

MEMORANDUM OF UNDERSTANDING

NATIONAL OFFSHORE PETROLEUM SAFETY AUTHORITY

and

**THE STATE OF WESTERN AUSTRALIA
(THROUGH THE WA DEPARTMENT OF INDUSTRY AND RESOURCES)**

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SCHEDULE 1	

**Summary of Operational Functions of the Designated
Authority and NOPSA in the Administration of the
Regulations under the *Petroleum (Submerged Lands)
Act 1982 (WA)* Post 1 January 2005**

NATIONAL OFFSHORE PETROLEUM SAFETY AUTHORITY

and

THE STATE OF WESTERN AUSTRALIA

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is between:

The National Offshore Petroleum Safety Authority ("NOPSA"), which is the statutory authority responsible for administering offshore health and safety as contained in and under the Commonwealth *Petroleum (Submerged Lands) Act 1967*, Part IIIC, and any successor legislation, and the corresponding State *Petroleum (Submerged Lands) Acts* (once State enabling legislation is in place), and any successor legislation; and

The Director General of the Department of Industry and Resources (WA), which is responsible for the administration of the *Petroleum (Submerged Lands) Act 1982 (WA)*, and any successor legislation, and as the State party of the Joint Authority responsible for administering the Commonwealth *Petroleum (Submerged Lands) Act 1967*, and any successor legislation.

1. OBJECTIVES OF THE PARTIES

- 1.1 The objectives of the parties are to ensure –
- (a) the development of petroleum resources in offshore waters in a sustainable manner;
 - (b) the delivery of a consistent and comprehensive safety regulatory regime in offshore waters and that duplication of regulatory activities is avoided as far as reasonably practicable in respect of offshore facilities;

2. PURPOSE OF THIS MEMORANDUM

- 2.1 The purpose of this MOU is –
- (a) to assist in building a productive partnership between the State and the National Offshore Petroleum Safety Authority (NOPSA) for the effective and efficient administration of offshore petroleum safety under the applicable legislation.
 - (b) to set out the common intentions of the parties to meet the objectives outlined in paragraph 1 and detailed as per Schedule 1, and contains the agreement of the parties.
- 2.2 This MOU is not intended to create legally enforceable obligations between the parties but sets out mutually agreeable voluntary undertakings.

3. TERM OF THIS MEMORANDUM

- 3.1 This MOU is effective from 31 May 2007 (subject to clause 3.4) as amended from time to time and continues until 31 December 2012 unless terminated earlier by the parties in accordance with this MOU.
- 3.2 Consideration of a new MOU will be commenced by the parties four months prior to the expiration of this MOU and completed no later than 31 December 2012.
- 3.3 If the parties fail to agree to enter into a new MOU by 31 December 2012, this MOU will continue in force until a new MOU is signed or the parties agree that no further MOU will be entered into.
- 3.4 In respect of the *Petroleum (Submerged Lands) Act 1982 (WA)* the MOU will commence on the date that the required regulations to this Act, conferring functions and powers upon NOPSA in relation to offshore petroleum operations in the designated coastal waters of the State of Western Australia, come into effect.

4. MUTUAL INTENTIONS

- 4.1 The parties agree to establish and maintain contact to ensure the effective operation of this MOU. As soon as possible after the signing of this MOU, the parties will advise each other of the name, and position, of their nominated contact officer and their contact details to whom any communications about this MOU and any Schedules are to be addressed.
- 4.2 Any changes to a party's nominated contact officer or their contact details are to be communicated to the other party as soon as possible.
- 4.3 All communication about the operation of this MOU is to be made through the NOPSA CEO and the State's contact officer as nominated from time to time.
- 4.4 The parties agree to provide to each other from time to time, information of their roles and responsibilities in areas of potential overlap, and any expected changes to legislation or regulations that may impact on the way in which the parties carry out their responsibilities offshore.
- 4.5 The parties agree to consider the interests of the other party in carrying out their responsibilities offshore and consult the other party in relation to any decision or action that may impact upon the responsibilities of the other party.

5. NOTIFICATIONS & REPORTING

- 5.1 NOPSA will provide the State with a regular update of the operator register (usually on a quarterly basis).
- 5.2 NOPSA will notify the State, as soon as reasonably practicable, of any:
 - (a) rejection of a safety case, or withdrawal of acceptance of a safety case;
 - (b) incident that may have resource management or environmental implications.

- 5.3 NOPSAs will notify the State as soon as reasonably practicable if it intends to take any action to issue a direction, or other notice, that may cause an operation to shut down or may materially impact on the production capability of an operation.
- 5.4 The State will provide NOPSAs with a regular update on the status of Field Development Plans considered by the State (usually on a quarterly basis).
- 5.5 The State will, as soon as reasonably practicable, notify NOPSAs of any:
- (a) issue of a Consent to Construct or Install, or of a Consent to Operate;
 - (b) incident that may have safety implications.
- 5.6 The State will, as soon as reasonably practicable, notify NOPSAs if it intends to take any action to:
- (a) issue a direction that may have safety implications;
 - (b) formally investigate an incident, complaint or alleged breach of the Act or regulations that has safety implications; or
 - (c) prosecute an operator for a breach of the Act or regulations that has safety implications.
- 5.7 NOPSAs will, as far as reasonably practicable, provide reports to the State and the Minister, as requested.

6. AUDITS, INSPECTIONS AND INCIDENT INVESTIGATION

- 6.1 The parties may jointly conduct audits and inspections of facilities for which both parties have a direct regulatory responsibility with the objective that, as far as practicable, duplication or overlap of audits and inspections is minimised.
- 6.2 Where it is necessary for a party to conduct an urgent audit or investigation of an incident which may impact on the jurisdiction of the other party, the party proposing to conduct the audit or investigation will notify the other party as soon as practicable of their proposed action.
- 6.3 Where a party is contacted by the operator or an employee on an offshore facility in an emergency situation, that party as soon as reasonably practicable will contact the nominated contact officer for emergency response for the other party to discuss an appropriate response strategy.
- 6.4 Both parties agree to exchange information on audits and the investigation of incidents in which they are interested, including information on the outcome of audits and investigations and any potential outcome for systemic improvements to industry operational management systems.

7. PROSECUTIONS AND APPEALS

- 7.1 Both parties agree to consult with each other, through their nominated contact officers, prior to the commencement of a prosecution in which the parties may have an interest.
- 7.2 Each party agrees to assist in the preparation of a prosecution and to provide each party and the State Solicitor's Office or Director of Public Prosecutions (as the agreed prosecutor of an offence occurring in State waters) with all relevant information relating to the offence.

- 7.3 Where an investigation discloses evidence that offences involving the jurisdiction of both parties may have occurred from the same set of facts and circumstances, the parties agree to consult with each other to determine the most appropriate jurisdiction for prosecution. Where both parties agree, joint or single party prosecutions may be undertaken.
- 7.4 Each party agrees to assist in preparation for appeals under the *Administrative Decisions (Judicial Review) Act 1977* and relevant State appeals legislation, to decisions made by the other party or an OHS inspector and to provide the other party with all the relevant information relating to the matter.
- 7.5 All legal costs associated with the prosecutions will be the responsibility of the prosecuting party.

8. CONSULTATION

- 8.1 The parties will consult each other in the preparation of any guidelines, codes of practice, or guidance notes, protocols or similar material that are developed to assist operators and tenement holders to meet their legislative obligations.
- 8.2 The parties will advise each other of any proposed changes to their policies, legislation or regulation that impact on the safe operation of offshore petroleum facilities.
- 8.3 Each party will notify the other as soon as reasonably practicable of any relevant training courses, or workshops, it conducts. Where the other party is interested in participating in a course, the party conducting the course will endeavour to make at least one place available for appropriate personnel from the other party.
- 8.4 Parties agree to ensure, as far as reasonably practicable, that cross training of staff occurs where opportunities arise.
- 8.5 Parties agree that the relevant CEOs, or nominated officers, will meet at least annually to discuss matters relevant to the parties under this MOU.
- 8.6 All parties will bear their own costs in relation to the operation of this MOU.

9. CONFIDENTIAL INFORMATION

- 9.1 With respect to any information supplied by one party to the other in connection with this MOU and designated as confidential, each party agrees to:
- (a) maintain the confidential use, disclosure and security of the confidential information consistent with relevant privacy laws and any applicable professional standards;
 - (b) use or disclose confidential information to persons required to give effect to the purposes set out in this MOU.
- 9.2 The obligations imposed on the parties by paragraph 10.1 shall not apply to information that is:
- (a) publicly available;
 - (b) already known or in the possession of the other party;
 - (c) disclosed by either party to a third party without restriction;
 - (d) authorised in writing by a party to be disclosed to the other party; or

- (e) disclosed to a party's professional advisers who have agreed to keep the information confidential.

9.3 If a party is uncertain whether information provided by the other party is confidential, the information shall be treated as confidential until otherwise advised by the party who has provided the information.

10. PRIVACY

10.1 The parties agree to:

- (a) Ensure that any personal or health information as defined in the relevant privacy legislation that is used or disclosed under this MOU has been collected in accordance with the applicable privacy legislation.
- (b) Ensure that any personal or health information collected in connection with this MOU is not used, disclosed, stored, or transferred except in accordance with the applicable privacy legislation.
- (c) Use personal or health information held or controlled by them in connection with this MOU only for the purposes of fulfilling their obligations under this MOU.
- (d) Take all reasonable measures to ensure that personal and health information in their possession or control in connection with this MOU is protected against loss and unauthorised access, use, modification or disclosure.
- (e) Ensure that any person who has access to any personal or health information is made aware of, and complies with the requirements of the relevant privacy laws.
- (f) Comply in so far as is practicable with any policy guidelines or direction by a party or issued by a Privacy Commissioner from time to time relating to the handling of personal or health information.
- (g) Ensure that any record (as defined by a privacy law) containing personal or health information provided under this MOU will, at the expiration or earlier termination of this MOU, be either returned to the other party or deleted or destroyed by a person authorised by the parties to undertake the deletion or destruction.
- (h) Cooperate with any reasonable request from the other party relating to the protection of personal or health information or the investigation of a complaint about the handling of personal or health information.

11.2 The parties agree not to use, disclose, store, or transfer personal or health information collected in connection with this MOU except in accordance with the applicable privacy legislation; and

11. FREEDOM OF INFORMATION

11.1 In carrying out any responsibilities under freedom of information (FOI) legislation, a party will have regard to the interests of the other party and will consult with them if a party proposes to take any action relating to an FOI request that may have an impact on the interests of the other party.

12. OWNERSHIP OF INFORMATION

12.1 All original documents (including written, visual or electronic forms) will remain the property of the originating party.

12.2 The parties agree to acknowledge the source of all documents used by the parties in carrying out their responsibilities under this MOU.

13. REVIEW OF THIS MEMORANDUM

13.1 The nominated contact officers will jointly review the operation of this MOU at least annually or as otherwise agreed in writing between the parties.

14. AMENDMENTS OR VARIATIONS

14.1 A party intending to amend or vary any of the terms or obligations of this MOU or attached Schedule must provide 28 days written notice to the other party of the proposed amendment or variation including the reason for the proposed change.

14.2 This MOU may only be amended or varied by a further MOU in writing and signed by the parties.

14.3 An amendment or variation to the MOU takes effect on the date it is signed by the parties or on a date agreed by the parties in writing.

14.4 Notwithstanding the above, Schedules attached to this MOU may be added, amended or varied by the insertion of one or more new Schedules duly signed by the parties to that particular Schedule(s). Schedules to this MOU may be removed by agreement between the parties, such agreement to be attested by a note to that effect duly signed by the parties and appended to this MOU.

14.5 Termination of any Schedule(s) attached to this MOU will be treated the same and subject to the same conditions as listed in Section 17 "TERMINATION OF THIS MEMORANDUM".

15. DISPUTES

15.1 Where a dispute arises between the parties in relation to any matter in this MOU, the nominated contact officers will meet to attempt to resolve the issue within 28 days in accordance with any relevant protocols or procedures that may be in force for handling disputes.

15.2 Where the nominated contact officers are unable to resolve the issue, the Chief Executive Officer of NOPSA and the State signatory (or delegate) to this MOU will undertake to resolve the issue.

15.3 If the dispute still cannot be resolved to the satisfaction of all parties, the matter shall be referred to the respective Ministers for decision.

16. TERMINATION OF THIS MEMORANDUM

16.1 If a party wishes to terminate this MOU or Schedules they must, after consulting with their Minister, give 28 days notice in writing to the other party of their intention to terminate the MOU. This notice must include the reasons for termination and any proposed transitional arrangements.

16.2 Both parties may agree in writing to terminate this MOU at a date agreed by the parties.

17. NOTICES

- 17.1 Any notice, request or other communication under this MOU may be in written or electronic form and delivered by the most appropriate means determined by the sending party.

18. COMPLIANCE WITH POLICIES

- 18.1 The parties, including any employee or contractor engaged by that party must, when using another parties premises or facilities, comply with all reasonable directions, policies and procedures relating to occupational health, safety and security in effect at those premises or in regard to those facilities, as notified by the parties or as might reasonably be inferred from the use to which the premises or facilities are being put.

19. ENDORSEMENT

This Memorandum of Understanding clarifies administrative arrangements between the parties as defined within this MOU.

Executed on the 31st day of May 2007

[Certified as signed by John Clegg, NOPSA CEO]

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John Clegg
Chief Executive Officer
National Offshore Petroleum Safety Authority

[Certified as signed by Stuart Smith, Acting Director General DoIR]

.....
Stuart Smith
Acting Director General
Department of Industry and Resources (WA)
on behalf of Western Australia

SCHEDULE 1

SUMMARY OF OPERATIONAL FUNCTIONS OF THE DESIGNATED AUTHORITY AND NOPSA IN THE ADMINISTRATION OF THE REGULATIONS UNDER THE *PETROLEUM (SUBMERGED LANDS) ACT 1982 (WA)* POST 1 JANUARY 2005

This Schedule sets out allocation of petroleum regulatory duties between the State Designated Authorities (DAs) and the National Offshore Petroleum Safety Authority (NOPSA) from the date of commencement of NOPSA responsibilities on 1 January 2005.

For non-PSLA waters all processes are a State responsibility. The processes differ according to individual State law.

This Schedule:

- provides additional detail on the interfaces between NOPSA and the Designated Authorities;
- is written on the assumption that the safety case addresses all health and safety issues, and is not limited to major accident events. Accordingly, there is no separate mention of “occupational” health and safety matters;
- is arranged to be based on the stages of offshore exploration and development; and
- indicates where collaborative working will be necessary between the parties.

ALLOCATION OF PETROLEUM REGULATORY DUTIES

TENEMENT ADMINISTRATION	
Designated Authority in Designated Coastal Waters Joint Authority in Commonwealth Waters	NOPSA
<p>Reviews and approvals/acceptances:</p> <ul style="list-style-type: none"> • Review of tenders and award of acreage • Grant of exploration permit • Registering of petroleum discoveries • Grant of retention leases • Review of reserve and production models • Review and acceptance of environmental assessments (EIS, EES, etc) • Review of Field Development Plans • Grant of production licences • Grant of infrastructure licences • Grant of pipeline licences • Grant of title renewals • Review of title holders’ reports • See also items under “decommissioning” <p>Preparation of technical reports, parliamentary briefings, quarterly and annual reports, etc.</p>	<p>Reviews and approvals/acceptances:</p> <ul style="list-style-type: none"> • Review DA/JA technical reports for safety issues • Review Field Development Plans for safety issues
<p>Collaborative Working: The DA/JA will be the lead agency for tenement administration, but may consult NOPSA if decisions are to consider tenderers’ and lease holders’ safety records. NOPSA may also provide comments on DA/JA technical reports and operator’s Field Development Plans.</p>	

ALLOCATION OF PETROLEUM REGULATORY DUTIES

SEISMIC SURVEYS	
Designated Authority in Designated Coastal Waters Joint Authority in Commonwealth Waters	NOPSA
<p><i>Reviews and approvals:</i></p> <ul style="list-style-type: none"> • Liaison with local communities and fisheries • Review and acceptance of environmental plans <p><i>Environmental management:</i></p> <ul style="list-style-type: none"> • Audit against environmental plans • Investigation of environmental incidents • Retention of environmental records <p><i>Resource and data management:</i></p> <ul style="list-style-type: none"> • Audit of seismic records • Retention of seismic records 	None
<p>Collaborative working: None needed between DAs and NOPSA (see note).</p>	

Note: For safety regulatory purposes survey vessels are sea-going vessels, subject to maritime law, and survey aircraft are subject to aviation law. There is no NOPSA involvement. DOTARS is the lead regulator. DAs, DOTARS (including AMSA) and the State/NT marine transport regulators may need to collaborate on environmental matters.

ALLOCATION OF PETROLEUM REGULATORY DUTIES

DRILLING	
Designated Authority in Designated Coastal Waters Joint Authority in Commonwealth Waters	NOPSA
<p>Reviews and approvals/acceptances:</p> <ul style="list-style-type: none"> • Environmental management plans • Reservoir management plans • Drilling programs • Well management plans • Operations management plans • Rig movements and “consents” to install/use <p>Environmental administration:</p> <ul style="list-style-type: none"> • Audits against environmental plans • Investigation of environmental incidents • Retention of environmental records <p>Reservoir administration:</p> <ul style="list-style-type: none"> • Audits of reservoir, drilling and well data • Investigations of well incidents • Retention of records (e.g. well files) 	<p>Review and approvals/acceptances:</p> <ul style="list-style-type: none"> • Scopes of validation • Safety cases • Safety case revisions (Bridging Documents) <p>Safety administration:</p> <ul style="list-style-type: none"> • Audits against safety cases • Investigations of safety incidents • Retention of safety records <p>Drilling from a platform:</p> <ul style="list-style-type: none"> • Assessment included in the platform safety case • Safety case revisions (bridging documents)
<p>Collaborative Working: The DA administers the Well Operation Management Regulations. Drilling safety regulation is under the <i>Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996</i> with operators dealing directly with NOPSA on safety matters. Collaboration will be required when reviewing aspects of drilling operations relevant to both the DA (reservoir, well or environment issues) and NOPSA (safety issues). This may include well integrity, casing design, kick tolerance, well control and new or changed reservoir situations. Joint audits and investigations may also take place. These issues may be addressed in the safety case and in the various management plans.</p>	

ALLOCATION OF PETROLEUM REGULATORY DUTIES

DEVELOPMENT – PLANNING AND CONSTRUCTION	
Designated Authority in Designated Coastal Waters Joint Authority in Commonwealth Waters	NOPSA
<p>Reviews and approvals/acceptances:</p> <ul style="list-style-type: none"> • Acceptance of environmental plans for production and infrastructure facilities • Grant consents to install/construct facilities • Acceptance of scope of validation of pipelines • Acceptance of environmental plans and management plans for construction of pipelines • Grant consents to construct/install pipelines <p>Environmental Administration:</p> <ul style="list-style-type: none"> • Community and fishery liaison as part of the environmental review processes • Audits against the EES, EIS, EP/EMP, etc • Investigations of environmental incidents • Retention of environmental records 	<p>Review and approvals/acceptances:</p> <ul style="list-style-type: none"> • Acceptance of safety aspects of pipeline management plans for construction including validation • Approval of scopes of validation for facilities • Acceptance of safety cases for construction of production facilities • Acceptance of safety cases for use of construction units <p>Safety Case Administration:</p> <ul style="list-style-type: none"> • Audits against the safety cases and the safety aspects of pipeline plans • Investigations of safety incidents • Retention of safety records
<p>Collaborative Working: Collaboration will be required when reviewing aspects of construction activities relevant to both the DA and NOPSA. Joint audits and investigations may also take place.</p>	

Note: Secondary pipelines have no PMP and are treated as part of the permanent facilities with which they are associated. NOPSA would assess as part of the safety case for Facility and DA would assess as part of EP for the Facility. Secondary lines crossing lease boundaries might be better treated as primary pipelines. Loading Buoys are facilities and considered as part of the facility safety case. Control Buoys are associated places and are therefore part of the safety case for the sub-sea development.

ALLOCATION OF PETROLEUM REGULATORY DUTIES

DEVELOPMENT - PRODUCTION	
Designated Authority in Designated Coastal Waters Joint Authority in Commonwealth Waters	NOPSA
<p><i>Review and approvals/acceptances:</i></p> <ul style="list-style-type: none"> • Review and approve/accept amendments to development, environmental, reservoir, operations and well management plans • Grant consents to use production facilities • Grant consents to use pipelines <p><i>Reservoir Administration:</i></p> <ul style="list-style-type: none"> • Audit of reserves and production models • Retention of reserves etc records <p><i>Environment Administration:</i></p> <ul style="list-style-type: none"> • Audits against the EES, EIS, EP/EMP, etc for facilities, infrastructure, pipelines etc • Investigations of environmental incidents • Retention of environmental records 	<p><i>Reviews and approvals/acceptances:</i></p> <ul style="list-style-type: none"> • Safety cases for use of fixed/mobile facilities • Safety case amendments (e.g. 5 year resubmission, facility modification, simultaneous operations) • Safety aspects of pipelines management plans for pipeline use • Safety aspects of revisions to pipeline management plans <p><i>Safety Case Administration:</i></p> <ul style="list-style-type: none"> • Audits against the safety cases and safety plans • Investigations of safety incidents • Retention of safety records
<p>Collaborative Working: Collaboration will be required when reviewing aspects of production activities relevant to both the DA and NOPSA. Joint audits and investigations may also take place.</p>	

ALLOCATION OF PETROLEUM REGULATORY DUTIES

DIVING	
Designated Authority in Designated Coastal Waters Joint Authority in Commonwealth Waters	NOPSA
None	<p>Safety regulation of all diving associated with offshore petroleum, from production or infrastructure facilities, mobile units or dive vessels, onto construction sites, pipelines, sub-sea templates, etc. This includes:</p> <ul style="list-style-type: none"> • MOU holder for ADAS • Review/acceptance of diving safety management system • Review/approval of diving project plans • Audits against DSMS and project plans • Investigations of diving incidents • Retention of diving records
<p>Collaborative Working: None needed</p>	

ALLOCATION OF PETROLEUM REGULATORY DUTIES

DECOMMISSIONING	
Designated Authority in Designated Coastal Waters Joint Authority in Commonwealth Waters	NOPSA
<p>Reviews and approvals/acceptances:</p> <ul style="list-style-type: none"> • Review and accept EP/EMPs for decommissioning • Issue directions to plug wells, remove property, make good any damage, etc • Approve movements of mobile units <p>Environmental Management:</p> <ul style="list-style-type: none"> • Audits against environmental management plans <p>Resource Management:</p> <ul style="list-style-type: none"> • Audits and inspection to ensure compliance with directions • Accept surrendered permits 	<p>Reviews and approvals/acceptances:</p> <ul style="list-style-type: none"> • Review and approve safety cases for decommissioning (including safety cases for mobile units) <p>Safety Management:</p> <ul style="list-style-type: none"> • Audits against safety cases • Investigation of safety incidents • Retention of safety records
<p>Collaborative Working: Collaboration will be required when reviewing aspects of the decommissioning activities that are relevant to both the DA and NOPSA. Joint audits and investigations may also take place. The operator’s primary point of contact for most purposes should be the DA.</p>	