

AUSTRALIAN INSTITUTE OF MARINE AND POWER ENGINEERS  
 Western Australia Branch  
 Secretary Phillip Olsen ~ Research Assistant Jackie Parkin



Monday, 11 January 2010

Mr David Borthwick, AO PSM  
 Commissioner  
 Montara Commission of Inquiry  
 GPO Box 2201  
 CANBERRA ACT 2601

Dear Commissioner,

**AIMPE Submission to the Montara Commission of Inquiry**

The Australian Institute of Marine & Power Engineers [AIMPE] was formed in 1881 by Marine Engineers in Australia and New Zealand. AIMPE has continuously represented the professional and industrial interests of marine engineers since its formation.

AIMPE has been a federally registered, trade union since 1906.

Today AIMPE has around 2,500 members who are employed on merchant ships [both coastal and international], tugboats, dredges, ferries, floating production storage & offloading facilities (FPSOs) and other specialized vessels.

The 2008-09 SEACARE Annual Report<sup>1</sup> (page 8) says that based on full-time equivalent (FTE) employees around 59% of Australian seafarers are employed in the offshore oil and gas sector.

AIMPE members employed in the offshore oil and gas sector man, operate and maintain a range of vessels in this industry including mobile offshore drilling units (MODUs), anchor handling towage and support (AHTS) vessels, platform supply vessels (PSVs), seismic vessels, dive support vessels (DSVs), specialist vessels such as pipe-lay vessels and construction vessels, FPSO support vessels, landing barges and utility vessels.

Marine Engineers operate and maintain the main propulsion systems, the ancillary power generation and other machinery on these vessels which enables the functions of the vessel to be carried out.

Marine Engineers hold Certificates of Competency issued by the Australian Maritime Safety Authority [AMSA] pursuant to a Convention of the International Maritime Organisation [IMO] known as the Standards of Training Certification and Watchkeeping [STCW]. These Certificates require successful completion of Diploma, Advanced Diploma or Degree level studies together with seagoing experience and oral examinations. Australian Marine Engineers are highly respected in the international maritime industry.

In addition State and Territory maritime authorities issue licences for Marine Engineers to operate and maintain smaller powered vessels.

Prepared by.

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## **Executive summary.**

The maritime offshore oil and gas sector is the largest employer of seafarers in Australia<sup>i</sup> and the industry is a major source of revenue for Federal and State Governments.

Oversight and regulation of occupational health and safety in the Australian offshore oil and gas industry is complex, fragmented and difficult to comprehend especially in regard to jurisdictional issues.

The industry has two independent sectors subject to different legislation and regulated by two regulators, the National Offshore Petroleum Safety Authority and the Australian Maritime Safety Authority.

Where these two independent industry sectors merge there is confusion and misunderstanding made even more complex by Flag State and Port State issues applying to vessels in this industry.

AIMPE proposes a more robust application of Section 8A of the Navigation Act 1912.

AIMPE further proposes a tripartite body (union/industry/government) be established to advise the Minister on safety issues in the offshore oil and gas sector.

## **Offshore oil and gas industry safety regulation.**

One of the major concerns with the regulation of safety issues in the Australian offshore oil and gas industry is that there are at least two regulators and two different sectors requiring regulation.

Firstly there is the sector regulated by the National Offshore Petroleum Safety Authority (NOPSA) under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

Secondly there is the sector regulated by the Australian Maritime Safety Authority (AMSA) under the *Australian Navigation Act 1912*.

In between these two jurisdictions is an area of varying shades of grey purportedly covered by a memorandum of understanding<sup>ii</sup> between the two regulators. State authorities may also have a role to play in the regulation of safety in the maritime sector depending upon a further complex set of issues including but not limited to, the origin, registration and size of the vessel and its area of operation. Somewhere in this mix is a protocol called the *Safety Case Regime*, it is difficult to determine its usefulness as it is a secret document not available to all industry stakeholders.

The regulation of the sector which may be subject to the Australian Navigation Act 1912, and regulated by the Australian Maritime Safety Authority, is further complicated by the fact that the majority of vessels involved in the Australian offshore oil and gas sector are foreign flag, most of which carry the flag of *Flag of Convenience*<sup>iii</sup> (FoC) countries, and therefore the administration of their safety regime may well reside with the flag state such as Belize, Liberia or Panama.

The regulation of the maritime sector of Australia's offshore oil and gas industry is complex, misleading, confusing and riddled with ambiguity. Many shipowners, operators and employers of maritime labour in this sector have difficulty interpreting where a jurisdiction lies with the vessels they man and/or operate. Employees of the shipowners and operators, the seafarers who man the vessels, stand little or no chance of comprehending how safety issues at their workplaces are regulated.

On 15 October 2009, AMSA held a workshop in Fremantle to investigate the feasibility of replacing the existing “*Australian Offshore Support Vessel Code of Safe Working Practice*” (*Australian CoP*) (which was first adopted in 1997 and subsequently reviewed in 2002), with the “*North West European Guidelines for the Safe Management of Offshore Supply and Rig Moving Operations*” (NWEA Guidelines). Workshop participants were informed that the Australian CoP or the NWEA Guidelines, whichever was adopted by AMSA, would only apply to offshore vessels subject to the Australian Navigation Act 1912. In fact very few vessels operating in the Australian offshore oil and gas sector would come under this jurisdiction.

Under this grey cloud of regulatory confusion, a number of offshore support vessels were mobilised to the vicinity of the West Atlas platform to undertake the task of monitoring the hydrocarbon release, sampling the environment and conducting oil spill control and dispersant operations.

Many members of the Australian Institute of Marine and Power engineers manning these vessels at or near the West Atlas platform or in the vicinity of the oil spill suffered adverse effects from the environment they were placed in. It has been reported to AIMPE that the effects of the environment gave rise to headaches, nausea, sore and irritated eyes and inflamed and aggravated breathing passages.

Injury or illness associated with inhalation of hydrocarbons should not be taken lightly. It has been stated that involuntary inhalation of hydrocarbons caused a patient to suffer from gross pulmonary oedema<sup>iv</sup>

It would appear that the environment where employees on offshore support vessels engaged by PTEEP or the regulator, was a hazardous one yet no qualitative risk assessment was carried out to determine the threats to health and safety before vessels were mobilised to the field.

Once a successful facility evacuation had been conducted there ought to have been a hazard evaluation conducted before employees were subject to exposure at or near the facility and wherever there is potential for adverse health impacts.

## **Conclusion.**

### Section 8A declaration

The confusion, misunderstanding and complexity of the jurisdiction and subsequent regulation of vessels operating in the Australian offshore oil and gas sector require urgent clarification. Seafarers have a right to know and understand who is responsible for their safety at the workplace and where does the regulatory regime reside.

The Navigation Act 1912 provides a solution to this problem. Section 8A<sup>v</sup> provides for a declaration to be made by the owner of an off-shore industry vessel and for AMSA to declare that vessel to be subject to the Navigation Act 1912. The making of such a declaration also confirms the application of the Occupational Health & Safety (Maritime Industry) Act 1993 and therefore remove much of the confusion associated with an un-declared vessel.

The Federal Government should consider making 8A declarations mandatory.

## NOGSAC

In 1996 the then Labor Government established the National Oil & Gas Safety Advisory Committee (NOGSAC). NOGSAC, a tripartite committee, was formed to advise the Federal Minister responsible, of matters relating to health and safety in the Australian offshore oil and gas sector. NOGSAC was responsible for amongst other things, the formation of the National Offshore Petroleum Safety Authority (NOPSA). NOGSAC was, and remains as the only tripartite body to have offshore oil and gas seafarer experience and a full time trade union presence. In 2007 the Howard Government abolished NOGSAC.

The *Offshore Petroleum and Greenhouse Gas Storage Act 2006* provides for NOPSA to refer matters to NOGSAC (or its replacement) Section 651.<sup>vi</sup>

The Federal Government should re-establish NOGSAC in order for it to advise the Minister on offshore oil and gas industry matters, especially those issues related to safety in the maritime sector of the oil and gas industry.

Sincerely,



Phillip Olsen

<sup>i</sup> Around 59 per cent of seafarers are employed in the offshore sector. (Source: Seacare Authority)

<sup>ii</sup> <http://www.nopsa.gov.au/document/MOU%20NOPSA%20AMSA.pdf>

<sup>iii</sup> A flag of convenience (FoC) ship is one that flies the flag of a country other than the country of ownership. Cheap registration fees, low or no taxes and freedom to employ cheap labour are the motivating factors behind a shipowner's decision to 'flag out'. There should be a 'genuine link' between the real owner of a vessel and the flag the vessel flies, in accordance with the United Nations Convention on the Law of the Sea (UNCLOS). There is no "genuine link" in the case of FOC registries. Some of these registers have poor safety and training standards, and place no restriction on the nationality of the crew.

<sup>iv</sup> <http://www.springerlink.com/content/w8112014l9k73185/>

### <sup>v</sup> 8A Off-shore industry vessels to which Act applies

- (1) The owner of an off-shore industry vessel may apply to the Authority for a declaration under subsection (2) in relation to the off-shore industry vessel.
- (2) The Authority may, in writing, declare the off-shore industry vessel to be an off-shore industry vessel to which this Act applies.
- (3) A reference in this Act to an off-shore industry vessel to which this Act applies is a reference to an off-shore industry vessel in relation to which a declaration under subsection (2) is in force.

### <sup>vi</sup> 651 Power to refer matters to NOGSAC

- (1) The Safety Authority may refer a matter to the NOGSAC body for advice.
- (2) For the purposes of this section, the **NOGSAC body** is:
  - (a) the body known as the National Oil and Gas Safety Advisory Committee; or
  - (b) if that body is disbanded—any successor body with similar membership and functions.
- (3) A matter referred under subsection (1) must be of a general nature and must not relate to a particular case.