



# Presentation to APPEA

The  
Enforcement Management Model (EMM)  
in the context of the  
NOPSA Compliance and Enforcement Strategy



# Compliance and Enforcement Policy – Objectives

The main objective of the compliance and enforcement strategy is to improve safety outcomes across the offshore petroleum industry through:

- ensuring compliance with the law; and
- actively influencing behaviour.

Improving safety outcomes includes operators moving beyond minimum compliance towards continuous improvement and effective H&S management which incorporates effective participation of all members of the workforce.



# Compliance and Enforcement Policy – Principles

## Graduated –

- Provide information
- Ensure voluntary compliance at the time
- Provide verbal or written advice
- Issue an improvement notice
- Issue a prohibition notice or direction to leave a workplace, plant, substance or thing undisturbed
- Withdraw acceptance (safety case or PSMP)
- Withdraw registration of an operator
- Prosecution



## **Compliance and Enforcement Policy – Principles (contd)**

**Outcome Focussed** – to achieve a clear safety outcome.

**Proportionality and Responsiveness** – responsive, timely and in proportion to the risk and potential impact.



## **Compliance and Enforcement Policy – Principles (contd)**

**Informed** – by assessment, planned inspections and audits, accidents and dangerous occurrences, national programmes and industry trends.

**Transparency and Consultation** – parties understand what constitutes compliance and what enforcement action is likely for particular types of breaches.



# Compliance and Enforcement Policy – Principles (contd)

## Consistency –

- Standard process for enforcement action – Enforcement Management Model (EMM)
- Standard tool set for OHS inspectors
- Training for OHS inspectors to ensure a baseline competence
- Periodic review of enforcement decisions
- Internal distribution of lessons learnt



## **Compliance and Enforcement Policy – Principles (contd)**

**Targeted** – effort directed towards those having control over activities that generate high levels of risk.

### **Natural Justice (Procedural Fairness) –**

- Enforcement action based on logical proof or evidence
- Provide an opportunity to respond to allegation
- Enforcement action will be taken without bias



## **Compliance and Enforcement Policy – Principles (contd)**

**Probity** – checks and review of decision making stages to ensure that decisions are made on the evidence at hand. Also teams of at least 2 inspectors.

**Secure Chain of Evidence** – all enforcement action will be documented and systems are in place to ensure the integrity of the chain of evidence.

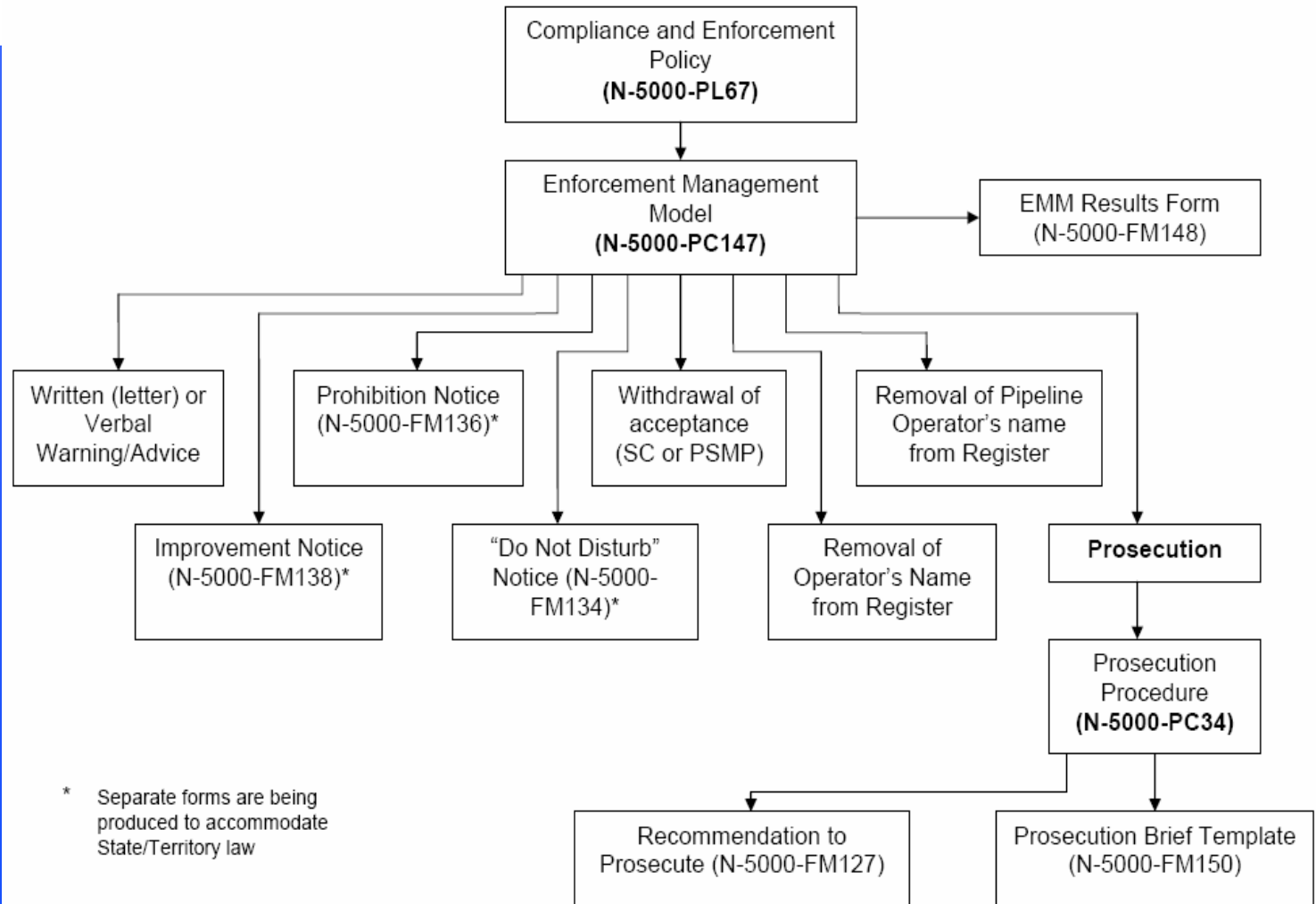


## **Compliance and Enforcement Policy – Principles (contd)**

**Notification and Cooperation (MOU) –**  
NOPSA will consult and cooperate with Designated Authorities and other agencies on enforcement action.



# Enforcement Framework





# Enforcement Management Model

The Enforcement Management Model (EMM) is a framework which helps OHS inspectors, and NOPSA, make enforcement decisions in line with the NOPSA Compliance and Enforcement Policy.

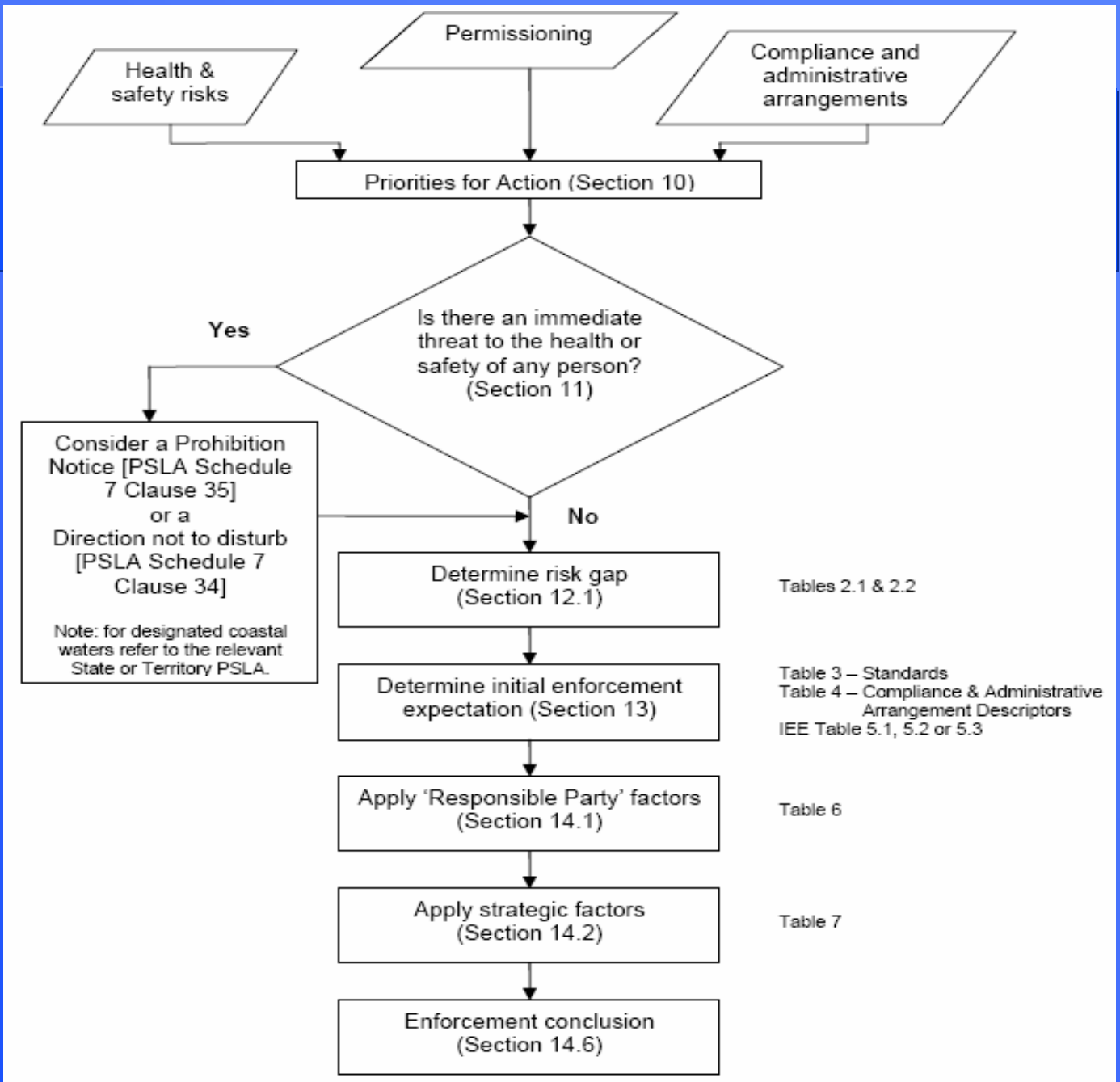
While the EMM aims to help with consistent enforcement decision-making, it still requires judgement by the OHS inspector on a range of factors.



# When is EMM used?

NOPSA OHS inspectors will only formally apply the EMM in certain circumstances, eg:

- following the investigation of serious injuries or fatalities;
- following investigation of complaints where significant issues are identified; or
- when prosecution action may be considered.





# Inputs to EMM

## Health and Safety Risks

- Hazards (something with the potential to cause harm eg physical agents, hazardous substances, processes or activities)

## Permissioning

- Compliance with a safety case, pipeline safety management plan, exemption, condition of acceptance, etc.

## Compliance and Administrative Arrangements

- legal duties do not directly result in control of risk, eg the requirements to **submit** safety cases, **assess** risks, **consult** with the workforce, and **report** incidents, but still demand compliance by the operator.



# Initial Steps

## Priorities for Action

- Prioritise so that serious risks are dealt with immediately.

## Immediate Threat to Health or Safety?

- Dealing first with immediate threats to health or safety through:
  - Prohibition Notices
  - direct that a workplace etc, not be disturbed

Then proceed with EMM.



# Determine Risk Gap – Actual Risk

1. Assess the level of actual risk arising from the responsible party's activities using the risk elements of:
  - **Consequence** – the nature of harm that could be reasonably expected to occur
  - **Likelihood** – the probability of the event, which may lead to injury, happening
  - **Extent** – the number of people likely to be affected



## Determine Risk Gap - Benchmarking

2. Set the benchmark – i.e. the level of risk remaining once the actions required of the responsible party by the relevant standards or law, are met.
3. Determine the risk gap using the appropriate risk table, depending upon the extent (number of people likely to be affected).

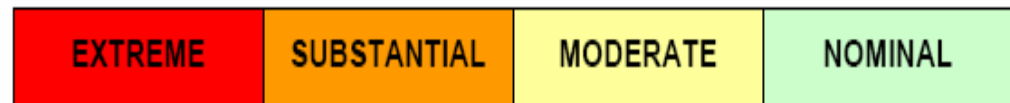
# Single or low casualties

MEASURE OF ACTUAL RISK  
(THE RESPONSIBLE PARTY'S  
ACTUAL PERFORMANCE)

Consequence	Likelihood											
NIL	NIL	Responsible Party			Responsible Party				Responsible Party			
Minor Injury	Remote	Complies with, or exceeds legal standard			Complies with, or exceeds legal standard				Complies with, or exceeds legal standard			
	Possible											
	Probable											
Significant Injury	Remote											
	Possible											
	Probable											
Serious Personal Injury	Remote											
	Possible											
	Probable											
Likelihood		possible	remote	nil/neg	probable	possible	remote	nil/neg	probable	possible	remote	nil/neg
Consequence		Serious personal injury			Significant injury				Minor injury			

BENCHMARK (WHERE THE 'RESPONSIBLE PARTY' SHOULD BE)

RISK GAP:



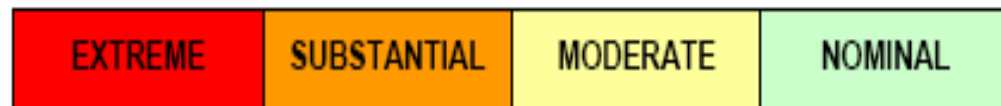
# Multiple casualties

MEASURE OF ACTUAL RISK  
(THE RESPONSIBLE PARTY'S  
ACTUAL PERFORMANCE)

Consequence	Likelihood											
NIL	NIL	Responsible Party			Responsible Party			Responsible Party				
Minor Injury	Remote	Complies with, or exceeds legal standard			Complies with, or exceeds legal standard			Complies with, or exceeds legal standard				
	Possible											
	Probable											
Significant Injury	Remote											
	Possible											
	Probable											
Serious Personal Injury	Remote											
	Possible											
	Probable											
Likelihood		possible	remote	nil/neg	probable	possible	remote	nil/neg	probable	possible	remote	nil/neg
Consequence		Serious personal injury			Significant injury			Minor injury				

BENCHMARK (WHERE THE 'RESPONSIBLE PARTY' SHOULD BE)

RISK GAP:





# Initial Enforcement Expectation (IEE)

1. Determine the 'standard' (i.e. defined, established or interpretative)
  - **Defined** – standard specified by Acts, Regulations, licence/acceptance conditions, approved Codes of Practice, etc.
  - **Established** – other Codes of Practice, published or commonly known standards, industry standards, etc.
  - **Interpretative** – standards which are not published or available generally, but are examples of performance needed to meet a duty.



# Initial Enforcement Expectation (IEE)

2. Determine 'descriptor' (for Compliance and Administration Arrangements) - (i.e. absent, inadequate or minor)
3. Determine 'deviation' (for Permissioning Document) - (i.e. contravention, irregularities or none)
4. Determine Initial Enforcement Expectation (using tables)



# IEE for Health and Safety Risks

**Table 5.1 Health and safety initial enforcement expectation**

Risk Gap	Standards	Initial Enforcement Expectation* (to secure compliance with the law)	Prosecution
<b>Extreme</b>	Defined	Improvement Notice	<b>Yes</b>
	Established	Improvement Notice	<b>Yes</b>
	Interpretative	Improvement Notice	
<b>Substantial</b>	Defined	Improvement Notice	
	Established	Improvement Notice	
	Interpretative	Letter/Inspection Report	
<b>Moderate</b>	Defined	Improvement Notice	
	Established	Letter/Inspection Report	
	Interpretative	Letter/Inspection Report	
<b>Nominal</b>	Defined	Letter/Inspection Report	
	Established	Letter/Inspection Report/Verbal warning	
	Interpretative	Verbal warning	

\* Immediate threats to health or safety have already been considered and dealt with where appropriate.



# IEE for Compliance & Administrative Arrangements

**TABLE 5.2 - COMPLIANCE & ADMINISTRATIVE ARRANGEMENTS  
INITIAL ENFORCEMENT EXPECTATION**

Descriptor	Standard	Initial Enforcement Expectation
Absent	Defined	Improvement Notice
	Established	Improvement Notice
	Interpretative	Letter
Inadequate	Defined	Improvement Notice
	Established	Letter
	Interpretative	Verbal Warning
Minor	Defined	Letter
	Established	Verbal Warning
	Interpretative	Verbal Warning



# IEE for Permissioning

**TABLE 5.3 - PERMISSIONING INITIAL ENFORCEMENT EXPECTATION**

Deviation From Permissioning Document	Risk Gap	Initial Enforcement Expectation*	
		Permissioning Document	Prosecution?
<b>Contravention</b>	<b>Extreme</b>	<b>Withdraw Acceptance/Reject</b>	<b>Yes</b>
	<b>Substantial</b>	<b>Withdraw Acceptance/Reject</b>	
	<b>Moderate</b>	<b>Reject/ Amendment of SC/ Variation</b>	
	<b>Nominal</b>	<b>Amendment</b>	
	<b>Nil/Negligible</b>	<b>Amendment</b>	
<b>Irregularities</b>	<b>Extreme</b>	<b>Reject/ Amendment of SC/ Variation</b>	<b>Yes</b>
	<b>Substantial</b>	<b>Reject/ Amendment of SC/ Variation</b>	
	<b>Moderate</b>	<b>Amendment</b>	
	<b>Nominal</b>	<b>Letter</b>	
	<b>Nil/Negligible</b>	<b>Letter/ Verbal Warning</b>	
<b>None</b>	<b>Any</b>	<b>Nil**</b>	

\* Immediate threats to health or safety have already been considered and dealt with where appropriate.

\*\* This is included because it is possible to have full compliance with the permissioning requirements but still identify a 'risk gap' that may require action to rectify. However, although the EMM predicts a 'nil' action through the permissioning regime, it may be that the permissioning document should be reviewed.



# Apply 'Responsible Party' Factors

- Verbal/written enforcement history?
- Incident history?
- Deliberate economic advantage sought?
- Actual level of harm?
- Standard of general conditions/compliance?
- Inspection history?
- Attitude of responsible party?

Then review initial enforcement expectation using flowcharts.



# Apply Strategic Factors

- Does action coincide with public interest?
- Are vulnerable groups protected?
- What is long term impact of action?
- Effect of action on others in the industry?
- Initial effect of action?
- Functional impact of action?
- Have the principles of the NOPSA Compliance and Enforcement Policy been met?

Then review using flowchart to determine whether:

- Action is confirmed; or
- Management review is required to produce an enforcement conclusion.



Questions?