

# International Regulators' Offshore Safety Conference

## Moving a new regulator to the next level

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October 2010



# GETTING TO GOOD

## OR

# GOOD TO GREAT?



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What does “the next level” mean?

Are we talking about getting to good, or going from good to great?

The “next level” neither defines where we are nor where we should be going.

And whilst the title of my presentation specifically talks about new regulators I believe it is a responsibility of all of us – whether new or old – to continually challenge ourselves and ask what can we do to become more effective regulators of the offshore oil and gas industry.

Complacency, whether it is:

- “it cant happen again”;
- “it cant happen here”; or
- “it can’t happen to us”...

...is just as dangerous for us as regulators as it is for industry.

## Outline

- NOPSA's inception & key milestones
- History of reviews – key recommendations & legislative change
- Achievements
- Key success factors
- Moving forward



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To give substance to my comments I have drawn from the NOPSA experience over its first five and a half years as a practical example to highlight some of the factors that I believe are important for all regulators.

I will talk a little about NOPSA's inception and some of our key experiences with particular reference to the many reviews of aspects of the industry and NOPSA over this time.

I will reflect on what the team at NOPSA has achieved and share some personal observations from my 12 months as CEO of some of the critical success factors which have contributed to us getting to where we are.

I will then make some more general comments as to where I think NOPSA – and potentially other regulators – could usefully focus as we move forward.

## History

- 1988 - Piper Alpha
- 1992, 1995, 1996 - legislation & regs amended - safety case regime
- 2001 - Independent Review Team (IRT) - national petroleum safety regulatory authority
- 2002 - Ministerial Council (MCMPR) :
  - Consistent national approach
  - Safety case approach
  - Legislative framework that is clear and enforceable and that requires operators to discharge their responsibilities for safety
- 1 Jan 2005 - NOPSA doors open



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In response to Piper Alpha (1988) a series of amendments to the legislation governing the Australian offshore oil & gas industry were made in 1992, 95 and 1996 to make the changes necessary to provide for a safety case regime

The safety case regime is characterised by an acceptance that the direct responsibility for the ongoing management of safety on facilities is the responsibility of those best placed to manage the risks - the operators and the role of the regulator is to provide robust challenge and oversight.

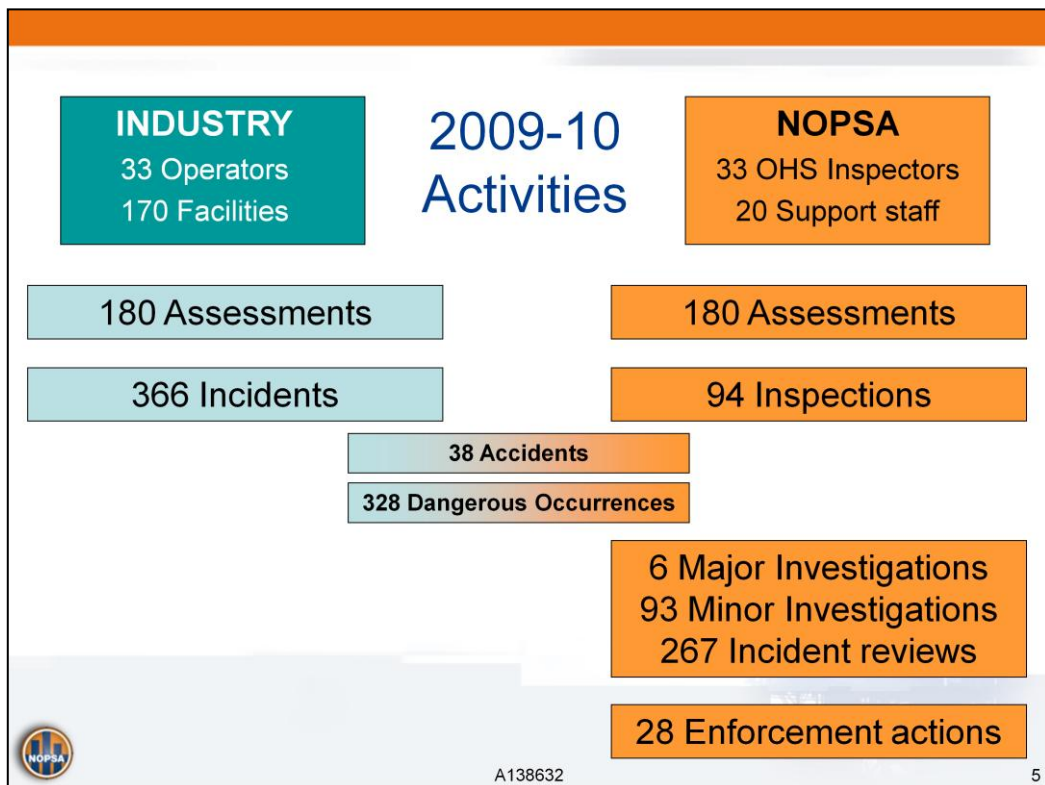
In 1999 the government commissioned an Independent Review Team (IRT) which reported in 2001 and recommended the existing framework of laws be revised and the regulatory system be restructured by establishing a national petroleum safety regulatory authority.

In 2002 the Ministerial Council on Mineral and Petroleum Resources (MCMPR) endorsed principles for regulation that established NOPSA, these principles included:

Consistent national approach

Safety case approach

Legislative framework that is clear and enforceable and that requires operators to discharge their responsibilities for safety



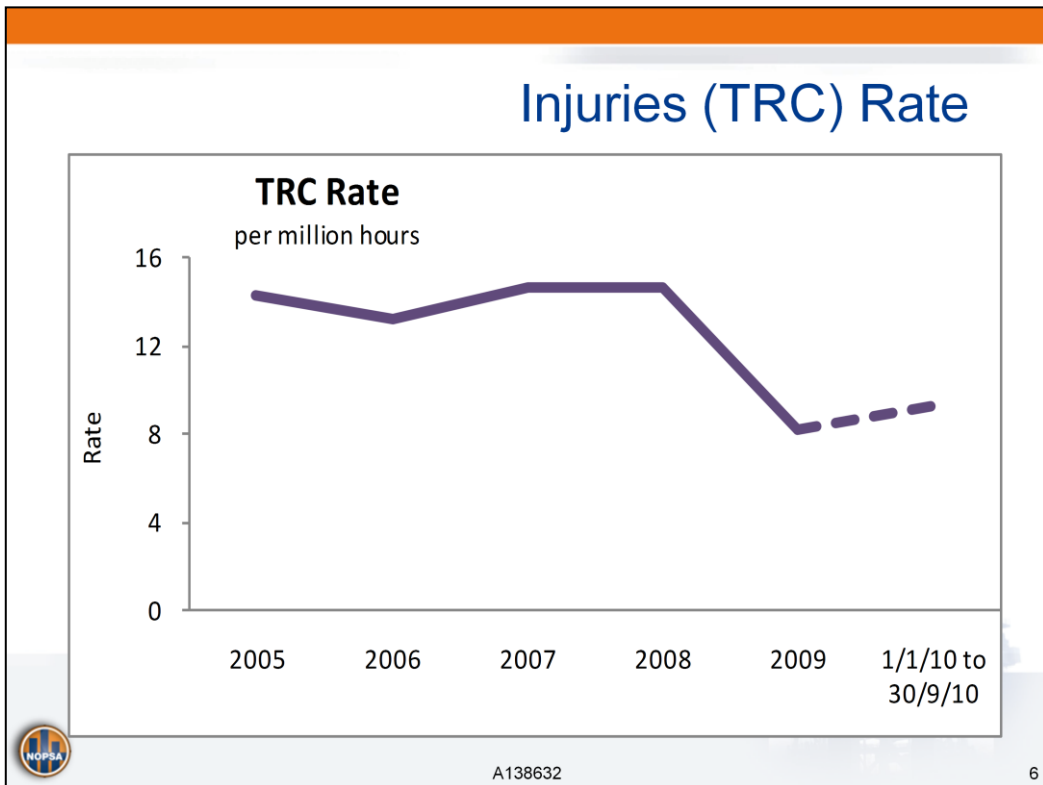
NOPSA's activities as currently structured, showing our focus on our core regulatory activities or assessment, inspection and enforcement.

Behind this, and supporting our inspectors and our regulatory activities, we have a comprehensive and structured management system. We have a comprehensive system of core processes for a regulatory activities and our support teams.

We are ISO 9000 quality accredited.

We know:

- What we do;
- Why we do it;
- The basis for our decisions; and
- It is all documented systematically. We can retrieve information to inform future inspections and to respond to requests from government and other stakeholders.



We find that data and statistics are useful for three reasons:

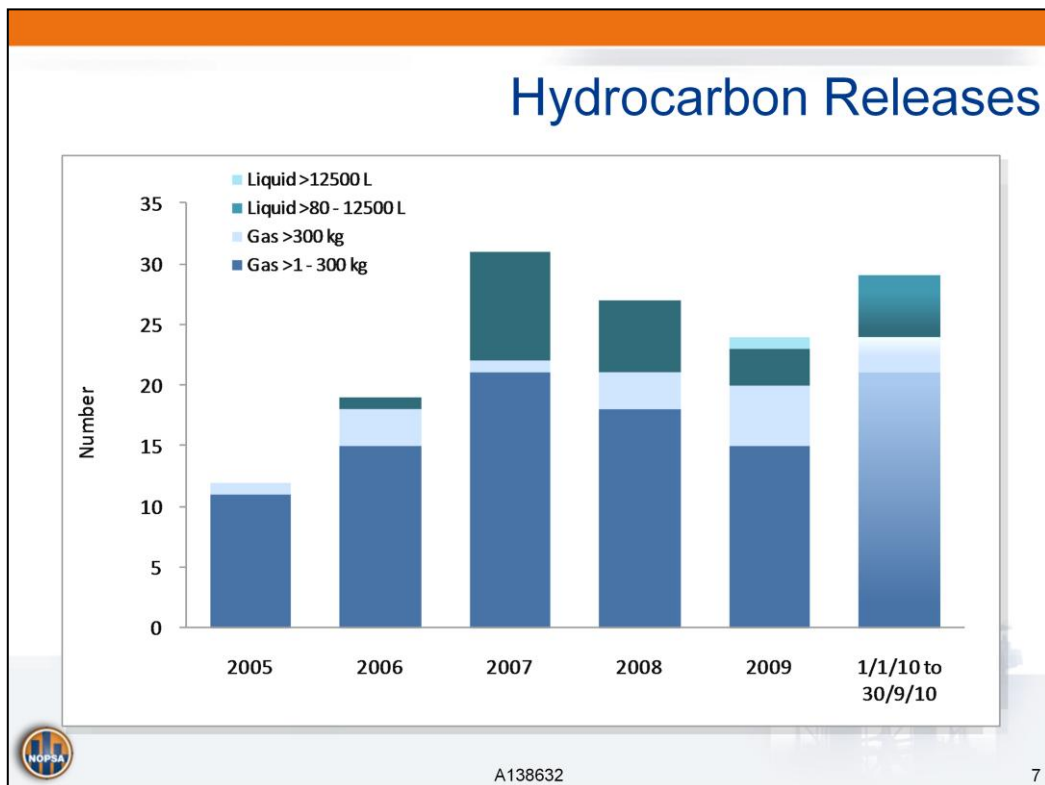
- Helping us shape priority areas for our attention in our regulatory activities such as inspections;
- Providing information to government and the community as to how the industry is performing; and
- As a starting point for conversations with an number of stakeholders, especially individual Operators.

Our industry performance data refers only to facilities in NOPSA's jurisdiction.

This graph of injury rate is important for two reasons:

- The decline in injury rate is actual harm avoided – more people are going home safely; and
- It reflects the results of the work that a number of Operators have put in to reducing personal injury rates over the last few years – where Operators and their staff focus attention, we can see significant improvements.

But we are mindful that whilst lower personal injury rates – fewer slips, trips and falls – may mean many things, it does not mean a lower risk of exploding oil rigs!



Unfortunately NOPSA doesn't have data for the period prior to its establishment and we believe there may have been a period of learning for the industry with new reporting requirements to a new regulator. This means that it is hard to identify a long term trend.

All hydrocarbon releases are important, regardless of their size ... what doesn't leak can't explode!

We see an increase in hydrocarbon releases over the first nine months of this year – this is a concern and we have used this insight to drive action:

- Issuing of safety bulletins to raise awareness of safety issues;
- A focus on asset integrity in our assessments our inspections; and
- We have used individual Operator data as a basis of discussion with CEO and senior Operator representatives, as well as safety and operations staff, particularly for facilities who have contributed repeatedly.

NOPSA's industry performance data contributes to accountability and transparency to the community and government.

## External Reviews ...1

- 2008 - 3-year Independent Review
  - Good start
  - Need to complete the regime
- 2009 - Bills/Agonstini Inquiry into Varanus Island
  - Main report not publically available
  - Reports into NOPSA & Marine issues



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In our first five and a half years NOPSA has been the focus or part of the scope of a number of reviews.

An independent review is required under our legislation every three years. The review team included Magne Ognedal from the PSA, Norway, an industry representative and a reviewer with a technical background.

The Varanus Island fire (failure and explosion of one pipeline initiated failure in three adjacent pipelines), raised a number of issues – jurisdiction, the challenges of undertaking activities under inadequate contractual arrangements where powers had not been properly conferred.

In the middle of this year the Australian Government released its response to these inquiries. Of the 28 recommendations that fall to NOPSA to implement, substantial progress has been made on 26 of them.

## External Reviews ... 2

- **Productivity Commission**
  - Single National Regulator
  - NOPSA remain independent
- **Montara Commission of Inquiry**
  - Report and whole of government response to be released soon
- **2011 – Second 3-year Independent Review**



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The Productivity Commission was a broad ranging review into a number of aspects of industry regulation. It recommended that existing state-based responsibilities for matters such as title administration and the environmental regulations contained within the *Offshore Petroleum and Greenhouse Gas Storage Act* be combined into a single national regulator alongside an independent safety regulator – NOPSA.

The Montara Commission of Inquiry report is with Resources and Energy Minister Martin Ferguson who has advised that the report contains 105 recommendations and 100 findings with wide-ranging implications for government and the regulators of the offshore petroleum industry. It is expected that the report will be released before Christmas.

## September 2010 – Ministerial Intent

- **Single National Regulator**
  - expansion of NOPSA's functions
  - safety of our offshore workers and the environment from exploration to decommissioning
  - responsible for approvals and regulation of safety and environment as well as integrity of facilities and day to day operations
  - NOPSIEA?
- **Establish a new statutory authority**
  - advise on title decisions and administration, and major questions of resource management and development
  - Joint decisions of the Commonwealth and the relevant State or Territory
  - located within Federal Department



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At a recent speech in Darwin the Federal Minister for Resources, Energy and Tourism, Martin Ferguson, outlined his direction for regulation of the offshore industry.

A single National Regulator with responsibilities for OHS, environment, integrity of facilities and day to day operations – an expansion of NOPSA's role is intended to simplify, clarify and remove gaps and overlaps.

A new statutory authority, located within the Federal Department of Resources, Energy and Tourism advising the Joint Authority (federal and state ministers) on title decisions and major questions of resource management and development.

For those of you who are unfamiliar with the arrangements for regulation of the offshore industry in Australia I will try and clarify.

Responsibility for matters such as title decisions, resource management, well integrity and administration of the environmental regulations within the *Offshore Petroleum and Greenhouse Gas Storage Act* (OPGGSA) for the waters around Australia is currently divided, with responsibilities lying with adjacent states or territory. The proposed way forward focuses on the responsibilities for regulation in commonwealth waters with the expanded NOPSA and the new national titles administrator. Under this model, state and territory governments will have the opportunity to confer powers for coastal and inland waters to the federal agencies. These arrangements are intended to maintain the role of state and territory ministers – working together with the federal minister – on key resource management decisions, whilst providing clearer and more cohesive responsibilities for the regulation of safety and environment.

Assessment of proposals under the "impact of proposals" legislation remains the responsibility of the environmental regulators – environment here refers to environmental management plans required under the OPGGSA.

Perhaps most significantly back in 2009 when the Productivity Commission released its report, it recommended a single national regulator for the industry sitting alongside an independent safety authority - NOPSA - so in 18 months there has been a major shift.

Safety (in Australia's case including well integrity and environmental regulations) is now the central focus of the Australian Government's regulatory reform agenda. This sends a clear message that in the government's mind safety is the most important game in town.

## Successful first 5 years??

- Evidence ?
- How do we measure success?
- Benchmarking ?
  - Regulator performance
  - Industry performance
- Feedback? Reviews?



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Whilst I believe that NOPSA has had a very successful first five years I believe a more important discussion is how we can continuously improve.

Success is driven by:

- Focus on core business (assessment, inspection, investigation);
- Independence as a regulator;
- Experienced and motivated people; and
- Core processes and technology.

## Start up = Focus

- Not core – don't do it
- Get the basics right –
  - assessment, inspection, investigation
- Key principles –
  - Operator responsible for safety of their facility
  - regulator not project facilitator
- Basic needs –
  - powers, \$, people, processes/technology



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Focus is critical during a start up or for a period of time after a major change.

Suggestions for a new regulator would be to define a box and be clear about what goes in and what stays out of the box, and then stick to it ... there will be a lot of folks criticising and eager to meddle, wanting to add stuff in and move your box around ... with a 'hurry up slowly' effect. Instead, get the basics right and grow from there.

Do what your legislation requires you to do.

If your regime is incomplete or could be improved, talk to the policy makers, provide wisdom and your operational experience into the mix and consider their priorities. Be disciplined about regulatory creep – it will eventually cause problems. A word of advice here is that the pressure to act in ways outside the regulatory framework can be intense and can come from those who should know better.

So for us the basics are our core processes assessment, inspection and investigation built around three key questions:

1. Are the operators doing enough to ensure the safety of their facilities?
2. Are they doing what they said they would do ?
3. If something goes wrong, what happened, why did it happen, what can we learn, and did anyone break the law? If the latter, is enforcement necessary?

In doing this we are clear about the separation of responsibilities – and that we are a regulator – not a project facilitator.

Success also relies on our basic needs being met:

- Powers to regulate nationally;
- Funding – NOPSA is funded by industry through a levy system; more on that in a moment; and
- People – the industry we regulate, at least in Australia, employs some of the best and brightest graduates from our universities. Whilst the fundamental physical principles of our industry are not complex, the facilities and equipment are becoming increasingly so: deepwater drilling, FLNG, subsea completions for high volume wells, world scale facilities, remote, hostile environments (and I am only talking about Australia here). To be competent regulators we need capable, experienced people, technical degree-qualified people who have a mix of experience including some with a deep industry background. To do this we need to remunerate them properly, provide good work conditions and provide a culture and climate that is supportive and allows them to perform at their best.

## Funding NOPSA

- Annual Safety Case Levy – main levy – covers all normal activities
- Pipeline safety management plan levy
- Safety investigation levy – only for major incidents
- Fee-for-Service (rarely used)



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I don't want to over-emphasise the importance of money ... I do get a lot of questions on this topic.

The annual Safety Case levy will cover all normal regulatory activities, such as:

- Routine visits/audits/investigations;
- Meetings with operators, contractors;
- Telephone discussions; and
- Assessment of Safety Cases and revisions (where required).

The Safety Case levy is the sum of the SMS amount and the facility amount as follows:

1. The SMS amount, (regardless of how many fixed facilities an Operator has)
  - Fixed facilities \$125,000 per annum
  - Mobile facilities \$80,000 per annum
2. The facility amount (depends on 'complexity' of facility)
  - Unit cost (\$26,000) x 'complexity' factor

Governance arrangements

Financial Management Act applies so all the usual governance arrangements apply. Senate estimates and so fourth.

NOPAS conducts a yearly cost effectiveness review as part of our consultation with industry.

The levy is set annually following a cost recovery impact statement (CRIS)

## Moving forward

- Mindset change
- Fill in gaps / eliminate overlaps – clear regulatory roles & responsibilities
- Complete the tool kit
- Communication & transparency
- Assess internal skills, competencies, leadership & culture needs
- Barriers
  - review fatigue
  - our world has changed ...



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Mindset change – move beyond the cautious “*we are new*”, to a confident and capable “*we are the regulator*” – no excuses.


Fill in gaps / eliminate overlaps – determine clear regulatory roles and responsibilities.

Complete the tool kit: this is about reshaping the box. Our success in doing this is driven by the effectiveness of the policy process, and whilst we have to rely on others regarding policy, we are not passive players. The regulators are the ones who have the most knowledge and insight as to what is needed: “priorities and lack of resources” are poor excuses for not taking action where there are known problems.

Collectively we need to assess internal skills, competencies, leadership and culture needs.

Barriers – review fatigue – some implications are practical resource demands, continuous change, new regulations and flow-on implications to core processes, training, skills, recruitment and so on. Some are emotional barriers, managing expectations of improvement and results of effort not delivered or not delivered quickly – it can feel like continual criticism.

A word of caution – our world has changed ...




## Montara


### 21 August 2009

**Immediate Cause:**  
Primary cementing  
integrity failure

**Root Cause:**  
Systemic failure of  
management systems,  
non-compliance with  
operating procedures



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Incidents such as Montara ...

## Macondo – April 2010

- Well control problems led to significant gas releases
- Insufficient measures to prevent gas ingestion into enclosed non-hazardous area containing ignition sources

High probability of:  
flammable atmosphere  
ignition  
explosion



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And Macondo ...

Have reminded us that before the flames have died down and the wells are killed ...

The glare of the media spotlight has turned full force on the regulator

Why didn't you stop this from happening?

Why weren't you out there watching all the time?

You are too cosy with those you regulate.

You have taken self-regulation too far and need to be more / less prescriptive.

We need to be clear on roles and responsibilities ...

We need to communicate clearly and consistently and continuously.

We need to communicate before there are problems.

# Moving forwards

- Effective regulation depends on
- Power
  - To be heard
  - To take action
  - To make decisions
- People
  - Respected by those they regulate
  - Knowledge skills & experience
  - Ethics, code of conduct
  - Supported by managers & governments
- Processes
  - Implementation is key



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## Building Capability ...1

- Communication
  - manage expectations
  - transparency
- Leadership - high expectations
- Culture, especially Code of Conduct, values and performance expectations
- Independence
- Structure
  - support for core regulatory functions
  - minimise potential for conflict
- Critical Mass
  - training
  - career opportunity
  - peer review & management oversight
  - ability to deal with emergency / non routine situations / major investigations



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## Building Capability ...2

### Support systems and processes

- Regulatory management system
- Using data / experience to drive focus areas  
(eg Safety Culture, Asset Integrity ...)
- Completing the work
  - Boundaries
  - Functions
  - Tools



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## What can we all do today ?

- Implement what we have – even the perfect safety law will not cover all circumstances
- Independent decision making – based on facts & robust analysis
- Support each other – all of us
- Communicate lessons learned

