



Farewell message from the CEO of NOPSA after five 'short' years regulating the Australian Offshore Petroleum Industry

A personal perspective by John Clegg, inaugural CEO of the National Offshore Petroleum Safety Authority (NOPSA) who concludes his five-year tenure at NOPSA on 30 June 2009.

The Start

Thirty or so years regulating major hazard industries both onshore and offshore in the United Kingdom somehow ended up with me as one of a number of project managers helping to reorganize the Railway Inspectorate following a series of accidents. A great job but challenging, particularly as it involved a seven-hour daily commute between Norfolk and London, and yes, you guessed it, on a train! But I learnt a lot looking over the shoulders of businessmen preparing annual reports and PowerPoint presentations. Did you know the single most effective precaution in preventing the spread of the superbug MRSA in hospitals is to wash your hands regularly? (very topical). I also learnt enough to do a bit of serious 'insider trading' should I have felt so inclined.

It was with some relief therefore to be offered the post as inaugural CEO of the Australian National Offshore Petroleum Safety Authority. I also thought, wrongly of course, that it would be an end to long distance commuting. Little did I realize that the London job was in fact good training for what was to come. Furthermore, sitting quietly in the corner of a rail carriage, I could now entertain my fellow rail travelers with phone calls from Australia, planning a whirlwind trip round the continent to meet Ministers, government and industry and doing some recruiting prior to starting the job. In the evening I would rush home and take out the world atlas to look up such places as Darwin, Perth, Melbourne, Brisbane and Toowoomba, and yes, Canberra is the capital.

The Regulator

Unusually, NOPSA is not a spin-off from a government department; it was to be a brand new national regulator of occupational health and safety of the Australian offshore petroleum industry. I was the only employee on 1 July 2004 but we had to be up and running six months later on 1 January 2005. We had a set of newly-revised legislation but that was it; we had no staff, no systems or procedures, no offices, no information technology help and no pencils. However, we did have the support of the NOPSA implementation team, very ably led by Rick Pickering and Peter Wilkinson, which had been 'beavering' away for four years getting approval of governments - no mean task - and laying the foundations for a world class regulator.

NOPSA now has a staff of 54 with its headquarters in Perth and a small office in Melbourne. Any business, and that includes a regulator, is only as good as its people and its processes. It has taken five years but NOPSA now has a staff of 28 inspectors and team leaders, 23 business, three executives, and a complete suite of business and regulatory core processes all certified to ISO 9001. But what a continuing struggle it is recruiting, training and retaining good staff, particularly when

you are competing with a wealthy industry in the throes of world-wide expansion driven by huge increases in oil price. NOPSA recruits internationally and targets senior engineers and regulators in major hazard industries, offering good money and an excellent lifestyle in a very attractive part of the world, but it is still difficult. Somewhat surprisingly we have yet to experience any recruitment benefit from the economic downturn.

In establishing and developing the legislative regime and the regulator, I am indebted to the International Regulators Forum (IRF) and in particular Magne Ognedal and Odd Bjerre Finnestad from the Norwegian Petroleum Safety Authority (PSA). The IRF is a group of ten regulators of health and safety in the offshore upstream oil and gas industry. It exists to drive forward improvements in health and safety in the sector through collaboration in joint programmes, and through sharing information. Magne and Odd led a review in 2001 that resulted in the establishment of NOPSA and undertook a review of NOPSA's effectiveness in 2007. They found that "*...NOPSA has made good progress in building a safety regulatory regime and authority of world class calibre, and, as expected there are still some aspects of the regime that can be improved on to achieve best practice regulation*".

The Australian legislation

In July 1988 there was a catastrophic incident in which 167 people died in a series of fires and explosions onboard the Piper Alpha platform, an integrated oil and gas facility, in the UK sector of the North Sea. The resulting Cullen Inquiry made 106 recommendations. Two of the main recommendations were the replacement of prescription with goal setting legislation based on a safety case and the establishment of a single regulatory body. The requirement for a safety case was introduced in Australian waters in 1996 but it continued to be administered by the States and the Northern Territory until NOPSA was established in 2005.

It is important to remember that in a duty-of-care regime it is the operator, with day-to-day management and control of the facility, which is responsible for identifying the hazards, assessing the risks and putting in place the necessary controls to protect personnel. It is the role of the regulator to critically examine the claims made by the operator in the safety case and to verify the operator's risk management arrangements through selective audit. These roles make clear the need for a degree of separation between the operator and the regulator. However, some of the industry and others criticise NOPSA for neither helping them with nor taking part in their projects and process and for not providing copious guidance. This tension between the roles of the regulator regarding promotion, advice, monitoring and compliance therefore needs careful handling as too close involvement could subvert the underlying ethos of the duty-of-care regime where the operator is the responsible party. Generally the approach taken by NOPSA is to provide advice as an integral part of all its functions, the degree being determined on a case-by-case basis depending on the maturity of the operator and the needs at the time. This recognizes that 'influence' is brought to bear by reasoned and proportionate application of all regulatory functions, from compliance through to promotion.

Safety cases must be produced by the operator of a facility as the operator has the greatest in-depth knowledge of their installation. I am concerned at the 'hands-off' approach adopted by some operators including the over-use of consultants. Consultants should be used advisedly and sparingly. The safety case must identify the safety critical aspects of the facility, both technical and managerial. Analysis of disasters almost always shows a combination of technical and managerial flaws have led to the event. Appropriate performance standards must be defined for the operation of the safety critical aspects. A 'performance standard' is a standard, established by the operator, of the performance required of a system, item of equipment, person or procedure which is used as a basis for managing the risk of a major accident event. Most importantly the workforce must be involved as they have intimate knowledge of what goes on in practice. Workforce involvement is also necessary so they know the process and safeguards. This makes it more likely that they do the right

thing because they understand why they are doing it, rather than relying on a 'rules-based' culture. It would be good to be able to say the unions are supportive of this approach but my experience is they are sometimes suspicious of it, perhaps because they feel it puts too much ownership in the hands of the operator. They seem to hanker after prescription and a highly interventionist regulator. Yet history shows this approach doesn't work. The challenge here is for the industry, the regulator and the unions to find better ways of working together.

NOPSA is sometimes criticised for lack of consistency, particularly in interpreting legislation and in assessing safety cases, yet when challenged little evidence is forthcoming. The smart solution to this problem of interpretation of legislation and the need for guidance is for legislators to ensure the legal framework is simple, the law is clear and concise, and where guidance is required it should be the industry that leads, supported by the regulator as appropriate, not the other way round. In this way better quality guidance is produced and, importantly, it is owned by the industry.

In this respect it is worth reflecting that most countries are moving from prescription to duty of care, goal setting legislative regimes. Some are only going as far as frameworks based on safety management systems and are retaining a certain amount of prescription often in terms of accreditation, licensing and consents, whereas one or two are going the 'whole ten yards' and introducing a broad-based safety case regime. This in turn brings huge challenges for the regulator as it has to move from a check list, interventionist approach to having the capability to provide serious technical, managerial and regulatory challenges to often quite sophisticated global industries operating complex plant sometimes in very remote parts of the world. This is why it is important regulators work at an international level to share experience in regime effectiveness, technical developments/solutions and health and safety performance.

It is gratifying to note that government representatives from Qatar Petroleum recently put in place a new offshore petroleum regulator based 90 percent on NOPSA and ten percent on the Norwegian PSA. This followed 18 months reviewing regulatory regimes worldwide.

The Industry

Prior to the establishment of NOPSA there was no real means of assessing the overall health and safety performance of the industry. However, NOPSA has been collecting incident and complaint history across the industry for the last four years and has just issued its first health and safety performance report. The report contains analyses of incidents for the financial year 2007-08 and summary data for previous years. It also contains information from our two national programmes on facility integrity and lifting operations. The industry's performance is reasonable compared with other industries but is not so when benchmarked against international petroleum operations.

The statistics show there are increasing numbers of gas releases and a plateauing of personal injury rates. Regrettably last year there was a fatality onboard an FPSO during disconnect. This was the first fatality since NOPSA commenced operations. The most common root causes of incidents continue to be problems related to procedures, equipment maintenance, design, defects and training.

I believe, in the early days, the industry was wary of NOPSA and its extensive regulatory powers and hence moved to a 'damage limitation' mode. However, over time, a professional relationship emerged and both industry and regulator were able to develop a more communicative approach. Particular key outcomes in the following years were:

- the preparation by the Australian Petroleum Production and Exploration Association (APPEA) of their first 'Platform for Prosperity-Strategic Leader's Report' in which one of the seven priorities related to environment and safety;
- the formation the same year of an industry CEO Safety Leadership Forum with a target of improving safety by 25% year on year and a comprehensive work programme including training for senior managers;

- development of industry-wide common induction training;
- introduction of a suite of leading performance indicators; and
- the appointment of two senior health and safety managers to APPEA offices in Canberra and Perth.

With these and other initiatives the industry is clearly realigning its aims with safety in mind. However, we all need to be vigilant and continually seek opportunities to provide encouragement and support.

The Future

It has been a roller- coaster five years, but I genuinely believe the offshore petroleum industry now has the high quality health and safety regulator it deserves. However, there remain many challenges ahead for both the regulator and the industry. Some of the more obvious are in the areas of the need for regulatory clarity, improving leadership, training and competence, and finding ways of better involving the workforce and the unions. None of these are new; it is just that they need continuous reinforcement. Above all else, we must maintain a sense of vulnerability.

I wish NOPSAs and the industry every success for the future. And please remember '*good health and safety is good business*'.