality highlights risks on open stern OSVs](#), 23 November 2016.

## PART A

**ACTU is not opposed to the Proposals of the Review, as summarised in this list, but notes that the Review recommendations are limited in scope and need to be revised in accordance with the detailed comment in the Table in Part B**

1. Requiring early engagement by operators to NOPSEMA on facility design
2. Tightening up requirements for when operators need to revise the safety case
3. Requiring safety case revisions to be once every 5 years only (not five years from every revision)
4. Tightening provisions for transferring operators and registering and de-registering them
5. Tightening provisions for when the operator and titleholder are separate entities
6. Requiring operators to ensure that short term and specialist workers are established as a Designated Work Group and have an HSR
7. Require operators to pay for HSRs to attend training ('course fees and any other reasonable costs associated with attendance'), and require HSRs to also attend a one-day annual refresher training (also paid for)
8. Require that the safety case 'must be easily accessible, without restriction, to the workforce at all times while they are at the facility'
9. Allow HSRs to request that the operator of a facility revise safety management documents, and to make that request to NOPSEMA (who could then make that request of the operator)
10. Ensure at least one HSR is a member of a workplace health and safety committee – ACTU this proposal is inadequate – please see table
11. (non-legislative) Hold an HSR forum every year and 'seek a commitment from operators' to pay reasonable associated costs for HSRs to attend, including being on pay
12. Amend the legislation to ensure health includes mental health
13. Amend safety regulations to include a broader range of factors that can cause fatigue, especially sleeping arrangements and long travel times
14. Amend the OPGGS Act to align with the provisions protecting workers from discrimination and coercion in the WHS Act
15. Increase NOPSEMA powers in relation to Diving Safety Management Systems (request information, withdraw acceptance, revise after 5 years]
16. Increase NOPSEMA powers in relation to Diving Project Plans
17. Increase information required in the Diving Start-up Notice and requiring this 28 days before the dive starts not 14 days. Create a provision for NOPSEMA to delay or refuse commencement of diving
18. Expand the period during which diving inspections can take place to include preparations and decompression (was previously restricted to strictly during dives)
19. Expanding reporting of serious matters to include titleholders and NOPSEMA if there is no operator in place
20. Introducing civil penalties and more enforcement tools for matters in the OPGGS Regulations (this was previously just for things in the Act)
21. Reducing some reporting requirements which they say is a duplication (required to report when they happen and also monthly)
22. Require operators to notify NOPSEMA when a vessel will become a facility.

**PART B**

Area	DISER – Review of Offshore Oil and Gas Draft Policy Framework August 2020	ACTU response: DIIS Review OPPGS – SSG Draft Policy framework October 2020
<p><b>Safety Case</b></p> <p>Inclusion of DNS in Offshore Regime</p>	<p>The department is proposing that it will be mandatory for all new production facilities to engage with and submit design concept details to NOPSEMA through the Design Notification Scheme (DNS).</p> <p>Details of the DNS will be determined in consultation with stakeholders but will likely include the following components:</p> <ol style="list-style-type: none"> <li>1. engagement with NOPSEMA on the design to begin early in the Front-End Engineering and Design (FEED) Phase (before lodgement of the field development plan (FDP) for the field at which the facility will be operating)</li> </ol> <ul style="list-style-type: none"> <li>• NOPSEMA will assess whether the submitted design contains sufficient information, and will have a mechanism to request further information if a design is incomplete</li> <li>• NOPSEMA will assess and provide feedback on the design concept, but will not ‘accept’ or ‘reject’ the design</li> <li>• a requirement governing the timing of NOPSEMA’s response to the initial design notification and any submissions made by the proponent following receipt of this response</li> </ul>	<p>The ACTU does not oppose the proposals but notes, as per previous comments:</p> <p>There must be a requirement to consult with HSRs, or in the absence of a workforce intended for the facility, the appropriate union(s) regarding the DNS prior to it being submitted to the NOPSEMA. For clarity we believe this should occur from the point of Front-End Engineering and Design (FFED) and prior to the scope of this work being confirmed.</p> <p>Consultation must be defined as providing the necessary information to workers, HSRs and their union(s) and providing a reasonable time for them to consider, seek the necessary advice and provide feedback on the matters to which they are being consulted.</p> <p>The operator shall then be required to consider the matters raised by these groups and make reasonable efforts to address them and modify the design.</p> <p>This consultation definition is consistent with WHS provisions elsewhere.</p>

	<ul style="list-style-type: none"> <li>• a mechanism in the safety case to ‘close the loop’ and provide assurance that feedback from NOPSEMA on safety issues has been appropriately addressed by the proponent</li> <li>• a cost-recovery structure to meet the costs incurred by NOPSEMA in reviewing and providing feedback on the design concept.</li> </ul>	
<p><b>Safety Case</b></p> <p>Safety case critical controls and management of change process</p>	<p>To address any ambiguity around the circumstances that require a safety case revision rather than a MoC process, the department is proposing to amend the Safety Regulations as follows:</p> <ul style="list-style-type: none"> <li>• in addition to the current requirement that operators must include in the safety case details of the technical and other control measures identified as a result of the formal safety assessment (regulation 2.5(1)(b)), operators must also identify which of those control measures are critical to safety, and</li> <li>• amend the regulations for the revision of a safety case to require that operators submit a revised safety case when there has been, or will be, a loss or removal of a technical or other control measure which they identified in the safety case as being critical to safety.</li> </ul>	<p>The ACTU does not oppose the proposals but notes:</p> <p>Safety case critical controls are defined as both equipment and processes. There should be a requirement that when there are changes to either of these controls that the operator should be required to resubmit a revised safety case. The effectiveness of this reform will greatly depend on how tightly ‘safety critical’ is defined and how operators apply this definition. NOPSEMA should review this carefully and identify any safety critical controls that have been missed.</p> <p>It must be assumed that safety critical controls impact on the entirety of the safety case, therefore the identification of individual measures should not negate the responsibility to review how changes affect the safety case as a whole,</p> <p>The current proposal says a revised safety case will be required if there is a loss or</p>

		<p>removal of a control – surely any change to a safety critical control would be a concern?</p> <p>We would appreciate NOPSEMA's confirmation that these criteria will also apply to Diving Safety Management Systems.</p> <p>In diving operations, revisions of the safety case during a diving operation can cause particular confusion and difficulty and are particularly dangerous. To avoid this, the Diving Safety Management System should include a range of reasonably predicted scenarios and a minimum in-principal strategy for safety critical controls. An overview of the Management of Change of processes for safety critical controls for equipment and processes must be included. The Safety Case can then provide some guidance for MoC processes in safety critical situations with a level of acceptability from the Regulator, and some level of informed consent from the dive team.</p>
<p><b>Safety Case</b></p> <p>Clarify arrangements for submitting five yearly safety case revisions</p>	<p>The department is proposing to:</p> <ul style="list-style-type: none"> <li>• amend the Safety Regulations (regulation 2.32) to clarify that a revised safety case must be submitted at five-yearly intervals starting on the day the initial safety case is accepted by NOPSEMA (under regulation 2.26)</li> <li>• remove sub-regulation 2.32(1)(b) requiring safety case revisions five years after the date of</li> </ul>	<p>ACTU supports this proposal</p>

	<p>each acceptance of a revised safety case.</p>	
<p><b>Safety Case</b></p> <p>Transfer of operator process for a facility</p>	<p>The department is proposing to include the term ‘proposed operator’ as an entity under the Safety Regulations to facilitate the transfer of operators in relation to the same facility. This would enable the nomination of a ‘proposed operator’ for an existing facility and for the submission of the safety case to occur without the ‘proposed operator’ having the legal responsibilities of the duty holder, which would remain with the current operator. The transfer of operatorship and legal responsibility will take effect at the point when the ‘proposed operator’ has an accepted safety case in place and the current operator successfully deregisters.</p>	<p>The ACTU does not object to the stated rationale for this proposal, but steps must be taken to ensure that it is used for the intended purpose, and not abused.</p> <p>Legal responsibility and accountability for safety goes back to the Operator, so the responsible Operator must be clearly identified at all times for any project, and they must undertake the proper consultation with the workforce in the preparation of the safety case.</p> <p>The objective of this reform should not be to make it easier to transfer operators. We do not want to see a situation where transfer of operator responsibility tic-tacs between phantom ‘proposed operators’ and a current operator awaiting successful de-registration.</p> <p>There is a particular issue with this proposal in relation to diving. In the Diving Start Up Notice the ‘proposed operator’ as an entity should be assessed as part of the Diving Safety Management System as a suitable entity under safety regulations for the specific Diving Project Plan.</p> <p>Anytime thereafter, the term ‘<i>proposed operator</i>’ is ambiguous and reduces regulatory clarity. If NOSEMA cannot identify the operator, the operatorship is <i>insufficient</i> for a Diving Project Plan. If the</p>

		<p>legal responsibility for the Diving Safety Management System is ambiguous, it is <i>unacceptable</i>.</p> <p>We suggest the term 'Proposed Operator' is only suitable to represent negotiations between NOSPEMA and a 'New Operator' from 60-days to 28-days prior to the work; and thereafter where the Regulator is assessing the suitability of the contractors, they should be confirmed as 'Operator'.</p> <p>An instance where an interim 'proposed operator' might be proposed as a temporary status is when a New Operator has submitted their first DSMP and DSN 60-days prior to the commencement of work, and where this includes the proposed diving contractors and vessels or related third party provider who has committed in good faith while negotiating terms at the outset of a job, or when the lifetime of a job requires different operators of mixed contract crews for seasonal contracts, and specific work orders that may require updating regularly, or DPP revision.</p> <p>The Regulations should prevent a situation pitting 'proposed operators' against each other for an ambiguous Safety Case. These entities must have the opportunity for direct input into the critical controls for equipment and processes specific to their operations at a specific facility, and avoid any situation of conflict of interest or duress with regards to the responsibility or</p>
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		influence of an out-bound or in-bound operator.
<p><b>Safety case</b></p> <p>Operator registration</p>	<p>The department is proposing to introduce additional requirements on the registration of an operator (or proposed operator) of a facility, similar to the requirements under the <i>Maritime Transport and Offshore Facilities Security Act 2003</i> for the designation of offshore facility operators, requiring NOPSEMA to also take into account:</p> <ul style="list-style-type: none"> <li>• the ability of the person to undertake the functions of an offshore facility operator,</li> <li>• the physical and operational features of the facility, and</li> <li>• the views of the current operator of the facility (if applicable).</li> </ul>	<p>The ACTU supports this proposal, but it is not strong enough.</p> <p>The Walker report highlights the consequences of transferring an aging facility to a sub-contracted operator who does not have the means and/or the intent to keep it in a decent state of repair. It is well known that the Northern Endeavour was in a poor state of repair for a very long time, before UPS became the operator and after.</p> <p>The condition of the facility must also be considered, and the decommissioning plan and responsible party should also be reviewed and updated before a new operator is registered. No operator registration should take place until the financial responsibility for carrying out the updated decommissioning plan is clarified and assured.</p> <p>The upcoming DISER Offshore Oil and Gas Decommissioning Framework Review should recommend that any transfer of responsibility should only take place if the titleholder puts up a decommissioning bond in a form accessible to the Commonwealth government to match the decommissioning plan.</p>

<p><b>Safety Case</b></p> <p>Operator deregistration requirements</p>	<p>The department is proposing to amend the operator deregistration requirements to ensure that an operator can only deregister under the following circumstances:</p> <ul style="list-style-type: none"> <li>• when another nominated operator has been registered and their safety case for the facility has been accepted by NOPSEMA, or</li> <li>• when the operator has demonstrated, to NOPSEMA’s satisfaction, that the facility will be exiting the OPGGS regulatory framework (such as in the case of a mobile offshore drilling unit being moved to another country’s jurisdiction), or</li> <li>• where the titleholder has not complied with its duties as described in the following new policy measure (Titleholder duties in relation to the operator – see page 10) and NOPSEMA is reasonably satisfied that the facility is safe.</li> </ul>	<p>ACTU supports the aspects of this proposal, that increase NOPSEMA’s oversight of operator de-registration. The proposal should also be strengthened as above to include the condition of the facility, the decommissioning plan and the financial responsibility for that plan.</p> <p>We question whether de-registering an operator is an appropriate response to a titleholder not carrying out their responsibilities.</p> <p>If action is needed to improve safety and compliance, the titleholder and operator should be required to cease operations until the necessary work takes place, and the facility is safe. It is likely that the operator will need to be involved in carrying out this work.</p>
<p><b>Titleholder duties in relation to the operator</b></p>	<p>The department is proposing to introduce new duties on the titleholder, to ensure that where the titleholder appoints a separate operator:</p> <ul style="list-style-type: none"> <li>• the titleholder must ensure that operator is at all times capable of carrying out its duties under the OPGGS Act and regulations</li> <li>• the titleholder must take reasonable steps to ensure that</li> </ul>	<p>The ACTU supports this proposal to increase titleholder responsibility, but stronger measures are needed.</p> <p>We note that this recommendation arises directly from the Walker review, but this is not mentioned in the consultation document.</p> <p>While in the case of the <i>Northern Endeavour</i> the titleholder went bankrupt,</p>

	<p>the operator fulfils its duties under the OPGGS Act and regulations.</p>	<p>consideration should be given to what happens if the operator goes bankrupt. It should be made clear that the titleholder immediately takes on all their responsibilities.</p> <p>While the consultation document notes that titleholder and operator being separate entities is unusual in the industry, we note that <i>Jadestone</i> and the <i>Dampier Spirit</i> are also completely separate operators and titleholders. We believe such arrangements may proliferate with an increased use of floating facilities and late-life transfers. It is just a higher level of subcontracting, which is rife in the industry, with all the attendant problems.</p> <p>We look forward to robust recommendations in the DISER Offshore Oil and Gas Decommissioning Framework Review on titleholder responsibility for decommissioning.</p>
<p><b>Workplace Arrangements</b></p> <p>Health and Safety Representatives (HSRs) for short-term or specialist work</p>	<p>Consultation with offshore workers has indicated that many believe casual and labour-hire workers, who are most likely to be used for short-term or specialist work on offshore facilities, do not have the same access to health and safety standards and outcomes as permanent workers.</p> <p>To address this, the department is proposing an amendment to the OPGGS Act to include a provision that</p>	<p>The ACTU concurs with the observation that insecure workers – casuals and labour hire workers - do not have the same access to health and safety representation as other workers.</p> <p>The ACTU has consistently argued for: Amendment of the OPGGS Act so that HSRs have the choice of picking their training provider, this is consistent with Recommendation 10 2018 WHS law review</p>

	<p>where short-term or specialist crews are being used at a facility, the operator is required to ensure that they are established as a DWG and that there is a HSR in the workgroup. This HSR would be selected by the workgroup, in accordance with the existing requirements for selecting an HSR. The operator would also be required to take reasonable steps to ensure that the HSR understands their powers and entitlements as set out in Schedule 3 to the OPGGS Act.</p>	<p>and amendments to section 72 NSW WHS Act in 2020</p> <p>Amendment of the OPGGS Act to require the regulator (NOPSEMA) keeps an up to date register of HSRs and their contact details (as proposed in WA WHS Act).</p> <p>As previously submitted, it is imperative that that “selection of HSR” is per proper election processes, as is clear in Part 5 of the WHS Act. This proposal falls short of harmonisation with on shore WHS laws. It is essential that workers are given the same autonomy as onshore workers during the election process</p> <p>The election process in clause 26 of Schedule 3 of the OPGGS Act should be amended to reflect s 61 of the WHS Act.</p> <p>Need to also provide for roving HSRs to assist casual and labour hire workers. This should include some guidance on what constitutes reasonable steps.</p>
<p><b>Workplace Arrangements</b></p> <p>Training requirements for HSRs</p>	<p>The department is proposing to amend training requirements to include provisions that require HSRs to attend one-day annual refresher training and require the operator to pay the course fees and any other reasonable costs associated with the HSR’s attendance at the initial NOPSEMA-accredited HSR</p>	<p>The ACTU supports the proposal for a one-day annual refresher training day, without cost to the HSR and improved clarity to ensure that the cost of training and associated costs is paid for by the operator. These are essential improvements, as one of the determinants of good health and safety performance is informed and trained HSRs and workers.</p>

	<p>course of training and the annual refresher course.</p> <p>These changes are intended to:</p> <ul style="list-style-type: none"> <li>• increase the overall safety standards at offshore facilities by ensuring HSRs have access to best practice and ongoing training</li> <li>• ensure HSRs remain up to date with current legislative and regulatory provisions that relate to the application of their role at the offshore facility by undertaking refresher courses</li> <li>• strengthen the role of HSRs by removing potential barriers to accessing training by ensuring the cost of the training and reasonable costs associated with undertaking the training will be covered by the operator.</li> </ul>	<p>However, the proposal does not address the lack of consistency with the WHS Act which allows HSR to choose, in consultation with their employer, the training course they wish to attend.</p> <p>The WHS Model Act Review or the recently passed Western Australian WHS Act provide for further clarity on choose of training provider.</p> <p>Additionally, as previously submitted the ACTU supports:</p> <p>amendment of the OPGGS Act to provide for a right for HSRs to attend to work health and safety business during work hours or while on a facility, including a requirement for the operator or employer to provide HSRs time to hold meetings and discussions with workers in respect of work health and safety matters during work hours or while on a facility.</p> <p>Adoption of a minimum handover period between HSRs and safety committee members between shifts, which must occur during the workers' normal working hours and rostered on period.</p> <p>Please refer to previously submitted Recommendations 17 and 19 and 32-35 regarding consultation and union Right of Entry (ROE) and 38 regarding issue resolution [see Part C]</p>
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<p><b>Workplace Arrangements</b></p> <p>Revision to safety case and safety management documents - HSRs</p>	<p><i>Safety management-related documents</i></p> <ul style="list-style-type: none"> <li>• HSRs will be able to request that the operator of a facility revise safety management-related documents if the HSR reasonably believes that a circumstance exists that affects the health and safety of workers and the operator has not adequately revised the documents in response to the circumstance or in response to previous feedback from the workforce or HSR.</li> <li>• The operator would then be required to provide the HSR written confirmation that the safety management document has been revised, or an explanation why a revision is not required, as soon as practicable.</li> </ul> <p><i>Safety Case</i></p> <ul style="list-style-type: none"> <li>• HSRs will be able to request that NOPSEMA consider information that demonstrates reasonable cause for the revision of the safety case for a facility. <ul style="list-style-type: none"> <li>- for example, where the loss of control measures critical to safety means that risk is no longer reduced to ALARP</li> </ul> </li> <li>• NOPSEMA would be required to consider the information provided by the HSR and determine whether to request an operator to submit a revised</li> </ul>	<p>The ACTU supports this proposal which is consistent with our previous submission – see Part C, Recommendation 2-4</p>
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	<p>safety case under regulation 2.31 (Revision on request by NOPSEMA).</p> <ul style="list-style-type: none"> <li>NOPSEMA would be required to provide the HSR a written response advising of the outcome of the HSR's request as soon as practicable.</li> </ul>	
<p><b>Workplace Arrangements</b></p> <p>Worker access to the safety case</p>	<p>The department is proposing to amend the Safety Regulations to require that the safety case must be easily accessible, without restriction, to the workforce at all times while they are at the facility, to ensure there is no barrier of access for HSRs or other workers.</p>	<p>The ACTU supports this proposal; however, it is insufficient to only allow workers access to the safety case while they are at work. It should be available to any worker at any time, and it should also be available to unions representing the workforce.</p> <p>Access should be inclusive of any safety case revisions and change of management notices.</p> <p>Divers and other specialist contractors must also have access to the safety case.</p>
<p><b>Workplace Arrangements</b></p> <p>Role of HSRs on the Health and Safety Committee</p>	<p>The department proposes to amend the HSC membership provisions in the OPGGS Act to require that:</p> <ul style="list-style-type: none"> <li>if there is a HSR at a workplace, that representative, if they consent, will be a member of the HSC</li> <li>if there are two or more HSRs at a workplace, those representatives may choose one or more of their number (who consents) to be members of the HSC.</li> </ul>	<p>The ACTU acknowledges that this proposal is a change that enhances the role of HSRs, however it does not align with the Model WHS provisions that allow for any HSR, if they consent, to become a member of the HSC (and not be limited to one HSR in a workplace, particularly given that there may be more than one DWG in a workplace) or ensure that that HSRs make up at least half of the committee.</p> <p>We further believe that there needs to be a clarifying of the role of HSRs that they are deemed to represent other HSRs or an HSC that so nominate them. This is to deal with</p>

		<p>the challenges with a remote offshore workforce which presents rostering and availability challenges in allowing all HSRs to participate in HSCs.</p> <p>HSRs must be able to consult with other HSRs given the remote nature of the work etc, prior to attending HSC meetings, including to be provided with access to electronic means for consultation purposes</p> <p>In addition, given the remote nature of the work, and the difficult shift patterns, greater obligations should exist on duty holders to facilitate and compensate HSRs to participate in HSCs. See Part C, Recommendation 40</p>
<p><b>Workplace Arrangements</b></p> <p>HSR general support (non-legislative change)</p>	<p>The department proposes that a HSR Forum be held on an annual basis<sup>18</sup> (continuing with the tripartite structure) and that to further support ongoing engagement, NOPSEMA establish a dedicated online portal or webpage for HSRs and workers. It is envisioned the portal/webpage would increase the provision of relevant information to HSRs and workers, as well as create a protected online space where current HSRs can communicate and share experiences and information with each other.</p>	<p>The ACTU supports this proposal.</p> <p>The Regulations should be amended to grant the power to NOPSEMA to deem an HSR Forum for the purposes of training that would facilitate HSR attendance in accordance with the release and associated costs requirements in the Regulations.</p> <p>Conference should be with HSR's and Regulator – NOPSEMA can communicate with the operators</p> <p>A tripartite annual conference is a step forward, however the tripartite conference should follow immediately after an industry</p>

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<sup>18</sup> Once current restrictions on travel and gatherings of large groups due to COVID-19 are lifted.

	<p>The department is also seeking a commitment from operators to pay reasonable associated costs for HSRs to attend the annual forum. This would include remuneration for HSRs during their attendance, as well as travel and accommodation expenses.</p>	<p>funded meeting for HSRs and union representatives conducted in the same location.</p>
<p><b>General Health and Safety Protections</b></p> <p>Offshore workers - mental health provisions</p>	<p>The department is proposing to include a definition of health in the OPGGS Act as 'physical and psychological health' in order to better support the overall wellbeing of the offshore workforce and to formalise the concept of health, as comprising both physical and mental aspects, in the offshore safety regulatory regime.</p> <p>In addition, operators and persons in control of any part of the facility will be required to take all reasonably practicable steps to provide and maintain a <i>working environment</i> at the facility that is safe and without risk to health. This will replace the current requirement to provide only a <i>physical environment</i> at the facility that is safe and without risk to health.</p>	<p>The ACTU supports the proposal amend the definition of health in the OPGGS Act.</p> <p>The proposal to refer to working environment is supported. However, it does not fully address all our concerns regarding psychological health. The COVID 19 pandemic has highlighted the extra difficulties faced by offshore workers.</p> <p>The regulations need to be amended to include a broad range of factors that impact on psychological health that duty holders must take into consideration. This is consistent with the recommendation into the model WHS law review that recommends specific regulation dealing with psychosocial hazards. Guidance on the factors to be included can be found by referring to <a href="#">SWA's national guidance material</a>.</p> <p>The ACTU has previously submitted the following:</p> <p>That the Safety Regulations be amended to deal with how to identify the psychosocial risks associated with psychological injury and the appropriate control measures to</p>

		<p>manage those risks in the offshore oil and gas industry.</p> <p>That the incident notification provisions in the OPGGS regime be reviewed to ensure that they provide a notification trigger for psychological injuries.</p> <p>That consideration be given to circumscribing or regulating contracting arrangements to maximise job security in the offshore petroleum industry.</p> <p>That consideration be given to mechanisms that would achieve better work health and safety standards and outcomes for workers in insecure forms of employment such as casual and labour hire, including additional training specific to those employment categories or roving HSRs to assist these types of workers.</p> <p>That consideration be given to circumscribing or regulating rostering arrangements to ensure that workers are not away from their home and family life for extended periods and have sufficient rest time between roster periods; for example, by amending r 95 of the Safety Regulations to require minimum continuous and uninterrupted periods off work and away from the workplace.</p> <p>That consideration be given to requiring a minimum handover period between shift change which must occur during the</p>
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		workers' normal working hours and rostered on period.
<p><b>General Health and Safety Protections</b></p> <p>Avoiding fatigue</p>	<p>To address this issue the department proposes to amend the Safety Regulations to include a broader range of factors that cause fatigue that duty holders must take into consideration before allowing or requiring a person at an offshore facility to commence work.</p> <p>These changes are intended to:</p> <ul style="list-style-type: none"> <li>• raise the overall standard of safety by ensuring that fatigue in workers is identified and managed to reduce the possibility of injury and accidents on offshore facilities</li> <li>• ensure a high standard of worker mental health and wellbeing is maintained.</li> </ul>	<p>The ACTU supports this proposal.</p>
<p><b>General Health and Safety Protections</b></p> <p>Protection for workers against discrimination</p>	<p>The department proposes to amend the OPGGS Act so it aligns with the provisions protecting workers against discrimination and coercion in the WHS Act.</p> <p>These changes are intended to:</p> <ul style="list-style-type: none"> <li>• strengthen protection for offshore workers against discriminatory or coercive behaviour</li> <li>• strengthen the role of HSRs by including provisions against discrimination relating to that role</li> </ul>	<p>The ACTU supports this proposal.</p> <p>The guidelines would also benefit from gender-neutral terminology to ensure against unlawful discrimination, misunderstanding and offense consistency and readability between the revised related Diving Codes and Standards.</p> <p>For example, replace the use of <i>bellmen</i> with <i>bell attendant</i>; Replace <i>man-riding equipment</i> with <i>diver-riding equipment</i>; and include gender-neutral pronouns.</p>

	<ul style="list-style-type: none"> <li>align legislative requirements for worker discrimination with the WHS Act</li> </ul>	
<p>Diving</p>		<p>Much clearer minimum standards are required in the Australian diving industry, and we understand that NOPSEMA has already issued directions to diving operators on compression times in the wake of the DOF Subsea incident. However this process needs to be formalised and made more inclusive in order to rebuild the trust of divers, and ensure their safety.</p> <p>These standards need to underpin the Diving Safety Management Systems, Diving Project Plan and Diving Start-Up Notice.</p> <p>We propose as a matter of urgency that Department of Resources and NOPSEMA convene a tripartite Diving Safety Working Group that includes representatives of the diving workforce and unions to establish minimum safety standards for all offshore diving in Australia, particularly saturation diving and Exceptional Exposure diving.</p> <p>This should include:</p> <ul style="list-style-type: none"> <li>- A through discussion and analysis of recent diving safety incidents and their causes.</li> <li>- An examination of best-practice minimum diving safety standards from other jurisdictions, especially Norway.</li> </ul>

		<ul style="list-style-type: none"> <li>- Minimum Bend Watch Times on board offshore facilities before any travel takes places, including chambers ready for immediate recompression, qualified decision-making personnel, communication with on-call hyperbaric doctor, and suitable treatment gases. In our view this should be 24 hours for saturation dives and 48 hours for Exceptional Exposure dives.</li> <li>- Minimum standards and tables for both saturation diving and exceptional exposure diving.</li> <li>- Reporting of Exceptional Exposure diving in line with Work Health and Safety Act 2011 Part 3 Incident Notification definition of what is a serious injury or illness where a worker may be: b) requiring immediate treatment for - the loss of a bodily function, and c) medical treatment within 48 hours of exposure to a substance, or in relation to a workplace that exposes a worker or any other person to a serious risk to a person's health or safety emanating from an immediate or imminent exposure to - uncontrolled gas and pressurised substances,</li> </ul>
<p><b>Diving</b></p>	<p>The department proposes to:</p>	<p>The ACTU supports the proposal. However, there is nothing in the document about</p>

<p>Diving Safety Management System</p>	<ul style="list-style-type: none"> <li>• introduce a mechanism to allow NOPSEMA to request more information on a DSMS, similar to that already provided for safety cases under regulations 2.25 and 2.33 of the Safety Regulations</li> <li>• establish a process and grounds for NOPSEMA to withdraw acceptance of a DSMS, similar to that already provided for safety cases under regulations 2.37 and 2.38 of the Safety Regulations</li> <li>• align the requirement for a revision five years after the first accepted DSMS in paragraph 4.10(e) with the proposed changes to the safety case revision requirements set out under regulation 2.32 of the Safety Regulations.</li> </ul>	<p>diver and HSR access to the Diving Safety Management System (DSMS).</p> <p>New minimum diving safety standards (discussed above) must underpin all Diving Safety Management Systems.</p> <p>Our earlier comments on the importance of worker access to the Safety Management System also apply here. All provisions for consultation and access to Diving Safety Management Systems must be, at a minimum, consistent with those for Safety Management Systems.</p> <p>However, diver access is even more important for DSMS as the legal responsibility for the operation continues in relation to a diver after they have left the site or facility. Consequently, dive teams need to be able to refer to the entirety of the DSMS off-site and after work hours.</p> <p>Saturation diving and related hyperbaric activity produces a range of decompression-related effects which may continue while the diver has a residual nitrogen load, or tissue saturation of other gas mixtures breathed under pressure, and beyond such time of operation which cause related cognitive and physical stresses and impairing the diver in the short term and long term. As a consequence, the application of the DSMS remains with the operator who has legal responsibility extended to the diver after the diver has left the work site, for all safety-related</p>
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		<p>injury, illness or impact incurred as a result of the diving operations performed at the facility.</p> <p>The DSMS should remain freely available to the diver, and their representative agent, for five years after they have left the site.</p> <p>In addition, the term of Diving Safety Management Systems should be shortened to three years.</p>
<p><b>Diving</b></p> <p><b>Diving Project Plan</b></p>	<p>The department also proposes the following amendments to requirements relating to DPPs:</p> <ul style="list-style-type: none"> <li>• require that the approved DPP for a diving activity should be provided to NOPSEMA along with the diving start-up notice</li> <li>• establish an offence provision for the operator if they breach their duty to ensure that a DPP complies with the relevant regulations</li> <li>• Amend sub-regulation 4.9(3) of the Safety Regulations to require that NOPSEMA maintains a register of DPPs it accepts, rather than all DPPs it receives for assessment, and all DPPs it receives along with diving start-up notices.</li> </ul>	<p>The ACTU supports this proposal adding as follows:</p> <p>Minimum diving safety standards (discussed above) must underpin all Diving Project Plans.</p> <p>An HSR and a member of the Offshore diving team (workgroup) intended to perform the work should be included in the consultation and preparation of the Diving Project Plan (DPP).</p> <p>The representative of the diving team intended to perform the work shall be a contractor or subcontracted Dive Supervisor, Life Support Attendant or Diver of the Saturation Diving Team undertaking hyperbaric operations on or from the facility. The HAZID meeting model should be used.</p> <p>The current reference to ‘Other members of the workforce’, could include someone not intended to perform the work and is</p>

		<p>therefore <i>not adequate</i> to ensure suitable expertise and responsibility for the development of the DPP.</p> <p>A non-contractor diver, such as a freelance salvage diver, or scientific diver contracted for non-decompression diving and activities relating to natural resources management or inspection on, or from the facility, or acting as a general consultant for the operation is not a suitably qualified for the representative saturation diving consultant on the DPP.</p> <p>'Other' members of the workforce who should be consulted include the ship's captain and rigging foreman.</p>
<p><b>Diving</b></p> <p><b>Diving Start-Up Notice</b></p>	<p>The current provisions give limited time for NOPSEMA to consider the safety of the dive before it begins, conduct an inspection if necessary, or to stop a dive if there are safety concerns. The department is proposing to amend the scope and timing of the diving start-up notice to ensure that NOPSEMA can confirm that a dive is occurring safely and in accordance with an approved DPP. These amendments will strengthen assurance and due diligence by:</p> <ul style="list-style-type: none"> <li>• requiring additional information in the start-up notice, for example: dive table and breathing mixture to be used, compression rate(s) for deep diving, number of people to be in the dive team and their roles and a</li> </ul>	<p>The ACTU supports this proposal and suggests:</p> <p>Minimum diving safety standards (discussed above) must underpin all Diving Start-Up Notices.</p> <p>A Diving Start Up Notice should be accessible to the HSRs, Dive Supervisor, Life Support Supervisor and Diver [with options of including their representative organisation, and any potential co-subcontractors], and made available remotely, freely and digitally. It is too limited to suggest that a safety case is only freely available to employees on site.</p> <p>The workers listed above must have the ability to advise NOPSEMA on the decision</p>

	<p>list of the relevant related permissioning documents (DSMS and the relevant safety case(s))</p> <ul style="list-style-type: none"> <li>• requiring NOPSEMA to assess and either accept or refuse a diving start-up notice</li> <li>• establishing provisions for NOPSEMA to request further information if a start-up notice does not include sufficient information to meet the requirements under the Safety Regulations</li> <li>• increasing the notification period from 14 days to 28 days to allow NOPSEMA to assess the start-up notice, ensure it is consistent with the DPP and undertake an inspection if needed</li> <li>• creating a provision for NOPSEMA to delay and/or refuse the commencement of the diving activity if there are reasonable concerns about the safety of the proposed dive.</li> </ul>	<p>to delay or refuse the commencement of diving activity.</p> <p>Dive contractors undertake mandatory pre-dive briefing and induction, requiring the safety case information to be made freely available before undertaking the work.</p> <p>Divers should have offshore access, remote access or digital access to the Diving Start-Up Notice submitted to NOPSEMA prior to the commencement of the contract;</p> <p>28 days prior for Contractors already holding NOPSEMA Dive Project Cases;</p> <p>60 days prior for New Contractors who have not had a DPP approved by NOPSEMA; and</p> <p>Available to all workers on an open access to the Safety Case onsite;</p> <p>Available to all the diving team or their representatives, ongoing for the five-years.</p> <p>Currently minimum of 2 hours before travel is insufficient. Some contractors have been sending divers on Bend Watch to shore after only 12 hours and this should not be allowed.</p>
<p><b>Diving</b></p>	<p>To address this, the department proposes to amend the relevant legislation to expressly permit</p>	<p>The ACTU supports this proposal.</p>

<p><b>Diving inspections</b></p>	<p>NOPSEMA inspectors to monitor compliance with diving-related obligations under the Safety Regulations on a vessel under the command of a master, before and after the vessel is considered to be an associated offshore place in relation to a facility but still conducting activities relating to a diving project (such as preparation to dive and decompression activities post dive).</p>	
<p><b>Diving</b></p> <p><b>Diving reporting obligations for diving supervisors</b></p>	<p>The department proposes to expand the reporting obligation on diving supervisors to include titleholders and NOPSEMA in the event there is no operator for that diving project, thus closing any gap of non-reporting. This will ensure adequate reporting and regulatory oversight in the event of a serious occurrence during a diving project.</p>	<p>The ACTU supports this proposal. Diving reporting obligations must remain stringent.</p> <p>Reporting standards that align with minimum diving safety standards (discussed above) must be developed.</p> <p>There are two instances where non-Operator diving takes place in the offshore. As the Operator is the legal entity responsible to NOPSEMA for safety, both should be minimised to greatest extent possible,</p> <p>Non-operator diving can take place on disused facilities where there is no operator, but it can also refer to the use of onshore-qualified divers such as scientific or salvage diver contractors on offshore projects.</p> <p>The Regulations require that the Non-Operator submit a DPP outlining the Regs</p>

		<p>and Acts applicable to the area of operation.</p> <p>Guidance should provide clarity to ensure the DSMS mitigates against: concurrent diving operations of mixed Offshore/Onshore qualified individual contractors (saturation dive teams, and scientific or salvage diver contractors) and; parallel diving operations mixing operational standards and equipment from the facility including ensuring against ancillary SCUBA and SSBA diving operations outside of the DSMP.</p> <p>A priority should also be placed on ensuring disused facilities are decommissioned as quickly as possible to avoid these potentially dangerous situations. This should be addressed in NOPSEMA's current review of the NOPSEMA policy on Maintenance and removal of property, as well as the DISER Decommissioning Framework Review.</p>
<p><b>Compliance and enforcement</b></p> <p><b>Introduction of a civil penalty regime</b></p>	<p>The introduction of civil penalties would further enable a range of penalties and enforcement tools of increasing levels of severity to be utilised to encourage compliance. The choice and application of the enforcement tools are intended to more accurately reflect the seriousness of contraventions and the harm or potential harm caused by the contravention.</p>	<p>The introduction of civil penalties is welcome and should be aligned with model WHS laws.</p> <p>However, the penalty provisions should better reflect the significant revenues by operators in the industry and raised significantly to ensure deterrence. Such penalties should be consistent with consumer protection penalties that are adjusted according to the revenue of the operator. In addition to these reforms</p>

	<p>In addition to civil penalties, the department also proposes to introduce additional graduated enforcement mechanisms for appropriate provisions in the Safety Regulations. The additional mechanisms would include infringement notices, injunctions and enforceable undertakings<sup>19</sup>. This would be consistent with the range of enforcement mechanisms available in the OPGGS Act.</p>	<p>unions should be given standing to bring prosecutions.</p> <p>See Part C, Recommendations 39 and 45.</p> <p>Further to the above consideration should also be given to the recommendation arising from the Boland review of model WHS laws (rec #26) to prohibit insurance policies that insurance against penalties for breaches of WHS duties.</p> <p>The introduction of an offence of industrial manslaughter should also be introduced into the Regulations. This is consistent with those passed, or under consideration by a number of jurisdictions, including all of those jurisdictions which operate onshore facilities that support the offshore oil and gas industry (Victoria, WA and the NT).</p> <p>Higher penalties and better enforcement tools must also be introduced in other area of the OPGGS Act jurisdiction as it is clear there is a problem with compliance. In October 2016 NOPSEMA found extensive corrosion throughout the <i>Northern Endeavour</i>, and made recommendations to Upstream Petroleum Solutions to fix it. It appears that that corrosion was never properly fixed until the facility was finally</p>
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<sup>19</sup> Enforceable undertakings are an alternative penalty for alleged non-compliance with a person's legislative obligations. Undertakings are agreed between the person and the regulator, and are enforceable in a court. Enforceable undertakings typically provide a commitment by the person to implement initiatives designed to deliver tangible benefits for the industry or broader community, which seek to resolve the alleged non-compliance and rectify the consequences of that non-compliance.

		<p>ordered to stop operating in July 2019. Between 2016 and 2019 there were multiple interventions from NOPSEMA, but the operator was given multiple extensions of time to comply.<sup>20</sup> These problems created an unsafe working environment, including a potentially fatal incident directly linked to corrosion in July 2019.</p>
<p><b>Compliance and enforcement</b></p> <p><b>Notification and reporting requirements</b></p>	<p>The department is proposing to:</p> <ul style="list-style-type: none"> <li>• modify the information required under sub-regulation 2.42(4) so monthly reports detail specified operational activities and incidents that are otherwise not-notifiable and leading indicators of safety performance, similar to the requirements for ‘recordable incident’ reporting under the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009. Some of this information that is currently requested by NOPSEMA on a voluntary basis (such as hours worked) is essential for interpretation in relation to the deaths/injury incident reports required by the Safety Regulations</li> <li>• modify the requirement under sub-regulation 2.42(4) so that monthly reports are not required where there has been nil operational activity at a facility, for example, where there has</li> </ul>	<p>The ACTU supports these proposals. However, the proposal does not require that psychological injury caused by work is required to be notified. This should be included consistent with recommendations arising from the Boland review of model WHS laws (rec #20).</p>

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<sup>20</sup> Steve Walker, [Review of the Circumstances that Led to the Administration of the Northern Oil and Gas Australia \(NOGA\) Group of Companies, Commonwealth of Australia – full report](#), June 2020.

	<p>been no work carried out that falls within the scope of the safety case</p> <ul style="list-style-type: none"> <li>• amend the OPGGS Act to include a new clause that provides clear legal authority for the monthly reports to be made under the Safety Regulations</li> </ul>	
<p><b>Definition of facility and associated offshore place</b></p>		<p>The ACTU supports this proposal. It appears to us that it would have the effect of clarifying that vessels working in the vicinity of offshore oil and gas facilities generally remain as vessels and not be unduly switched to the OPGGS Act jurisdiction.</p>
<p><b>Vessel activity notification scheme</b></p>		<p>The ACTU supports this proposal. However, at the same time that the vessel operator is required to notify NOPSEMA that they will become a facility, they should also be required to notify their workforce.</p> <p>It remains the ACTU position that the OHS(MI) Act and WHS matters under the OPGGS Act should be harmonised into the national and state WHS jurisdiction to reduce the confusion that this change in jurisdiction causes.</p>

Minor technical amendments	Proposed change	
Use of 'practical' in Safety sub-regulations 4.5(3) and 4.6(3)	Change to 'practicable' as the current references are incorrect.	Supported.
Terms 'safety case' and 'revised safety case' are used interchangeably	Ensure consistency – the same term should be applied to that suite of Safety sub-regulations.	This should be applied with caution to ensure maximum clarity in the naming of safety cases. All parties should be able to identify whether a safety case has been revised, and what the correct safety case to refer to is.
Use of "operator for a diving project"	Change to "operator of a facility" as the current references are incorrect.	<p>Further clarification required. The 2020 Definition of "Operator" is missing from the Guidelines.</p> <p><a href="https://www.nopsema.gov.au/assets/Guidelines/A40339.pdf">https://www.nopsema.gov.au/assets/Guidelines/A40339.pdf</a></p> <p>Reg 4.12(1) This regulation applies if there is an operator for a diving project.</p> <p>Guidance: This regulation applies where the diving contractor is undertaking work, either directly for an operator or as a subcontractor through a principal contractor to the operator.</p> <p>Related topic: see Glossary of Terms for meaning of 'operator' in the context of diving operations</p> <p><a href="https://www.nopsema.gov.au/assets/Guidelines/A40339.pdf#page=110&amp;zoom=100,0,164">https://www.nopsema.gov.au/assets/Guidelines/A40339.pdf#page=110&amp;zoom=100,0,164</a></p>

<p>&lt;&lt;error 404 &gt;&gt; missing links in the Glossary of Terms</p>		<p>Update with correct URL cross-reference and guidance</p> <p>Diving contractor: a person who enters into a contract to conduct a diving project.</p> <p><i>Guidance</i> A diving contractor is a contractor within the ordinary meaning of the term who, by reason of having access to the appropriate equipment, procedures, personnel and specialist knowledge, undertakes to provide diving services on a contractual basis in support of activities for the offshore petroleum industry.</p>
<p>Spacing errors</p>		<p>Correct spacing errors and inconsistent usage of terms:</p> <p><i>on shore</i> (in-land) and <i>onshore</i> (maritime jurisdiction);</p> <p><i>off shore</i> (from land) and <i>offshore</i> (maritime area).</p>

## **PART C: ACTU Submission 9th August 2019 – Recommendations**

**Recommendation 1:** That the objects of Schedule 3 of the OPGGS Act be harmonised with the objects of the model WHS laws, particularly in respect to the workforce and their representatives.

**Recommendation 2:** That the OPGGS regime be amended to require consultation with the relevant unions in the development of the initial safety case.

**Recommendation 3:** That the OPGGS regime be amended to permit accredited HSRs and union officials to conduct a work health and safety inspection of facilities before commissioning.

**Recommendation 4:** That the OPGGS regime be amended to require a review of the safety case to take place with a new workforce once hired (and before the commencement of operations, where possible), to ensure the workforce understands the safety case, the hazards and risks they will be exposed to, and the control measures in place to manage them, and to provide for workforce input to continuous review of the safety case.

**Recommendation 5:** That the OPGGS regime be harmonised with the model WHS laws in respect of the ability of HSRs to trigger a review of a safety management-related document, including a safety case.

**Recommendation 6:** That the duties in OPGGS Act be amended to be consistent with those in the model WHS laws (including any amendments following the Safe Work Australia Review of the Model WHS Laws), except where objectively justified by reference to the high hazard nature of the offshore oil and gas industry.

**Recommendation 7:** That the OPGGS regime be amended to implement a licensing system for workers performing high-risk work, similar to that under the model WHS laws.

**Recommendation 8:** That consideration be given to mechanisms that would achieve better training standards and access for casual and labour hire employees.

**Recommendation 9:** That the OPGGS Act be amended to expressly define 'health' as 'physical and psychological health'.

**Recommendation 10:** That the Safety Regulations be amended to deal with how to identify the psychosocial risks associated with psychological injury and the appropriate control measures to manage those risks in the offshore oil and gas industry.

**Recommendation 11:** That the incident notification provisions in the OPGGS regime be reviewed to ensure that they provide a notification trigger for psychological injuries.

**Recommendation 12:** That consideration be given to circumscribing or regulating contracting arrangements to maximise job security in the offshore petroleum industry.

**Recommendation 13:** That consideration be given to mechanisms that would achieve better work health and safety standards and outcomes for workers in insecure forms of employment such as casual and labour hire, including additional training specific to those employment categories or roving HSRs to assist these types of workers.

**Recommendation 14:** That consideration be given to circumscribing or regulating rostering arrangements to ensure that workers are not away from their home and family life for extended periods and have sufficient rest time between roster periods; for example, by amending r 95 of the Safety Regulations to require minimum continuous and uninterrupted periods off work and away from the workplace.

**Recommendation 15:** That consideration be given to requiring a minimum handover period between shift change which must occur during the workers' normal working hours and rostered on period.

**Recommendation 16:** That the election process clause 26 of Schedule 3 of the OPGGS Act be amended to reflect s 61 of the WHS Act, to provide for workers in the offshore oil and gas industry with equivalent autonomy in determining the manner in which they elect an HSR.

**Recommendation 17:** That the OPSSG Act be amended to provide for a right for HSRs to attend to work health and safety business during work hours or while on a facility, including a requirement for the operator or employer to provide HSRs time to hold meetings and discussions with workers in respect of work health and safety matters during work hours or while on a facility.

**Recommendation 18:** That consideration be given to requiring a minimum handover period between HSRs and safety committee members between shifts, which must occur during the workers' normal working hours and rostered on period.

**Recommendation 19:** That NOPSEMA continue to lead and sponsor the HSR Forum annually.

**Recommendation 20:** That NOPSEMA establish an online portal for HSRs to communicate with each other confidentially.

**Recommendation 21:** That the NOPSEMA give consideration to ways to better promote its dedicated NOPSEMA inspector focal point and dedicated hotline number to HSRs.

**Recommendation 22:** That clause 40(1) of Schedule 3 the OPGGS Act be amended to address any deficiency relative to s 70(1) of the WHS Act.

**Recommendation 23:** That the OPGGS regime be amended to prescribe an initial period of training of up to five days and an entitlement to refresher training of up to one day per year.

**Recommendation 24:** That the OPGGS regime be amended to be consistent with the model WHS laws (including any amendments following the Safe Work Australia Review of the Model WHS Laws) in respect of HSR choice of training course and operator requirement to cover reasonable costs.

**Recommendation 25:** That the OPGGS Act be amended as necessary to ensure that the HSR Forum is accredited for the purposes of clause 30 of Schedule 3 of the OPGGS Act, and provision made for NOPSEMA or the employer or operator to cover the cost of travel and accommodation for HSRs to attend the training.

**Recommendation 26:** That the OPGGS regime be amended to be consistent with the model WHS laws in respect of HSR membership of the health and safety committee.

**Recommendation 27:** That the NOPSEMA be required to develop, in consultation with stakeholders including unions and HSRs, an HSR engagement policy.

**Recommendation 28:** That the OPGGS Act be amended so that the operator is required to maintain an up-to-date list of HSRs and to provide a copy to NOPSEMA as soon as practicable after it is prepared.

**Recommendation 29:** That the OPGGS Act be amended to require the list to also record the date on which the HSR was elected to the role and the date on which they completed the HSR training.

**Recommendation 30:** That the OPGGS Act be amended so that the list is required to be displayed at the workplace, in a manner that is readily accessible to the workers.

**Recommendation 31:** That the OPGGS regime be amended to require HSRs to accompany NOPSEMA on their inspections and to require NOPSEMA inspectors to meet separately and privately with HSRs during inspections (i.e. without the operator or employer or their management representatives present).

**Recommendation 32:** That the OPGGS regime be amended to be equivalent to the WHS Act regarding consultation with, and participation of, the workforce, and that practical guidance be developed to assist duty holders to fulfil these additional consultation duties.

**Recommendation 33:** That clause 35 of Schedule 3 of the OPGGS Act be amended to make it clear that the consultant can be a union official, and that consideration be given to how to achieve the policy intention that a union official accessing a workplace to provide assistance to an HSR is not required to hold an entry permit under the *Fair Work Act 2009* (Cth) or another industrial law, taking into account the interaction between Commonwealth, state and territory laws.<sup>21</sup>

**Recommendation 34:** That the OPGGS regime be amended to provide for a union right of entry for work health and safety purposes, consistent with the model WHS laws (subject to any modifications following the Safe Work Australia Review of the Model WHS Laws and the further modifications outlined below).

**Recommendation 35:** That any right of entry for work health and safety purposes established under the OPGGS Act provide for:

- the operator of the facility to, as soon as possible, facilitate transport for the permit holder for right of entry purposes;
- the cost of transport for the permit holder for right of entry purposes to be recovered from industry by a levy revenue to NOPSEMA; and
- an ability for the permit holder to exercise entry for the purposes of inquiring into multiple suspected contraventions of the OPGGS Act, including additional contraventions identified during the course of the entry.

**Recommendation 36:** That the OPGGS regime be amended to require that the workforce be given a copy of the safety case, including by confidential remote online access.

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<sup>21</sup> Safe Work Australia, Review of the model WHS laws: Final report, Recommendation 8.

**Recommendation 37:** That the OPGGS Act be amended to provide for equal representation of industry and workforce participants on the NOPSEMA Board, with the latter representatives to be nominated by the Australian Council of Trade Unions.

**Recommendation 38:** That the OPGGS Act be amended to provide for an issue resolution process consistent with the model WHS laws (subject to any modifications following the Safe Work Australia Review of the Model WHS Laws).

**Recommendation 39:** That unions to be given standing to commence prosecutions for contraventions of Schedule 3 of the OPGGS Act.

**Recommendation 40:** That guidance be developed with examples of health and safety committee constitutions, agendas and minutes.

**Recommendation 41:** That NOPSEMA carry out regular, unannounced inspections as part of its standard inspection regime.

**Recommendation 42:** That the OPGGS regime be amended to require duty holders to notify NOPSEMA when a vessel facility is going to be used for a relevant purpose defined under the OPGGS regime, to facilitate compliance monitoring.

**Recommendation 43:** That the penalties in the OPGGS regime be significantly increased, in line with best practice responsive regulation (and at least in proportion to any increases in the model WHS laws).

**Recommendation 44:** That the OPGGS Act be amended to provide for a new offence of industrial manslaughter. The offence should provide for gross negligence causing death and should reflect as closely as possible any similar offence that is introduced into the model WHS laws.

**Recommendation 45:** That consideration be given to whether there should be increased penalties in the OPGGS Act for larger businesses or repeat offenders. This consideration should take account any similar consideration in respect of the model WHS laws.

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