



Dr Loraine Abernethie  
Principal Research Officer  
Economics and Industry Standing Committee  
Legislative Assembly Committee Office  
Parliament of Western Australia

Dear Dr Abernethie

**Inquiry into Safety-related matters relating to FLNG projects in Australian waters off the Western Australian coast**

Thank you for this opportunity to provide advice in relation to emergency response arrangements for offshore petroleum incidents in Commonwealth waters, on behalf of the Western Australian Economics and Industry Standing Committee inquiry into safety related matters concerning floating LNG facilities off the WA coast.

*Responsibilities under the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPGGS Act) and its Regulations*

The OPGGS Act makes a distinction between the operator of an offshore petroleum facility and titleholder of an offshore petroleum title in which the facility is located.

Under the OPGGS (Environment) Regulations 2009, the titleholder is responsible for preparing and maintaining an Environment Plan, as well as an Oil Pollution Emergency Plan.

In the event of an environmental incident, the titleholder has responsibility for emergency response. Consistent with the National Plan principle that the response to maritime environmental emergencies are a shared responsibility of all levels of government, industry and business, the Australian Maritime Safety Authority (AMSA) may, upon request, support an offshore petroleum titleholder in responding to an incident. AMSA has a number of memorandums of understanding (MOUs) with offshore petroleum operators in relation to oil spill preparedness and response. It is anticipated new MOUs may be agreed with any new upstream operations, for example FLNG facility activities.

Titleholders may also establish arrangements in their Oil Pollution Emergency Plan to use equipment and expertise from the Australian Marine Oil Spill Centre (AMOSOC).

Under the OPGGS (Safety) Regulations 2009 the operator of a facility is responsible for the safety case outlining the safety management system and the risk control measures to reduce the risk of harm to persons from a Major Accident Event to as low as reasonably practical. The safety case must include an evacuation, escape and rescue analysis and the preparation of a response plan for the facility to be employed in the event of an incident.

These permissioning documents must be accepted by the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) before any activity can be undertaken.

In the event of a safety incident, implementation of the emergency plan is the responsibility of the operator. In the event the operator requires assistance, this will be coordinated with

Commonwealth or state government agencies according to the plan. In the event of an operator failing to execute the emergency plan as necessary or adequately address the on-going safety of persons at or near the facility, NOPSEMA as the regulator may intervene with notices or directions as required.

### **The Offshore Petroleum Incident Coordination Committee**

The Australian Government Crisis Management Framework outlines that leadership of the Australian Government's response to a crisis will, in the first instance, be the responsibility of the relevant portfolio minister. In this respect, the Minister for Industry and Science is the lead Commonwealth Minister in the event of a significant petroleum incident in Commonwealth waters.

As such, and in response to the *Report of the Montara Commission of Inquiry*, the Commonwealth Government agreed that in responding to future offshore petroleum incidents, a central incident coordination committee be convened and chaired by the Department of Industry and Science<sup>1</sup>. The Committee is the Offshore Petroleum Incident Coordination Committee (OPICC).

The OPICC is intended to effectively coordinate Australian Government efforts and resources, and communicate to the public and affected stakeholders all matters relevant to a significant offshore petroleum incident in Commonwealth waters. The governance arrangements for the OPICC, including its purpose, membership and key protocols for member agencies are outlined in the Offshore Petroleum Incident Coordination Framework.

Key functions of the OPICC are to provide situational awareness, advice to ministers, coordinate public information and enable whole of government strategic collaboration to resolve conflicts and identify gaps in support of crisis response activities. This includes facilitating interaction and communication as required with the titleholder/operator, state and territory government agencies, the offshore petroleum industry, foreign governments, other stakeholders and the public.

The OPICC is not a mechanism to deploy Commonwealth resources for the operational response to a significant offshore petroleum incident. It is not responsible for incident control or implementing operational response arrangements. Deploying resources is, in the first instance, the responsibility of the titleholder/operator and shall be coordinated in accordance with their Oil Pollution Emergency Plan and other plans. The OPICC also cannot assume any regulatory responsibilities, which remain at all times with the relevant regulatory agencies.

### **The role of the responsible Commonwealth Minister**

The responsible Commonwealth Minister (in this case the Minister for Industry and Science) has the following powers under the Act in the event of an escape of petroleum in Commonwealth waters:

#### *Polluter pays*

Under section 572C of the OPGGS Act, if there is an escape of petroleum resulting from or in connection with a petroleum activity carried out under a Commonwealth title, the titleholder must (in Commonwealth waters):

- a) Take all reasonably practicable steps to eliminate or control the escape of petroleum, as soon as possible after becoming aware of it;

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<sup>1</sup> Final Government Response to the Report of the Montara Commission of Inquiry, 25 May 2011.

- b) Clean up the escaped petroleum and remediate any resulting damage to the environment;  
and
- c) Carry out environmental monitoring of the impact of the escape on the environment.

Under section 572E, if the Minister considers on reasonable grounds that the titleholder has failed to comply with its duties under section 572C, the Minister may do any or all of the things that they consider that the titleholder has failed to do (note that NOPSEMA has an equivalent power under section 572D). This would, in practice, include paying the costs for another party to take the required action. Any costs or expenses incurred by the Minister are recoverable from the titleholder.

General power to give directions

Under section 574A of the OPGGS Act, the Minister has a general power to give a direction to a petroleum titleholder as to any matter in relation to which regulations may be made under the Act. Such matters could include, for example, the prevention of an escape of petroleum, or the clean-up or other remediation of the effects of an escape of petroleum. However, such a direction can only be given by the Minister in relation to resource management, resource security, or data management. This restricts the types of directions that could be given by the Minister in the event of an escape of petroleum. There is no such restriction, on the other hand, within the general power for NOPSEMA to give directions in section 574.

It should be noted that a direction given by the Minister under section 574A will over-ride a direction given by NOPSEMA under section 574, to the extent of any inconsistency. However, a significant incident direction given by NOPSEMA under section 576C will over-ride a direction given by the Minister under section 574A, to the extent of any inconsistency.

A direction given by the Minister under section 574A may require the titleholder to take an action anywhere within Commonwealth waters, whether within or outside the particular title area. Similar to the polluter pays provisions, if a titleholder breaches a direction given by the Minister under section 574A, the Minister may do any or all of the things required by the direction to be done (see section 577A of the OPGGS Act). Any costs or expenses incurred by the Minister in doing so are recoverable from the titleholder.

The offshore petroleum safety and environment regulatory regime in Australia is considered leading practice, using a performance-based regulatory approach which is best fit for high technology, high hazard industries. The Department considers that there is nothing inherently different arising from the development of FLNG technology and the current performance-based, safety case regime is well placed to address any associated risks.

Thank you for this opportunity to respond to the Inquiry.

Yours sincerely



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Resources

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