

NATIONAL LEGISLATIVE COMPLIANCE FRAMEWORK

Offshore Petroleum and Greenhouse Gas Storage Act 2006

Noetic Solutions Pty Limited

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EXECUTIVE SUMMARY

The governance of offshore petroleum activities in Australia is a product of a series of constitutional agreements between the Commonwealth, States and Northern Territory (NT). This arrangement has led to a regime where regulatory powers are shared between the Commonwealth and States and NT in a Joint Authority (JA) / Designated Authority (DA) arrangement. This regime has served Australia in the past but recent reviews have highlighted (among other issues) inconsistencies in the administration of offshore petroleum activities between Australian jurisdictions. In recognition of the need for improvements to the regulation of offshore petroleum activity, including improved consistency, the Upstream Petroleum and Geothermal Subcommittee¹ (UPGS) agreed to the development of a National Legislative Compliance Framework (NLCF). The NLCF is intended to ensure a consistent best practice approach by regulators of Australia's offshore petroleum industry in the areas of well operations, environment and integrity.

Noetic Solutions Pty Limited (Noetic) was contracted by the Department of Resources, Energy and Tourism (DRET) to develop a draft NLCF on behalf of the Australian Government. In developing the report, Noetic reviewed documentation from a number of Australian and international sources. Noetic developed an understanding of global and domestic regulatory practice. Noetic also consulted with regulators to understand their views on what principles should be applied to demonstrate good regulatory practice.

This report provides a description of the overarching principles and best practice approaches proposed to form the basis of the NLCF. This report describes the history of offshore petroleum regulation in Australia and some of the unique characteristics of the offshore petroleum industry. These descriptions illustrate how the offshore petroleum industry is one where there is generally a clear willingness to comply with regulatory requirements. This context is important to consider when determining the best practice approaches to regulatory administration.

Noetic has identified five principles which underlay good practice in the regulation of Australia's offshore petroleum activities. These principles are:

- + **Helpfulness** – indicating it is the role of regulators to secure compliance with the regulatory regime through appropriate engagement rather than being a barrier or burden to the industry.
- + **Accountability** – suggesting that regulators need to be answerable for their actions and decisions as well as the use of authority and public resources.
- + **Transparency** – indicating that regulators need to be open and clear in all their dealings, both internally and with external stakeholders. This will support their ability to be accountable and helpful.
- + **Consistency** – meaning that regulators should undertake their regulatory practices in a way that is predictable to stakeholders, duty-holders and the community. It also means their actions are in proportion to the risks which they are managing.
- + **Efficiency** – which asks regulators to perform their functions in a way which makes best use of the resources available to them. This means applying risk management approaches to compliance monitoring activities and ensuring that it employs suitably qualified, skilled and experienced personnel.

The principles identified in this report provide a *basis* on which the NLCF can be built. However, the principles are inextricably linked and cannot be considered in isolation from each other. They must also be considered in terms of

¹ A subcommittee of the Standing Council on Energy and Resources.

their practical application to the administration of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGGS Act), in terms of standards that apply and the guidance provided in this report. These standards and guidance provide advice on how to judge if the administration of the legislative regime by the various regulators is appropriate. Regulators themselves may also use the guidance provided in this report to demonstrate if they are meeting the standards relevant to them. They may also use the standards and guidelines as a basis for carrying out performance audits of the regulators. The draft NLCF outlined in this report is based on the particular circumstances of the upstream petroleum and greenhouse gas sector and draws on good practice from Australia and overseas. However the guidance contained in this draft report cannot be too prescriptive given the different types and styles of regulation in the OPGGS Act from prescription for titles administration and goal setting for safety regulation.

This report also includes a Case Study using approvals and compliance monitoring of well operation and integrity activities as they were required under the *Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004*². This Case Study (at **Annex A**) examines how regulators might best monitor compliance to the Regulations and identifies elements that represent good practice in regulatory approaches.

² The *Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004* have been replaced by the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* as of 29 April 2011.

1 INTRODUCTION

1.1 Background

Offshore petroleum activities in Commonwealth waters are governed by the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGGS Act) and its associated regulations. The regime provides for powers to be shared between the Australian and the State and Northern Territory (NT) governments, with the States and NT taking on the role of regulators (as the Designated Authorities). This situation has allowed individual Delegated Authorities (DAs) to develop legislative compliance regimes and administrative practices suitable for their local circumstances. This has allowed some innovation within regulators but has also led to some inconsistency in the way regulators administer the OPGGS Act and its regulations. This inconsistency can cause inefficiencies to arise in the development and regulation of Australia's offshore petroleum resources as petroleum exploration and production companies are required to respond to differing regulatory practices between Australian jurisdictions.

The Upstream Petroleum and Geothermal Subcommittee (UPGS) (a subcommittee of the Standing Council on Energy and Resources) agreed to the need to promote efficient and effective regulatory administration of the offshore petroleum industry. This included identifying an agreed broader framework that promotes consistency in approach and timing or the sharing of learning and other information supporting best practice in all areas. The National Legislative Compliance Framework (NLCF) is intended to provide such a framework.

As secretariat to the UPGS, the Australian Government Department of Resources, Energy and Tourism (DRET) contracted Noetic Solutions Pty Limited (Noetic) to develop a report describing the NLCF based on overarching principles of good regulatory practice.

1.2 Scope of work

The scope of Noetic's work on the NLCF included:

- + reviewing relevant material published or provided by regulators;
- + developing a questionnaire to be provided to regulators;
- + consulting with representatives from each regulator within each State and the NT;
- + developing a case study on the management of well operations;
- + collating and analysing feedback from the questionnaire and stakeholder engagement;
- + developing a report to be provided to DRET describing the analysis and indicating principles for best practice regulation; and
- + recommendations to allow for the effective evaluation and improvement of the NLCF over time².

The full terms of reference for this work are contained in Schedule 1 (Statement of Requirement) of the Request for Tender (RFT, No. RET10/1100021) documents issued by DRET. An extract of the relevant parts of Schedule 1 is provided at **Annex B**.

1.3 Methodology

1.3.1 Review of Documentation

Noetic reviewed documentation at the commencement of the project and following engagement with regulators and stakeholders. Documents reviewed prior to stakeholder engagement included the Australian National Audit Office

(ANAO) Better Practice Guide *Administering Regulation* (2007) and various online resources describing the regulatory approaches used by the Therapeutic Goods Administration (TGA), Australian Taxation Office (ATO) and Australian Fisheries Management Authority (AFMA). Noetic also reviewed other documentation on regulatory good practice to identify the principles of good regulatory practice. These included documents from other nation's regulatory bodies (including the Petroleum Safety Authority (PSA) in Norway and the Health and Safety Executive (HSE) in the United Kingdom (UK)) and Australian and State Government guidelines (including from the Australian Government Office of Best Practice Regulation, the Productivity Commission, the Queensland Ombudsman and the Council of Australian Governments). These documents were used to develop a broad understanding of good practice regulation and what form the NLCF might take.

During stakeholder consultation Noetic was provided with a number of documents which were reviewed concurrent with and following the consultation process. A list of all documents reviewed as part of this project is provided at **Annex C**.

1.3.2 Questionnaire

Prior to engagement with stakeholders, Noetic developed a questionnaire based on the issues raised in the ANAO Better Practice Guide *Administering Regulation* (2007). It was intended the questionnaire would be completed by regulators prior to direct engagement, providing information to Noetic about the regulatory practices used by regulators. It was intended this approach would identify areas where Noetic could focus enquiries during direct engagement.

Following feedback from regulators, Noetic and DRET agreed that it was not feasible for regulators to complete the questionnaire prior to direct engagement. Noetic readjusted its approach to allow for face to face engagement without requiring the questionnaire to be completed. However, the questionnaire was used to guide discussion, allowing Noetic to seek stakeholder views on good practice in terms of the topics listed in the questionnaire, namely:

- + governance,
- + information management,
- + relationship management,
- + receiving and processing applications,
- + monitoring compliance,
- + addressing non-compliance, and
- + responding to adverse events.

1.3.3 Consultations

Noetic undertook a combination of face to face and telephone consultations with stakeholders from each regulator in each State and the NT. The purpose of the engagement was to understand stakeholder views on:

- + the overarching principles that might apply to demonstrate good practice regulation; and
- + how the overarching principles would be evident in the administration of the OPGGS Act and its Regulations.

1.3.4 Case Study: Management of Well Operations

Noetic was asked to develop a Case Study based on the approvals and compliance monitoring of well operation and integrity activities as was required under the *Petroleum (Submerged Lands)(Management of Well Operations) Regulations 2004*³. The Case Study included:

- + identifying the processes implemented by regulators in performing their responsibilities and discharging their obligations under the *Petroleum (Submerged Lands)(Management of Well Operations) Regulations 2004*;
- + identifying those elements (of processes) that represent an effective practice regulatory approach; and
- + developing a framework, drawing on the elements identified as best practice, for approval and compliance monitoring for well operation activities.

2 CURRENT REGULATORY PRACTICE

2.1 Characteristics of regulation of offshore petroleum and greenhouse gas storage industry

The offshore petroleum and greenhouse gas storage industry is characterised by high economic barriers to entry. As a result, most of the companies in the industry are large, well resourced and often multi-national. These organisational characteristics also tend to be correlated with a desire to comply with the law, and avoid the damage to reputation associated with a major environmental incident and risk of loss of a licence to operate. Consequently, the industry is characterised by companies that generally want to comply with the law and avoid being subject to formal enforcement action such as a prosecution. Despite the tendency for a high level of voluntary compliance in the industry, there are occasions when non-compliances occur. In these situations, regulators must have the capabilities to identify these non-compliances, take appropriate action to secure compliance and take formal enforcement action (such as prosecutions). It is also essential that regulators are able to demonstrate to duty-holders that they are capable of detecting non-compliance and taking the appropriate action. This demonstration of capability plays an important part in deterring non-compliant behaviour and securing compliance.

The draft principles, standards and guidelines suggested in this report examines those elements of the regulatory regime that are needed to maintain a high level of voluntary compliance. Important aspects include establishing and maintaining the appropriate human capability, organisational culture and rigorous systems and processes.

2.2 Observations

Through its consultation with offshore petroleum regulators across Australia, Noetic has made a number of observations about the current practices in administering the OPGGS Act and its Regulations. These observations provide some insight into the need for the NLCF.

Regulators size and capacity

Noetic observed marked differences between the size and capacity of regulators. In many cases, the differences between regulators were indicative of the workloads placed on them by activity in the offshore petroleum industry. For example, regulators administering more offshore titles and activities were likely to have a greater number of resources dedicated to regulatory activities. In contrast, other regulators who administered a small number of titles

³ The *Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004* have been replaced by the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* as of 29 April 2011.

had fewer resources dedicated to offshore petroleum regulation. Noetic also observed that regulators within smaller jurisdictions were also more likely to have less capacity dedicated to offshore petroleum regulation.

Sharing of resources and expertise

Noetic notes that many of the regulators identified a number of instances where they had shared their experience or sought expertise from other regulators. This seeking and sharing of experience and expertise was particularly evident where regulators with less offshore activity sought guidance from regulators who had more experience in administering the OPGGS Act and Regulations. Information was exchanged on the correct protocol and interpretation of the OPGGS Act and its delegations. In one case, formal arrangements had been entered into between Tasmania and Victoria, where the Victoria Department of Primary Industries (Vic DPI) was able to undertake technical assessments on behalf of Mineral Resources Tasmania (MRT). This had proven to be a successful model, allowing MRT to draw on Vic DPI's capacity, expertise and experience in administering the OPGGS Act and its Regulations. Other examples were provided where Victoria and South Australia had collaborated to develop administrative procedures and where New South Wales had drawn on advice from Victoria. Other examples were also provided by Primary Industries and Resources South Australia (PIRSA) where it had drawn on its on-shore regulatory experience. However, this sort of sharing of experience and expertise was not evident in all regulators indicating there was greater potential benefit from wider application of this practice, particularly for regulators in smaller jurisdictions with more limited capacity.

Inconsistent application of risk-based compliance monitoring

Some regulators were able to describe what can be considered a risk based approach to compliance monitoring. That is, they could identify that criteria used to determine the risk that a duty-holder would be able to comply with its obligations under the OPGGS Act and Regulations. Examples of these criteria included the size of the company, past history of compliance and risk of activities undertaken. The criteria were used to identify which duty-holders presented the greatest risk to safety or environmental integrity. High risk duty-holders were then targeted for compliance monitoring activities (such as inspections or audits). However, not all regulators were able to identify such a risk-based approach and, of those that could, they did not demonstrate that the risk based approach was applied evenly across all operations. For example, one regulator described a risk-based approach to monitoring compliance against Environmental Plans (EPs), while the same approach did not appear to be applied to monitoring compliance against Well Operations Management Plans (WOMPs).

Greater role for Commonwealth

Many of the regulators' representatives expressed a need for the Commonwealth to provide a greater level of guidance and coordination to enhance regulatory practice across all jurisdictions. Some acknowledged that some guidance was provided in legislation and Regulation but there was a further need for the Commonwealth to take a more active role in developing guidance for industry as well as providing feedback to regulators. They cited potential to expand the role of the UPGS and or expand the role of the Environmental Assessors Forum (EAF) to cover other communities of practice within petroleum regulation.

3 DEFINING GOOD REGULATORY PRACTICE

3.1 What is regulation?

Regulation is defined as a set of instruments used by governments to influence or control the way people and businesses behave to achieve social, economic or environmental policy objectives. It includes laws or rules that govern the conduct of people or business. Regulatory functions include:

- + allocation of rights (such as the right to access a natural resource);
- + encouraging regulated entities to comply with their obligations through advice and education;
- + assessing whether a person, organisation, product or service meets specified requirements;
- + registration of a person, organisation, product or service;
- + setting and enforcing established standards (including the use of regulatory instruments such as formal notices or prosecution);
- + gathering evidence of compliance (or non-compliance) with the standard; and
- + collection of taxes, fees, duties or other revenue.

In Australia, regulation is undertaken by a combination of Commonwealth, State, Territory and local governments, depending on the activities being regulated. The goal of the regulating entities is to ensure that duty-holders (those undertaking a regulated activity) manage and control the risks associated with their effectively in a way that minimises negative impacts on social, economic and environmental good. This means that regulators need to:

- + ensure duty-holders identify and take action to deal with serious risk,
- + promote and achieve compliance with the law, and
- + ensure duty-holders who breach their requirements are held to account.

3.2 What is good regulation?

To identify good practice regulation, Noetic examined a number of documents produced by Australian government entities including the Council of Australian Governments, Australian National Audit Office, the Productivity Commission and state and territory ombudsman's offices. Of the documents reviewed they all indicated common concepts about what constitutes good regulation. Common factors include that regulation should;

- + aim to **achieve the objectives of the legislation** and Regulations being administered;
- + **facilitate compliance** with the legislation and Regulation through a combination of education, engagement and enforcement instruments; and
- + achieve the greatest degree of compliance with the legislation and Regulation at the **minimum cost** to all parties (that is, the regulator, the regulated entities and the tax-paying community).

The documents reviewed offer further advice about how regulators can achieve these objectives. These include ways to enhance efficiency to ensure an **optimal balance between regulatory cost and benefits** and achieve maximum cost effectiveness. They also include ways to **build confidence** in regulatory activity among the community, stakeholders and regulated entities.

4 REGULATION OF OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE

4.1 Historical Context

The governance arrangements for offshore petroleum and greenhouse gas storage operations in Australia are a result of the Offshore Petroleum Agreement of 1967 and the Offshore Constitutional Settlement of 1979. These agreements allowed Australian States and the Northern Territory (NT) to regulate petroleum within coastal waters⁴. It also allowed the Commonwealth of Australia (the Commonwealth) to regulate petroleum outside that area (Commonwealth waters) but with a Joint Authority between the Commonwealth and the adjacent State or NT jurisdiction.

Under current agreements and legislation the Commonwealth is ultimately responsible for Commonwealth waters but jointly administers regulation and supervision of offshore petroleum activities with the adjacent State or NT through a Joint Authority (JA)/ Designated Authority (DA) arrangement.

4.2 Regulatory Roles and Responsibilities

Following a series of constitutional agreements, the Commonwealth, States and the Northern Territory (NT) have reached agreement that provides the Commonwealth with access to State and NT resources for administration of its jurisdiction over the territorial sea beyond State and NT coastal waters⁵. Under that agreement the Parliament of the Commonwealth was able to pass the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act). The OPGGS Act allows for the regulation of offshore petroleum and greenhouse gas storage activities within Commonwealth waters⁶. As per the JA/ DA arrangement, OPGGS Act Regulations are administered by government entities including:

- + Australian Government Department of Resources, Energy and Tourism (which is both a JA and a DA);
- + New South Wales Government, Department of Industry and Investment;
- + Northern Territory Government, Department of Resources;
- + Queensland Government, Department of Employment, Economic Development and Innovation;
- + South Australian Government, Primary Industries and Resources South Australia;
- + Tasmanian Government, Mineral Resources Tasmania⁷;
- + Victorian Government, Department of Primary Industries; and
- + Western Australian Government, Department of Mines and Petroleum.

The National Offshore Petroleum Safety Authority (NOPSA)⁸ (established by Commonwealth law) was established to administer offshore petroleum safety legislation. In November 2010, NOPSA had its functions and powers expanded to include non-occupational health and safety aspects of structural integrity for petroleum facilities, wells and well-related equipment in Commonwealth waters.⁹ This amendment in effect provides NOPSA with regulation and

⁴ Coastal waters are those within 3 nautical miles of the low water mark or within historical boundaries

⁵ Territorial Sea extends to 12 nautical miles from Australia's territorial sea baseline.

⁶ Commonwealth waters are those beyond the 3 nautical mile limit of Coastal waters.

⁷ Mineral Resources Tasmania has an arrangement to allow the Victoria Government to undertake technical assessments on its behalf.

⁸ At the time of writing, the Commonwealth Parliament was considering the establishment of the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) and the National Offshore Petroleum Titles Administrator (NOPTA) to regulate all offshore petroleum activities beyond three nautical miles from the territorial sea baseline.

⁹ *Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Miscellaneous Measures) Act 2010*.

oversight of the whole of structural integrity of petroleum facilities (including pipelines), wells and well-related equipment in Commonwealth waters.

In addition to the obligations of both regulators and duty-holders set out in the OPGGS Act, the Commonwealth Minister for Resource and Energy has recently issued a draft statement of expectations to DAs and NOPSA¹⁰. The statement sets out the expectations of the Minister for Resources and Energy of these agencies when performing their regulatory duties. It provides guiding principles according with the principles of good practice regulatory administration set out in the ANAO's Better Practice Guide *Administering Regulation* (2007). Key elements of the guiding principles nominated by the Minister include:

- + **promoting** and securing compliance by duty-holders;
- + **encouraging** a safety culture within the petroleum industry;
- + implementation of effective **risk-based monitoring and enforcement strategies** appropriate to the regulatory activities being undertaken;
- + **working cooperatively** to ensure relevant parties remained informed of regulatory activities;
- + pursuing a consistent national approach to regulation;
- + implementing a **systematic risk-based management framework** to identify, evaluate and mitigate regulatory risks;
- + allocating **sufficient resources** in accordance with priorities;
- + **streamlined and timely** approval and administrative processes;
- + maintaining effective and reliable **data and information management** systems to support industry and regulatory decisions;
- + encouraging information sharing by facilitating dialogue and **maintaining relationships**.

Many of these key elements are explored further in the NLCF proposed in this report.

4.2.1 Regulatory Reform

At the time of writing, the Australian Government was leading reform of the regulatory regime governing offshore petroleum activities. Many of these reforms are outlined in the Final Government Response to the Report of the Montara Commission of Inquiry (Australian Government, 2011). They include the transfer to NOPSA during 2011 of regulatory responsibility for Well Operations Management Plans (WOMPs) and approval of well activities, as described above, and the proposed further legislative reform to establish the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) and the National Offshore Petroleum Titles Administrator (NOPTA). If the latter legislative reform is passed by the Australian Parliament, it is expected the DA arrangement will cease for offshore activities. However, the NLCF described in this report will remain valuable to all regulators. It is expected the NLCF will be applied by NOPSEMA and NOPTA, and can be applied by the States and NT to enhance consistency in the application of a high standard of regulation of petroleum activities onshore and in State- and NT-administered coastal waters.

¹⁰ A draft copy of this agreement was provided to Noetic.

4.3 About the National Legislative Compliance Framework

4.3.1 Aims

The aim of the NLCF is to ensure:

- + effective and efficient administration of the legislative regime governing the offshore petroleum and greenhouse gas storage industries; and
- + consistency of policy/regulatory work including approvals and monitoring and compliance such as with existing compliance activities undertaken by various organisations involved in the offshore regulatory regimes.

The NLCF intends to do this by identifying a set of overarching approval and compliance principles and articulating how they could be applied to the administration of the OPGGS Act and its Regulations. It is expected the application of the NLCF will facilitate:

- + identification of gaps, risks and potential critical problems and risk management approaches; and
- + continuous improvement and information sharing between regulators and stakeholders, including the offshore petroleum industry.

The NLCF proposed in this document should provide authoritative but not prescriptive guidance to regulators in the administration of the OPGGS Act. It specifies the roles and responsibilities between the Commonwealth, DAs and NOPSA. The NLCF proposed also provides a benchmark against which parties can examine their approaches, capability, systems and performance and identify opportunities for improvements.

However, it should be noted that careful judgment in applying the NLCF is required because of the wide variety of objectives and different styles of legislation adopted in the OPGGS Act and Regulations. For example, some of the legislative requirements are very new¹¹, such as the requirement for Field Development Plans in the Resource Management Regulations. Some of these new Regulations are detailed without much scope for variation on the part of duty-holders, as in the legislation on titles, whereas other aspects have both prescriptive and objective based requirements, such as the safety and environment legislation.

4.3.2 Roles and Responsibilities

4.3.2.1 APPLICATION

It is expected that the Commonwealth, each DA and NOPSA will be responsible for the application of the NLCF to its own regulatory operations. Each regulatory entity could be expected to compare their current operations against the NLCF and determine what adjustments to current approaches and practices are needed (if any). It is expected the Commonwealth may provide further guidance to assist DAs and NOPSA implement the NLCF. DAs and NOPSA will be responsible for providing feedback on the appropriateness of the NLCF

4.3.2.2 MONITORING AND REPORTING

It is expected the Commonwealth (through DRET) will have primary responsibility for monitoring and reporting on the implementation of the NLCF. The Commonwealth may gather feedback from DAs, NOPSA, industry groups (such as the Australian Petroleum Production and Exploration Association (APPEA)), individual companies in the industry and other stakeholders.

¹¹ The *Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004* have been replaced by the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* as of 29 April 2011.

4.3.2.3 REVIEW AND EVALUATION

It is expected the Commonwealth (through DRET) will have primary responsibility for the regular review and evaluation of the effectiveness of the NLCF. The Commonwealth may have regard to the feedback provided by DAs, NOPSA, industry groups (such as APPEA), individual companies in the industry and other stakeholders in undertaking the review and evaluation.

4.3.2.4 REFINEMENT

It is expected the Commonwealth (through DRET) will be responsible for coordinating the redevelopment or redesign of the NLCF to ensure that it continues to meet and appropriately balance the needs of the Commonwealth, the States and the NT, and the offshore petroleum and greenhouse gas storage industries. Refinement of the NLCF should be based on feedback provided by DAs, NOPSA, industry groups (such as APPEA), individual companies in the industry and other stakeholders.

5 PRINCIPLES OF LEGISLATIVE COMPLIANCE

Through consultation with stakeholders and review of documentation, Noetic has identified a number of overarching principles. These principles are intended to guide all activities and decisions by regulators of the OPGGS Act. They should also guide non-regulatory activities that will impact on the effectiveness of a regulator. These non-regulatory activities include organisational design, human resource capability development, organisational culture development and others. The principles Noetic has identified are explained in the sections below.

5.1 Helpfulness

Helpfulness describes the philosophical approach the regulator should hope to instil throughout its organisation. It refers to the attitude individual personnel and the organisation will have when engaging with industry members (including duty-holder). Helpfulness does not mean regulators will relax any regulatory requirements, as the regulator will best serve the interests of the community by maintaining its independence of regulatory action. It will however secure companies compliance with the objectives of legislation and regulations through guidance that assists companies to understand the practical implications of their obligations under the legal framework and to adopt standards and measures to bring their activities into compliance. This encompasses processes that will facilitate voluntary compliance such as education and awareness raising, application forms that are easy to use and complete, and guidelines that are readily understood and practical. By being helpful, regulators will reduce the regulatory burden placed on duty¹²holders and increase the likelihood of their compliance, thereby reducing the overall cost of the regulatory regime

¹² However, titleholders remain responsible as helpfulness does not mean the responsibility for compliance and good oil field practice is taken away from the duty-holder.

5.2 Accountability

Accountability describes the concept of oversight or supervision both within an organisation and of the organisation itself. It requires that individuals or organisations are held to account for the execution of their responsibilities, decisions and actions (Australian National Audit Office, 2007). Accountability demands that mechanisms are established that allow someone to determine if a person or organisation is performing their required functions and responsibilities. Accountability is an obligation to report or explain something to someone who has a legitimate need to know and understand.

In the context of the administration of the OPGGS Act, accountability requires regulators and their personnel to report, explain and be answerable for their decisions and actions/inaction. This may include the way a regulator reports and explains to a Minister the nature and consequences of regulatory activities. Accountability may require that decision makers are able to report and explain the reasoning behind their decisions to both internal and external stakeholders. Accountability also requires decision makers to explain the nature and reason for decisions to those affected by the decisions (e.g. duty-holders). Accountability within a regulator will also require decision makers and administrators to explain if they have followed any established procedures or processes. They may also be required to explain why they may have deviated from the established procedures or processes. Equally, decision makers and administrators may be required to explain their behaviour and why this might differ from the expected or required behaviour.

5.3 Transparency

Transparency describes the concept of openness to scrutiny. It also describes willingness to report and exchange information. Transparency with information will often support accountability. Transparency may assist government regulation by providing evidence to support decision making and evaluate service delivery performance (Australian National Audit Office, 2007). An open information policy may also “contribute to experience transfer and knowledge building about safety issues in the oil and gas sector” (Petroleum Safety Authority Norway, 2011). In accordance with guidelines from the Office of the Australian Information Commissioner, 2011, transparency requires that:

- + information is openly available where there is no legal need to protect the information;
- + government organisations cooperate with the community (or relevant stakeholders) about what information is relevant or useful to them and respond promptly to requests for information;
- + information is well managed and governed to ensure its relevance, quality, security and accessibility;
- + information is discoverable and usable by those who need it (this includes people both internal (staff) and external (stakeholders) to the organisation);
- + information can be provided at the lowest reasonable cost to those requesting the information;
- + the processes for decision making, and the decision outcome, are made known to and explained to those requesting information to enable both the decision making process and the final decision to be questioned and challenged.

5.4 Consistency

Consistency in the context of regulatory practise describes the idea that a responsible individual or organisation will perform its functions in ways that are **predictable** to stakeholders, duty-holders and the community. This means that regulators would apply comparable processes and criteria to examining the compliance of potential and current duty-holders. Such an approach would provide a level of certainty to potential or current duty-holders about what they can expect from their interactions with a regulator. This might require a regulator to make clear statements about their expectations of regulated entities or what regulated entities could expect from the regulator (a concept linked with transparency). “To promote regulatory certainty, [regulators] should clarify and clearly articulate the objective/s and make transparent the criteria and processes used in both approving initial retention leases and renewing existing retention leases” (Productivity Commission 2009).

Consistency also implies an expectation of comparability and **proportionality**. This means a duty-holder would reasonably expect they would be treated in a way that is comparable with another organisation of a similar size, track history and other characteristics. To ensure consistency, regulators would establish internal policies that describe the way processes ought to be undertaken. Policies may also support consistency by describing how regulatory officers should interact with duty-holders. Consistency would also require regulators to ensure and assure that its personnel are undertaking their functions and making decision in accordance with established policy, procedure or process. This would in turn provide assurance that regulatory activities and decisions are undertaken in a predictable manner.

5.5 Effectiveness

Effectiveness describes the ability of an individual or organisation to achieve their objectives (that is, to have an impact). In the context of regulation of the OPGGS Act, effectiveness means that regulators are able to achieve (or facilitate achievement of) the objectives of the Act and its Regulations. The objectives of the OPGGS Act include:

- + providing legal framework for the:
 - exploration and recovery of petroleum,
 - exploration for potential greenhouse gas storage formations,
 - injection and storage of greenhouse gas substances, and
 - safe and environmentally sound operation of infrastructure facilities and activities in relation to petroleum and greenhouse gas substances in Commonwealth jurisdiction;
- + ensuring operations in an offshore area are carried out in accordance with good oilfield practice and are compatible with the optimum long-term recovery of petroleum;
- + assisting administrators to be informed about all aspects of exploration, discovery, development and production or injection.

In this case, regulators will need to meet the objectives of allowing exploration and recovery of petroleum and the objectives of safety and protection of the environment. This will mean that regulators will need to ensure that the risk associated with the exploration and recovery of petroleum offshore are reduced to a level that is as low as reasonably practicable (ALARP). In doing this, regulators will ensure their operations contribute to the achievement of the broader economic objectives associated with the exploitation of petroleum without unreasonable detriment to social

objectives of safety and the environmental objectives of environmental integrity and the economic pursuits of other marine users.

5.6 Efficiency

Efficiency refers to the ability of an organisation to achieve its objectives (i.e. be effective) to the greatest extent possible given the resources available to the organisation. An organisation's resources will include its funds (either from appropriations or cost recovery), its human resources (including the mass of capable personnel) its processes and systems. Regulators can achieve efficiency by ensuring it has the right personnel, that it has streamlined and non-duplicative processes and that its systems enable the processes to be conducted quickly. An organisation can also achieve efficiency by targeting its limited resources to activities that are likely to have the greatest impact. Targeting resources can be achieved by using evidence to determine how risks are best managed.

6 APPLYING THE PRINCIPLES IN PRACTICE

The Principles described above provide building blocks on which the NLCF is built. They should not be considered in isolation as they are inextricably linked to each other. The Principles exist to provide a guide for policy makers and regulators alike that should underpin the design of regulatory responses to economic, social and environmental issues. The Principles can also be applied in the administration of any regulatory regime and the OPGGS Act and its Regulations are no different.

The following sections provide a detailed set of Standards and Guidelines, which illustrate how the Principles might be applied in practice to the administration of the OPGGS Act and its Regulations. The Standards and Guidelines may be used by regulators to judge for themselves if they can demonstrate the Principles that underlay good regulatory practice. The Standards and Guidelines will also provide the basis for carrying out performance audits of regulator to identify how their practices might improve to achieve good practice or set a new benchmark.

6.1 The Standards

The Standards are split into the following six elements:

- + Governance,
- + Strategy and Guidance,
- + Compliance Processes,
- + People and Culture,
- + Information and Resources, and
- + Continuous Improvement.

6.1.1 Six Elements

For each of these elements, this framework identifies the type and nature of the Standards which should be in place. These are summarised at the end of each section in a table. The tables are collated in a standards and guidance checklist at **Annex E** and form the basis for self-appraisal, audit or external review.

Just as with the Principles described in section 5, these sections also need to be read and considered together and because of the wide ranging nature of the activities covered by the OPGGS and the various styles of legislation employed, judgment is required in applying these standards.

The tables provided within each section below offer a succinct statement of the Standard and where appropriate (but not in all cases) the framework provides some Guidance on the Standard. This format is widely used in the upstream oil and gas industry as a method to provide clear standards on the management of risks without being too prescriptive as to how the standard is achieved.

6.1.2 Governance

Governance refers to the processes by which organisations are directed, controlled and held to account (Australian National Audit Office, 2007). Regulators need to ensure they have the necessary governance arrangements in place to ensure they are exercising their authority (making regulatory decisions) and taking actions (education, enforcement and monitoring) in accordance with legislation and regulation. They also need to establish and maintain governance arrangements that ensure quality of process, actions and decisions in accordance with performance expectations. These include the expectations that regulation is administered consistently, fairly, equitably, proportionately, efficiently, and transparently. Governance mechanisms therefore offer an avenue for accountability both within the regulator and from the regulator to its Parliament and the public.

Governance arrangements are also important to help ensure a regulator maintains its regulatory objectiveness. Appropriate governance arrangements can ensure regulatory objectiveness by maintaining actual and perceived impartiality in decision making, avoiding conflicts of interest (actual or potential) and avoiding ‘regulatory capture’¹³. Regulators should have governance mechanisms in place to ensure regulatory objectivity. Standards and guidance on how to meet the standards for governance are provided below in Table 1.

Table 1. Standards and guidance on Governance.

#	STANDARD	GUIDANCE
1	Regulators should establish and maintain governance arrangement to ensure authority is exercised in accordance with legislation and regulation.	<p>Management line oversight provides some level of assurance but additional assurance could be provided via a peer review process¹⁴, which allows decisions or actions to be reviewed either regularly or periodically. Peer reviews may occur on a risk-management basis so the decisions of less experienced personnel (who may be more prone to errors) are reviewed more frequently while more experienced personnel are subject to fewer reviews. Reviews would include:</p> <ul style="list-style-type: none"> + review of assessment and recommendation by a decision maker leading to the correct decision, or + peer review after the event of a decision of the adequacy of the assessment.

¹³ Regulatory capture (also known as ‘industry capture’) occurs when officials inappropriately identify with the interests of a client or industry (Independent Commission Against Corruption, 1999 and Adams *et al*, 2007).
¹⁴ A peer review process is usually conducted by colleagues within the regulator.

2	Governance arrangements are in place to ensure the performance of the regulator is in accordance with performance expectations.	<p>Regulators may establish senior management committees and stakeholder reference groups who examine the performance of the regulator in meeting its stated objectives. To facilitate this, regulatory objectives should be published in an annual business plan with specific goals and targets. Regulators could also publish service charters which set out the minimum standard of service stakeholders can expect. A stakeholder reference group could examine performance against these goals and report to the Minister or Parliament on the outcomes.</p> <p>Data on compliance with key performance indicators should be regularly reported and considered by senior managers. This should include data on the quality of decision taking.</p>
3	Governance arrangements are in place to ensure regulatory independence.	<p>Regulators develop and enforce codes of conduct that stipulate that officers should avoid or declare actual or potential conflicts of interest if they are involved in regulatory decisions.</p> <p>Regulators should establish and maintain policies and mechanisms to actively monitor 'regulatory capture'. This will include organisational structures and information systems separating regulatory functions from industry promotion functions.</p>

6.1.3 Regulatory Strategies and Policies

To promote **consistency** and **transparency** in carrying out compliance activities, regulators should document and publish their regulatory strategies and policies. These documents guide how compliance activities are carried out and assist duty-holders to understand compliance decision taking. Where more than one regulatory body is applying the same legislation in different parts of offshore waters (as is the case in the current JA/ DA arrangement), operational policies should be aligned.

Regulatory interventions can be expensive for both companies and regulators alike. Therefore, regulators need to develop strategies to achieve the objectives of the legislation while reducing the overall impact on taxpayers and duty-holders. However, these strategies need to be effective and take into account the unique circumstances of the offshore petroleum industry, including the nature of the risks (such as low likelihood and high consequence events) and international experience of the industry. These Strategies need to inform the compliance processes and procedures discussed below in section 6.1.5.

Table 2. Standards and guidance for Regulatory Strategy and Policy documents.

#	STANDARD	GUIDANCE
4	Document and publish the regulatory strategies and policies which will guide compliance activities.	These should describe the regulatory strategy and policies in use and how, why and in what circumstances the regulator will use the various powers granted to it

under the legislation.

Examples include the Victoria's WorkCover Compliance and Enforcement Policy and the UK HSE's Enforcement Policy

6.1.4 Guidance Material for Duty-Holders

An underlying presumption is made that the upstream petroleum industry intends to comply with the law. To support this, good quality guidance material is required to encourage voluntary compliance. The production of this guidance material should receive adequate priority and be produced in conjunction with new legislation and after adequate consultation with appropriate stakeholders. Guidance material should be kept under review, revised as required and published to promote **transparency**.

The guidance material should give advice on the standards which duty-holders are expected to achieve. This includes good practice and the processes which they should follow when interacting in accordance with the legislation (for example in preparing submissions to regulators). Guidance material meeting these standards promotes **efficiency** and **consistency**.

In addition, to promote organisational learning in duty-holders, regulators (wherever possible) should publish the results of incidents, near misses, examples of good practice and details of enforcement action.

Table 3. Standards and guidance for development of Guidance Material for Duty-holders.

	STANDARD	GUIDANCE
5	Guidance material is published to assist duty-holders meet their legal obligations.	Guidance material should be developed in consultation with stakeholders. The use of case studies may be employed to give practical examples. Dissemination of information on incidents, near misses, good practice and the results of enforcement action should be published as appropriate to facilitate lesson learning.

6.1.5 Compliance Processes

These are procedures that describe the activities carried out to determine if a duty holder is compliant with the OPGGS Act and its Regulations. The documenting and publishing of these procedures support the principles of **transparency** and **certainty**. These procedures include:

- + **regulatory interventions**, (such as inspections, audits and investigations) and approval and acceptance processes are documented;
- + the criteria used to **determine compliance**; and
- + **responses** to non-compliance which are proportionate to the nature of the non-compliance, and graduated where this is appropriate.

6.1.5.1.1 REGULATORY INTERVENTION PROCEDURES

Procedures for regulatory activities such as inspections, audits, investigations, review and approval of documents such as Environment Management Plans, Field Development Plans, Safety Cases and so on should be developed, documented, published and implemented. The regulatory intervention methods should take into account the risks of non-compliance and how and where regulatory interventions are carried out. For example, if regulated activities take place predominantly at offshore facilities, then it is likely that offshore visits to examine these activities (on a selective basis) are needed. Their development and implementation will promote consistency within the regulator, ensuring that personnel understand and meet expectations. Publication of these documents will also support the regulator to be **transparent** and **accountable** to the public and duty-holders. Publication will also provide a tool for duty-holders and other stakeholders to determine whether a regulator is undertaking its processes in a fair and **consistent** manner. The quality assurance processes for the documents (including development, submission and approval) should also be described and illustrated in a procedure management process, which may be illustrated in process maps or flow diagrams. The development and implementation of this sort of documented quality assurance will provide another layer or assurance to stakeholders that quality is a core consideration in every aspect of regulatory function.

6.1.5.1.2 COMPLIANCE CRITERIA

The criteria regulators use to determine the extent to which a duty holder is complying with the legislation should be documented and published. This could be incorporated into Guidance material (see section 6.1.4 above) or form part of a published Enforcement Management Model as used by NOPSA and UK HSE (see section 6.1.5.2 below).

These models are typically used where the regulatory compliance decisions are complex, particularly where objective based legislation is used. They typically use the concept of a “risk gap”, which is the difference between where the duty holder should be if risks are well controlled and where they actually are. Inspectors need to determine whether the gap is extreme, substantial, moderate or minor and the size of the risk gap is then used to assist (in conjunction with other criteria) to identify appropriate compliance action.

Preparation and publishing these criteria promotes **consistency** of decision taking within a regulator and makes decisions more **transparent**.

6.1.5.1.3 A PROPORTIONATE RESPONSE TO NON-COMPLIANCE

Duty-holders and other stakeholders expect that action taken by regulators to achieve compliance or to bring duty-holders to account for non-compliance should be **proportionate** to the seriousness of the breach of the law. Another way of describing this is that regulators adopt a graduated response to non-compliance. Examples of how this “graduated response” works in practice should be published.

Table 4. Standards and Guidelines for Compliance Processes.

#	STANDARD	GUIDANCE
6	Policies and guidelines for the conduct of regulatory activities are published including their objectives, scope and timing.	Policies and guidelines should be published on each regulatory activity from education activities to inspections to prosecutions. Policies and guidelines should provide a level of clarity and certainty to duty-holders to enable them to predict under what circumstances they should expect to see regulatory activities undertaken. Policies and guidelines should be accurate and realistic.

7	The criteria used by the regulator to judge compliance is published.	In simple cases the legislation may provide sufficient information on compliance assessment criteria. However, for complex risk based decisions within an objective-based legislative regime, more guidance is needed. The use of Enforcement Management Models is one way to do this (as used by the UK Health and Safety Executive and the National Offshore Petroleum Safety Authority).
8	Regulators compliance action is based on a proportionate response.	Regulators should publish guidance on how the proportion of the response is determined. Case studies may form a useful way of achieving this.
9	Regulators adopt a cooperative approach to assist duty-holders comply.	Regulators provide guidance on the development of remedial action plans to secure compliance by the duty-holder in accordance with the principle of helpfulness. This can be done without 'regulatory capture' ¹³ and increase confidence that the plan will return the duty holder to compliance.

6.1.5.2 DECISION REVIEW PROCESSES

A characteristic of the upstream oil and gas and greenhouse gas industry is that regulatory decisions may cost duty-holders very large amounts of money and impact on a wide variety of stakeholders. As a result it is important that there are robust decision making processes within regulatory bodies and that these decisions are open to scrutiny by those they affect. Regulators should establish **transparent** and accessible mechanisms that allow duty-holders to request internal reviews and/or to lodge complaints about decisions made or the process undertaken. To support this level of transparency and **accountability** to duty-holders, regulators should:

- + develop **guidance material** in consultation with key stakeholders to ensure the decision process is well understood and respected;
- + **publish the criteria** upon which regulatory decisions are made so that the basis for decisions are well understood;
- + **monitor decision quality** to ensure that the decision making process is being followed and producing decisions that are valid and defensible; and
- + **provide formal avenues for review** to allow legitimate challenges to be heard and investigated internally.

International experience and experience in other regulatory regimes in Australia has shown that these measures will enhance the **transparency** of decision making processes and the respect for regulatory decisions among duty-holders and stakeholders. This is likely to also enhance voluntary compliance and reduce the need to resort to formal avenues of appeal through the legal system. These measures may also increase the overall quality of regulatory decisions by ensuring that regulators are **accountable** to duty-holders for their decisions and the potential cost of those decisions.

Processes within this category should as a minimum include:

- + processes for monitoring the **quality** of compliance decision making within the regulator,
- + processes to allow **internal review** of complex or sensitive compliance decisions, and
- + processes to allow duty-holders to **request a review** of compliance decisions and/or **make a complaint**.

Guidance on these elements is provided below in Table 5.

Table 5. Standards and Guidelines for decision review processes.

#	STANDARD	GUIDANCE
10	The quality of compliance decisions is routinely monitored.	Line managers may sample the documents produced by their staff and discuss with them how they arrived at their decisions.
11	Complex or sensitive compliance decisions are internally reviewed.	A variety of approaches are currently in use including peer review techniques (DPI Victoria), and the use of an Enforcement Management Model (NOPSA).
12	A mechanism exists for duty-holders to seek an informal review of a compliance decision.	These sorts of mechanisms typically involve engaging an officer from a separate team within the regulator (to give a degree of independence) to determine if they would arrive at the same decision if they were provided with the same information.
13	Avenues exist for complaint from duty-holders to be lodged and responded to.	Regulators may also publish information about their complaints procedure. Regulators may publish a link to a complaints form on their website (e.g. DPM WA). The complaints form allows the user to enter information about the nature of the complaint and preferred resolution.

6.1.6 Standards for People and Culture

Throughout the consultation process, stakeholders repeatedly indicated it was important for regulators to have the “right attitude” towards the regulatory process. Stakeholders believed that the right attitude would be developed by understanding the unique characteristics of the offshore petroleum industry. They believed that the high entry costs to the industry (due mainly to the large capital investments required) meant companies would generally want to comply with the law and avoid being subject to formal enforcement action such as a prosecution. With this understanding, regulatory personnel with the right attitude would be able to work cooperatively with the large and multinational companies (typical in the offshore petroleum industry) to achieve regulatory objectives. This ‘right attitude’ reflects a mature and developed approach to regulation. However, stakeholders also recognised there will be occasions when more formal investigative and enforcement styles of working are necessary.

These two contrasting styles will mean that regulators need to recruit, develop and retain personnel who have the right combination of technical subject matter expertise and attention to detail combined with the personal skills and ability to think strategically. This combination will enable regulators to engage effectively with the front line workforce, supervisors and managers at all levels within a duty-holder. The Standards and Guidelines set out below in Table 6 provide guidance on how regulators can ensure they have appropriate recruitment, development, performance management and retention strategies and measures in place.

Table 6. Standards and guidance for People and Culture.

#	STANDARD	GUIDANCE
14	The competencies (knowledge and skills) and values (attitudes and ethics) required of staff are defined.	These include: <ul style="list-style-type: none"> + appropriate technical or domain knowledge and experience; + an appropriate balance of social/ people/ 'soft' skills required for effective function within a team environment and with duty-holders + skills necessary to apply knowledge in an effective way to undertake regulatory activities; and + the values required to achieve the regulator's goals (such as a willingness to help, probity, respect for process, and ability remain impartial and maintain probity).
15	A performance management system is implemented.	Specific mechanisms are in place to measure and monitor the performance of all personnel against the achievement of performance objectives. Mechanisms are also in place to identify and effectively reward good performance and manage underperformance.
16	All regulatory personnel take part in continuous professional development.	Mechanisms are in place to allow regulatory personnel are able to identify their developmental needs and undertake development (including on the job training, secondments, formal training, coaching or mentoring, etc).
17	A retention policy is developed and implemented.	Strategies and mechanisms are in place to ensure effective personnel are retained (this may include a combination of rewards and recognition strategies). It will be important for regulators to recognise that both financial and non-financial rewards will impact on retention.
18	The numbers of personnel must be adequate to discharge Government, community and industry expectations.	Organisations have strategies and mechanisms in place to ensure that an adequate mass of personnel with the appropriate knowledge, skills and experience is available to undertake the duties required of a regulator. This may include strategies to share human resources with other jurisdictions. The number and capabilities of regulatory personnel needed to effectively discharge the regulatory responsibilities should be documented including the basis on which this assessment was made.

6.1.7 Information Management and Recordkeeping

A key requirement of any regulatory organisation is an effective information management system. This is required for keeping records of regulatory submissions, (e.g. applications), track them through the regulatory process, provide reports for management purposes and to provide a record of the regulatory decisions taken by the regulator (and the reasons for those decisions). Quality information management and recordkeeping supports the rigor, **transparency**, **accountability** and therefore community confidence in the regulatory system. This then leads to a greater willingness to voluntarily comply with the regulatory regime and reduces the cost to regulators, duty-holders and taxpayers.

6.1.7.1 REGULATORY INTELLIGENCE AND RISK BASED ACTIVITY

To ensure risk-based regulatory activities (such as compliance monitoring) are adequately supported, regulators should also maintain quality regulatory intelligence about duty-holders. Information kept on duty-holders might include:

- + past performance, including:

- the standard of documents the duty holder provides for assessment and approval,
 - the standards they achieve in the field for their environmental and other obligations,
 - the rate and quality of completion of undertakings,
- + risks inherent in their operations, and
- + any other factors that might indicate the likelihood they will be non-compliant and the potential consequences of their non-compliance.

This type of information might be used to develop ‘intelligence’, composed on a profile of individual duty-holders who present a higher risk for non-compliance. Regulators would then use this intelligence to inform their compliance monitoring programs, allowing them to target those duty-holders who present a greater risk.

Table 7. Standards and guidance for Information Management and Recordkeeping.

#	STANDARD	GUIDANCE
19	Regulatory decisions are recorded.	The record should permit a reviewer to understand how and why the decision was made. This will allow for independent review and challenges by the duty-holder to be defended.
20	Regulatory intelligence is collected and used as an input to compliance monitoring activities and discussions with the duty-holder.	Regulators should ensure they are able to compile accurate information and use this as an evidence base to inform the frequency and focus of compliance monitoring activities. Duty-holders who present a greater risk of non-compliance (based on intelligence) should be targeted for compliance enforcement activity (such as education, inspections, audits, etc).

6.1.8 Continuous Improvement

During the consultation process, stakeholders expressed the importance of continuous improvement through quality management systems. Stakeholders also spoke of the value of internal and external audits to ensure that regulator functions were undertaken in an efficient and effective way. The Standards and Guidance provided below in Table 8 provide further information on how regulators could embed continuous improvement into their organisations.

Table 8. Standards and guidance for continuous improvement in regulatory practice.

#	STANDARD	GUIDANCE
21	Defined processes are used to identify and implement continuous improvement.	<p>These processes should cover all the Standards set out in the draft NLCF proposed in this document.</p> <p>Appropriate processes could include the introduction of Quality management systems (QMS) to identify gaps in performance and opportunities for improvement.</p> <p>DAs could undertake surveys of duty-holders and other stakeholders to gather their views (anonymously) on the effectiveness and efficiency of the regulatory regime and regulatory processes.</p> <p>Formal performance audits, based on these Standards, provide a vehicle to identify improvements.</p>

7 AREAS OF DIVERGENCE

Based on the review of documentation and telephone and face to face interviews with regulators and other stakeholders, there is widespread acceptance of the regulatory principles articulated in Section 5 of this report. Many of the regulators interviewed believed they were already applying these Principles. Noetic believes there will be broad agreement on the standards articulated in this Report. Noetic accepts there may be differences in the detail of *how* these Principles and Standards are achieved *in practice*. Three areas were identified where there was some disagreement among stakeholders as to how the principles and standards could be achieved in practice. They include:

- + the degree to which onsite (offshore) verification activities were needed to check that duty-holders were doing what they said they would do (see paragraph 7.1);
- + the degree of transparency (including internal regulatory procedures) (see paragraph 7.2); and
- + the extent to which regulatory decision taking was subject to formal quality reviews.

However, as was pointed-out by participants during the information gathering stage, the potential for different approaches will dramatically decline assuming the current Australian Government policy is implemented and NOPSEMA and NOPTA assume the existing regulatory functions of the DAs. Nevertheless, these detailed differences in regulatory philosophy and practice will still be relevant to whoever is the regulator and they are described below.

7.1 Offshore verification of duty-holders activities

Offshore verification of duty-holders is very well embedded in the philosophy and procedures of NOPSA, but was less so in the case of many of the DAs. For example, only one of the DAs interviewed indicated that they routinely (on a risk basis) undertook offshore site visits to verify compliance with well operations management plans (WOMPs). The other DAs indicated they were satisfied WOMP compliance could be verified by visits to the titleholder's office and by examining daily drilling reports (DDRs). As is discussed in the main body of the Report in section 6, it is a common finding amongst regulators that operations offshore do not always reflect records and documentation held at head offices onshore. Therefore, it is important that regulators invest their resources (on the basis of risk) in verifying the alignment between onshore documentation and offshore activity. This does not mean that regulators should verify all offshore activities as this would not be an effective or efficient use of limited resources. Instead, regulators should seek to understand which duty-holders and which operations present the greatest risks of non-compliance. Without offshore verification, regulators cannot be assured that duty-holders are actually undertaking the activities that are planned or recorded. This would represent a gap in the regulator's ability to effectively manage the risks associated with offshore petroleum activities.

7.2 Transparency

There were differing views among DAs as to how far the principle of transparency should be applied. Most DAs do not publish on websites their detailed checklists and procedures for carrying out compliance activities. These DAs indicated they did not believe publishing this material was necessary or desirable. They believed duty-holders may focus their activity to ensure they comply only with those areas being examined by the regulator rather than taking a holistic approach to ensure compliance.

However, the UK's HSE and Norway's PSA's experience suggests the opposite is true. These agencies publish internal manuals and guidance online on the basis that publishing this information promotes better understanding among duty-holders (and therefore better compliance) and ensures consistency among regulatory personnel. Noetic understands this practice is widely respected in the international offshore petroleum community and seen as leading practice.

It may be necessary for a more detailed examination of the evidence to determine which of these two contrasting approaches is the more successful. Regulators should examine which approach is associated with a higher level of compliance and a lower frequency of medium and severe level incidents. Regulators should also seek the views of the offshore petroleum industry about which approach is likely to result in better compliance, safety, integrity and environmental outcomes. With the evidence understood, Australian regulators may need to develop strategies to re-align their cultures to facilitate a more transparent approach.

7.3 Review of the Quality of Decision Taking

As mentioned in previous sections, the OPGGS Act establishes a largely objective-based regulatory regime with some more prescriptive elements included. In objective-based regimes, regulators are required to use their judgement to determine if risks are reduced to levels that are 'as low reasonably practicable' and to determine if the oilfield practice is 'good'. To ensure confidence in its capability to make these judgements, the regulator needs to demonstrate its ability to ensure its decisions are of a good quality.

There were differing views among regulators as to how quality of regulatory decisions might be assured. Most agreed that strategies to ensure the employment of capable and experienced personnel were essential. Most also agreed that documented internal decision-guiding policies also provided a level of quality assurance.

Most regulators agreed that some level of decision oversight was also necessary. However, there were differing views as to whether line-management oversight provided sufficient quality assurance for more complex, sensitive or high risk decisions. For these decisions, some regulators believed that more formal arrangements were necessary. They advocated it would be necessary to "peer review" the facts in decisions made on permission seeking documents. These documents were reviewed by a board to ensure the decision was of good quality and highly defensible. Another regulator advocated an 'Enforcement Management Model' (EMM) approach. This approach helped to guide regulators through the key considerations in making compliance decisions. It is also used to examine and challenge highly complex or sensitive decisions to ensure they are of the highest quality.

Whatever the approaches used by regulators, Noetic suggests regulators will need to develop comprehensive quality management models that describe what strategies and measures are in place to assure decision quality. These models would ideally include a combination of documented policies and procedures, line-management oversight, peer reviews and EMMs. The models should clearly demonstrate to duty-holders, stakeholders and the public how a regulator is ensuring that the quality of its work and decisions is being tested and maintained. This will assist the regulator to garner support for its abilities and facilitate voluntary compliance in the industry.

8 IMPLEMENTING THE NLCF

The NLCF described in this report should provide sufficient guidance on effective practice to regulators of the OPGGS Act. However, the true value of the NLCF, and the benefits it is intended to achieve, can only be realised if the principles and standards we suggest are adopted and its guidance is implemented by regulators.

To assist regulators to implement the NLCF, a list of **Implementation Actions** has been developed and is provided at **Annex F**. This list is based on the standards and guidance throughout this report. It should provide regulators with a sufficient starting point. Regulators are encouraged to action the list after having read this guide in full to understand and appreciate what it is aiming to achieve. Regulators should compare the guidance offered in this report against their own practices and determine what gaps might exist. They should then identify what measures or initiatives are needed to address the gaps between their own practice and what is considered to be effective practice. Regulators should then prioritise their set of initiatives according to their own strategic and operational needs. To assist them to close the identified gaps, regulators should examine what existing knowledge, experience, practice and materials they can draw on. For example, regulators may be able to draw on the effective practices of regulators of other industries within their jurisdiction (e.g. State-based work place health and safety regulators) or from OPGGS regulators in other jurisdictions (referred to as partner regulators). Each OPGGS regulator should maintain engagement with their partner regulators to ensure they continue to identify lessons and draw on valuable experience. Where regulators cannot draw on their partner regulators for content or inspiration, they should develop their own policies and content to address the gaps in their own practice.

9 CONCLUSION

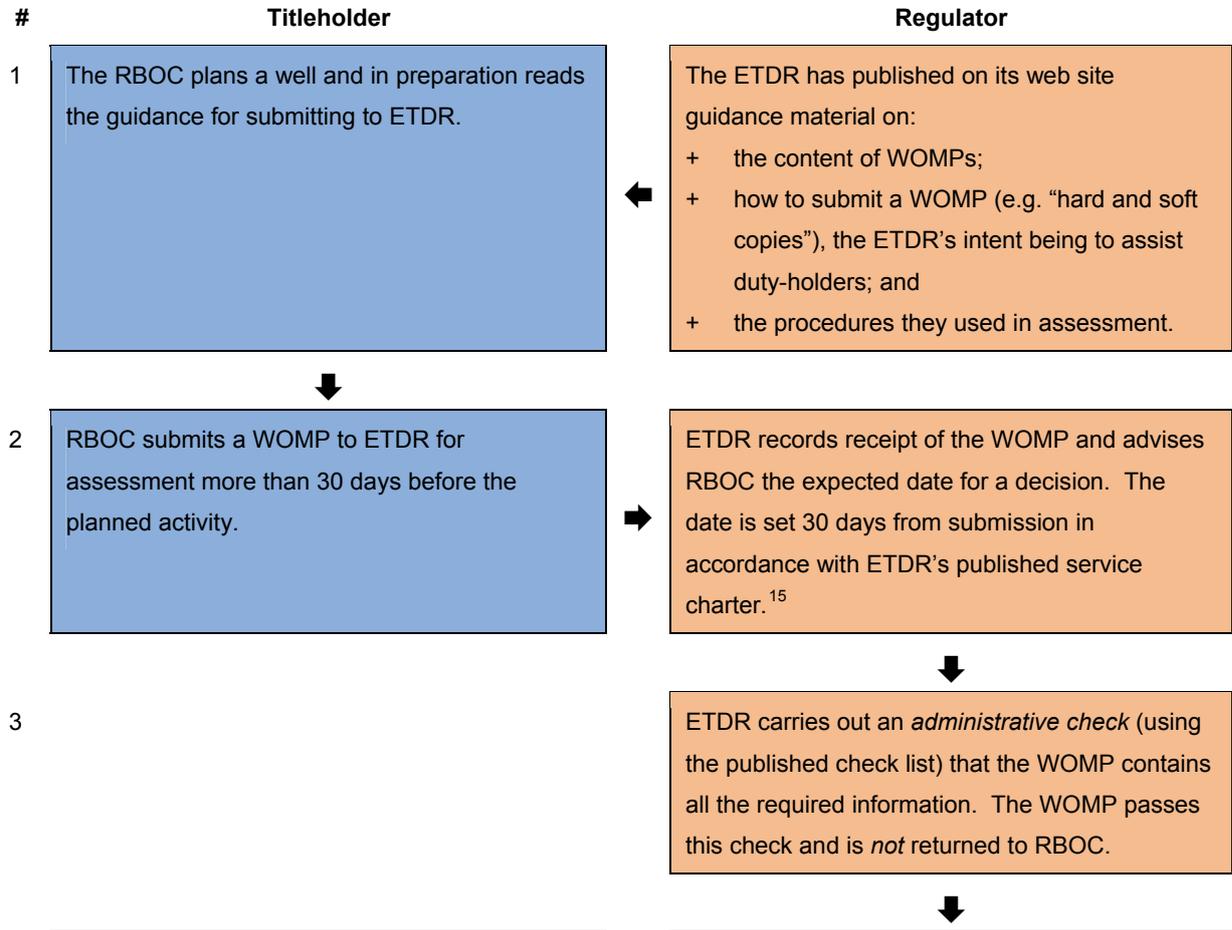
This report provides a starting point for the development and implementation of a NLCF. We have described six high level principles, and suggested standards and guidance on how the principles should be applied in practice. Noetic believes that if these standards are applied and the guidance followed, Australian regulators of offshore petroleum activities will be demonstrating good regulatory practice within the confines of the established legislative regime. Noetic also believes that if applied equally by all Australian regulators, the principals, standards and guidance presented in this report, will provide a basis for consistency in the administration of the OPGGS Act. At a minimum the standards and guidance we have suggested provide a framework for Australian regulators to use to examine their own performance. They may use our guidance as a benchmark and identify areas where they may need to re-align or add to their existing practices. Regulators may use this framework on a regular basis to facilitate continuous improvement by indenting the gaps, risks and potential problems in their regulatory practice. They may then prioritise their risks and address the issues in accordance with resource constraints.

ANNEX A: CASE STUDY – WELL OPERATION AND INTEGRITY

Introduction

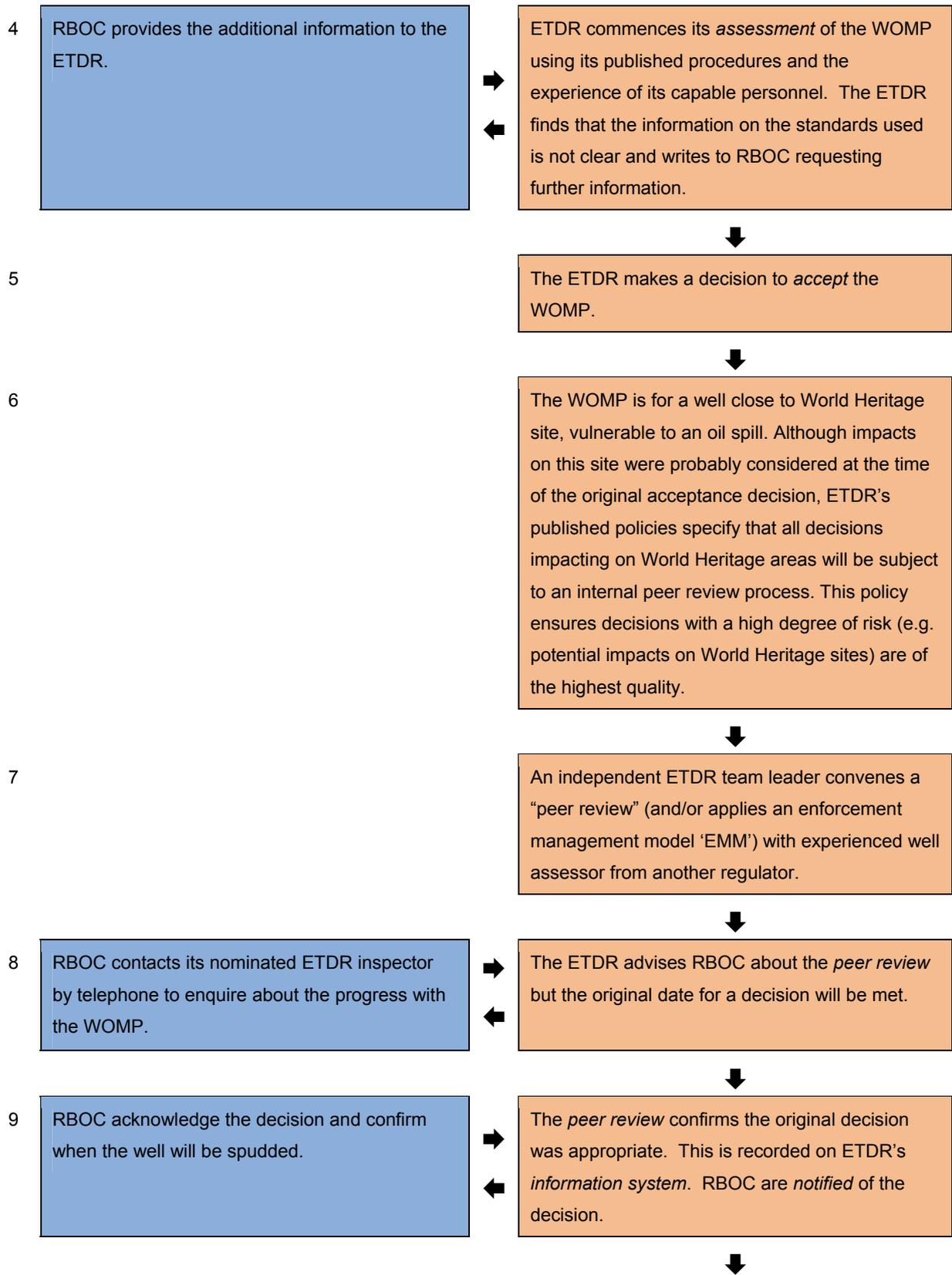
Figure 1 below illustrates a Case Study of the compliance processes for Well Operations Management Plans (WOMPs), based on the requirements of the *Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004* (hereafter referred to as WOMP Regulations). The Case Study uses a hypothetical situation where a fictitious oil company (Really Big Oil Company – RBOC) is planning a multi-well campaign to explore and extract petroleum. The well activity is regulated by the Eastern Territory Department of Resources (ETDR) as the Designated Authority (DA) under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGGS Act). Figure 1 below provides a flow diagram and narrative of how the situation unfolds from planning to well operations. It illustrates the tasks undertaken by the titleholder and the regulator and their interactions.

Figure 1. Flow diagram.

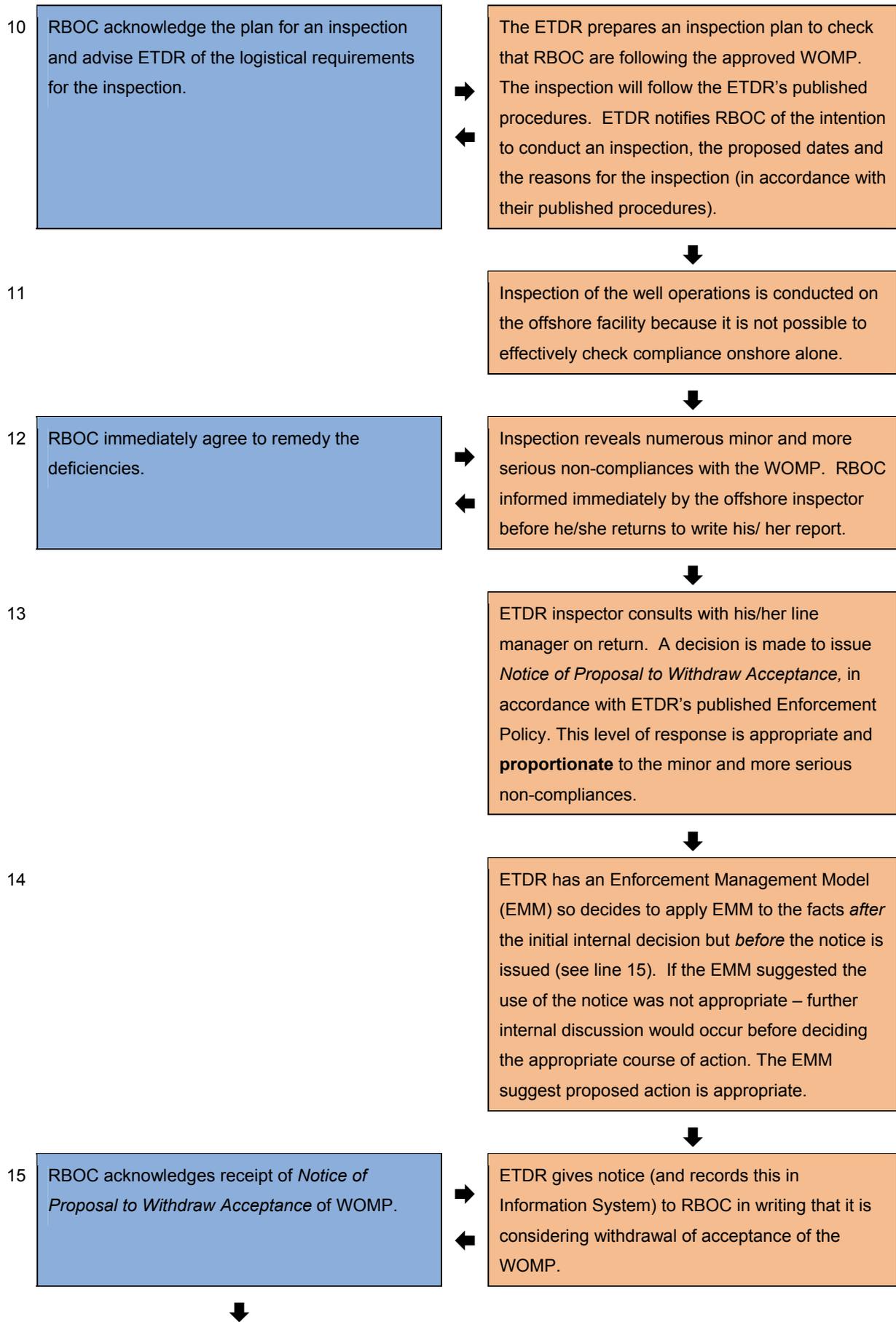


¹⁵ The published service charter timelines will be derived from the Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011

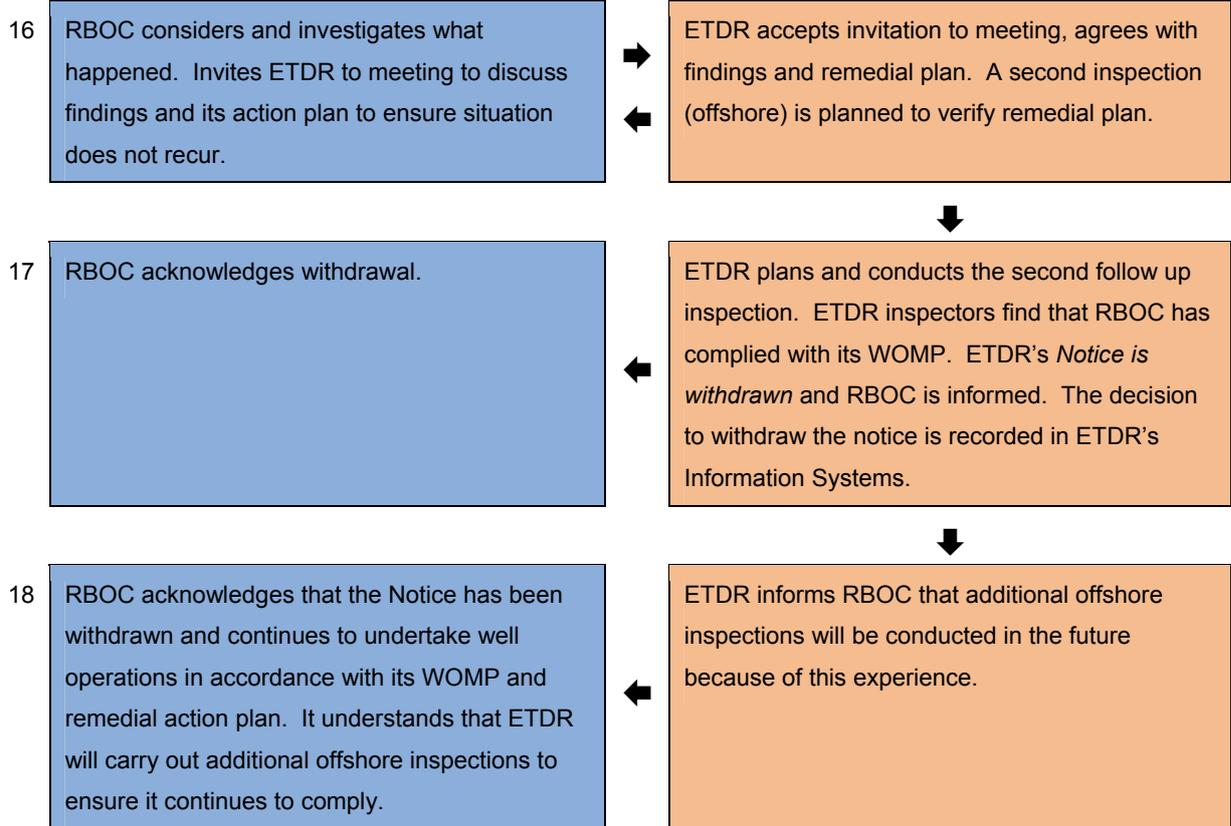
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ANNEX B: TERMS OF REFERENCE

- 1) The purpose of the consultancy is to develop the broad NLCF, based on a responsive model of legislation and regulation incorporating best practice administration, and consistent with the principles of transparency and accountability.
- 2) The NLCF to be developed by the consultant must include the following characteristics:
 - a) Development of a set of overarching approval and compliance principles;
 - b) Complete coverage of the entire offshore regulatory regime for compliance including: a methodology to facilitate the ongoing identification of gaps, risks and potential critical problems, and prioritisation of risk management approaches;
 - c) Facilitating continuous improvement and information sharing between the Regulator(s) and stakeholders, including the offshore petroleum industry;
 - d) The NLCF must also include regular evaluation and/or review to ensure that the provisions of the framework remain appropriate and reflect best practice regulator administration principles.
- 3) The consultancy will use the approvals and compliance monitoring of well operation and integrity activities, as currently required under the Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004, as a case study.
- 4) In undertaking the well operations case study, the consultant will:
 - a) Identify the processes implemented by the Designated Authorities in performing their responsibilities and discharging their obligations under the Petroleum (Submerged Lands) (Management of Well Operations) Regulations 2004.
 - b) Identify those elements that represent best practice regulatory approach
 - c) Develop a framework, drawing on the elements identified as best practice, for approval and compliance monitoring for well operation activities.
- 5) In developing the NLCF, it is envisaged that the consultant will:
 - a) Develop a questionnaire, in consultation with the Department, to seek stakeholders' views on a matters relating to:
 - i) The key objectives of a NLCF;
 - ii) Key issues as identified by regulators;
 - iii) Risk identification strategies and compliance and enforcement methodologies implemented by the regulators;
 - iv) The effectiveness of current processes and how they may be improved/achieve best practice.
 - b) Consult with key stakeholders, including all Designated Authorities (DAs).

- c) Collate and analyse feedback/information (qualitative and quantitative) from questionnaires plus additional sources such as annual reports, previous audits, and researched best practice compliance methodologies.
- d) Develop options for development of a NLCF using the well operations case study
- e) Provide a Report to the Department that includes:
 - i) An analysis of existing compliance and approval strategies;
 - ii) Provision of best practice regulatory activities for Inclusion of well operation activity as a case study;
 - iii) Identification of best practice activities drawing lessons learned from the Offshore Petroleum Safety Regulation Inquiry, the Montara Commission of Inquiry, Productivity Commission "Review of the Regulatory Burden on the Upstream (Oil and Gas) Sector", and feedback from consultation with stakeholders;
 - iv) Recommendations on practical ways to implement a NLCF including transitional arrangements.

ANNEX C: DOCUMENTS REVIEWED

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ANNEX D: PERSONNEL INTERVIEWED

Organisation	Personnel	Position Title
Australian Petroleum Production and Exploration Association	Ms Miranda Taylor	Director, Skills and Safety
Primary Industries and Resources SA	Dave Cockshell	Chief Petroleum Geophysicist
	Michael Malavazos	Chief Engineer
Department of Mines and Petroleum (Western Australia)	Kim Anderson	General Manager
	Reza Malek	General Manager
	Mark Gabrielson	General Manager
	Hayden Samuels	Approvals Monitoring Officer
	Beverly Bower	General Manager
Department of Primary Industries (Victoria)	Moshtak Othman	Principal Petroleum Resources Advisor
	Terry McKinley	Manager for Petroleum and Geothermal Operations
	Doug Sceney	Director for Earth Resources Regulation
Department of Resources (Northern Territory)	Alan Holland	Director for Energy, Assistant Director of Titles
Department of Employment, Economic Development and Innovation (Queensland)	Jim Grundy	General Manager for Mining and Petroleum Operations
Department of Infrastructure, Energy and Resources - Mineral Resources Tasmania	Michael Leonard	Director for Mines
Department of Industry and Investment (New South Wales)	Tracey Godwin	Team Leader, Coal and Petroleum Titles
Department of Infrastructure, Energy and Resources – Mineral Resources Tasmania	Carol Bacon	Managing Geologist, Industrial Minerals and Land Management
National Offshore Petroleum Safety Authority	Simon Schubach	General Manager Regulatory Operations

ANNEX E: STANDARDS & GUIDANCE CHECKLIST

#	STANDARD	GUIDANCE
1	Regulators should establish and maintain governance arrangements to ensure authority is exercised in accordance with legislation and regulation.	<p>Management line oversight provides some level of assurance but additional assurance could be provided via a peer review process¹⁶, which allows decisions or actions to be reviewed either regularly or periodically. Peer reviews may occur on a risk-management basis so the decisions of less experienced personnel (who may be more prone to errors) are reviewed more frequently while more experienced personnel are subject to fewer reviews. Reviews would include:</p> <ul style="list-style-type: none"> + review of assessment and recommendation by a decision maker leading to the correct decision, or + peer review after the event of a decision of the adequacy of the assessment.
2	Governance arrangements are in place to ensure the performance of the regulator is in accordance with performance expectations.	<p>Regulators may establish senior management committees and stakeholder reference groups who examine the performance of the regulator in meeting its stated objectives. To facilitate this, regulatory objectives should be published in an annual business plan with specific goals and targets. Regulators could also publish service charters which set out the minimum standard of service stakeholders can expect. A stakeholder reference group could examine performance against these goals and report to the Minister or Parliament on the outcomes.</p> <p>Data on compliance with key performance indicators should be regularly reported and considered by senior managers. This should include data on the quality of decision taking.</p>
3	Governance arrangements are in place to ensure regulatory independence.	<p>Regulators develop and enforce codes of conduct that stipulate that officers should avoid or declare actual or potential conflicts of interest if they are involved in regulatory decisions.</p> <p>Regulators should establish and maintain policies and mechanisms to actively monitor 'regulatory capture'. This will include organisational structures and information systems separating regulatory functions from industry promotion functions.</p>

¹⁶ A peer review process is usually conducted by colleagues within the regulator.

4	Document and publish the regulatory strategies and policies which will guide compliance activities.	<p>These should describe the regulatory strategy and policies in use and how, why and in what circumstances the regulator will use the various powers granted to it under the legislation.</p> <p>Examples include the Victoria's WorkCover Compliance and Enforcement Policy and the UK HSE's Enforcement Policy</p>
5	Guidance material is published to assist duty-holders meet their legal obligations.	<p>Guidance material should be developed in consultation with stakeholders.</p> <p>The use of case studies may be employed to give practical examples.</p> <p>Dissemination of information on incidents, near misses, good practice and the results of enforcement action should be published as appropriate to facilitate lesson learning.</p>
6	Policies and guidelines for the conduct of regulatory activities are published including their objectives, scope and timing.	<p>Policies and guidelines should be published on each regulatory activity from education activities to inspections to prosecutions. Policies and guidelines should provide a level of clarity and certainty to duty-holders to enable them to predict under what circumstances they should expect to see regulatory activities undertaken. Policies and guidelines should be accurate and realistic.</p>
7	The criteria used by the regulator to judge compliance is published.	<p>In simple cases the legislation may provide sufficient information on compliance assessment criteria. However, for complex risk based decisions within an objective-based legislative regime, more guidance is needed. The use of Enforcement Management Models is one way to do this (as used by the UK Health and Safety Executive and the National Offshore Petroleum Safety Authority).</p>
8	Regulators compliance action is based on a proportionate response.	<p>Regulators should publish guidance on how the proportion of the response is determined. Case studies may form a useful way of achieving this.</p>
9	Regulators adopt a cooperative approach to assist duty-holders comply.	<p>Regulators provide guidance on the development of remedial action plans to secure compliance by the duty-holder in accordance with the principle of helpfulness. This can be done without 'regulatory capture'¹³ and increase confidence that the plan will return the duty holder to compliance.</p>
10	The quality of compliance decisions is routinely monitored.	<p>Line managers may sample the documents produced by their staff and discuss with them how they arrived at their decisions.</p>
11	Complex or sensitive compliance decisions are internally reviewed.	<p>A variety of approaches are currently in use including peer review techniques (DPI Victoria), and the use of an Enforcement Management Model (NOPSA).</p>

12	A mechanism exists for duty-holders to seek an informal review of a compliance decision.	These sorts of mechanisms typically involve engaging an officer from a separate team within the regulator (to give a degree of independence) to determine if they would arrive at the same decision if they were provided with the same information.
13	Avenues exist for complaint from duty-holders to be lodged and responded to.	Regulators may also publish information about their complaints procedure. Regulators may publish a link to a complaints form on their website (e.g. DPM WVA). The complaints form allows the user to enter information about the nature of the complaint and preferred resolution.
14	The competencies (knowledge and skills) and values (attitudes and ethics) required of staff are defined.	These include: <ul style="list-style-type: none"> + appropriate technical or domain knowledge and experience; + an appropriate balance of social/ people/ 'soft' skills required for effective function within a team environment and with duty-holders + skills necessary to apply knowledge in an effective way to undertake regulatory activities; and + the values required to achieve the regulator's goals (such as a willingness to help, probity, respect for process, and ability remain impartial and maintain probity).
15	A performance management system is implemented.	Specific mechanisms are in place to measure and monitor the performance of all personnel against the achievement of performance objectives. Mechanisms are also in place to identify and effectively reward good performance and manage underperformance.
16	All regulatory personnel take part in continuous professional development.	Mechanisms are in place to allow regulatory personnel are able to identify their developmental needs and undertake development (including on the job training, secondments, formal training, coaching or mentoring, etc).
17	A retention policy is developed and implemented.	Strategies and mechanisms are in place to ensure effective personnel are retained (this may include a combination of rewards and recognition strategies). It will be important for regulators to recognise that both financial and non-financial rewards will impact on retention.
18	The numbers of personnel must be adequate to discharge Government, community and industry expectations.	Organisations have strategies and mechanisms in place to ensure that an adequate mass of personnel with the appropriate knowledge, skills and experience is available to undertake the duties required of a regulator. This may include strategies to share human resources with other jurisdictions. The number and capabilities of regulatory personnel needed to effectively discharge the regulatory responsibilities should be documented including the basis on which this assessment was made.

19	Regulatory decisions are recorded.	The record should permit a reviewer to understand how and why the decision was made. This will allow for independent review and challenges by the duty-holder to be defended.
20	Regulatory intelligence is collected and used as an input to compliance monitoring activities and discussions with the duty-holder.	Regulators should ensure they are able to compile accurate information and use this as an evidence base to inform the frequency and focus of compliance monitoring activities. Duty-holders who present a greater risk of non-compliance (based on intelligence) should be targeted for compliance enforcement activity (such as education, inspections, audits, etc).
21	Defined processes are used to identify and implement continuous improvement.	<p>These processes should cover all the Standards set out in the draft NLCF proposed in this document.</p> <p>Appropriate processes could include the introduction of Quality management systems (QMS) to identify gaps in performance and opportunities for improvement.</p> <p>DAs could undertake surveys of duty-holders and other stakeholders to gather their views (anonymously) on the effectiveness and efficiency of the regulatory regime and regulatory processes.</p> <p>Formal performance audits, based on these Standards, provide a vehicle to identify improvements.</p>

ANNEX F: IMPLEMENTATION ACTIONS

#	Action
1	<p>a) Develop and publish policies and guidelines describing how quality is to be assured. The policies and guidelines should describe all the mechanisms in place that assure appropriate use of authority. These mechanisms should include governance arrangements, line management, delegation mechanisms (and how they are documented), and what monitoring is undertaken.</p> <p>b) Develop and document the roles and responsibilities for assuring quality throughout the organisation. Roles and responsibilities, regarding quality assurance, should be documented. All personnel should understand their obligations for assuring quality of performance, service, decisions and all aspects of the regulator’s functions. These obligations should be considered in the management of personnel performance.</p> <p>c) Develop, document and implement procedures to monitor the quality of decisions. The document should include a auditing and/ or a peer review process and describe:</p> <ul style="list-style-type: none"> + the purpose and scope of the processes; + which decisions are reviewed/ audited (including the criteria used to determine whether or not to review a decision); and + the frequency and mode of review/ audit (e.g. monthly via committee or weekly by line manager).

- 2 Establish and maintain governance arrangements to assure the performance is in accordance with performance standards. Governance arrangements should include:
- + developing a performance standard
 - + establishing a senior management committee
 - + establishing a stakeholder reference group.

Performance Standard

Regulators should articulate (and publish) a statement of the standard of performance that is expected of them. This is typically articulated in a service charter. This document should describe the regulatory objectives, strategic priorities for the period, the performance indicators (qualitative and quantitative), performance benchmarks (current) and performance targets (intended). The document should provide detail on how regularly performance indicators will be published.

Senior Management Committee

A senior management committee should be established to examine the regulator's performance (from an internal perspective). The senior management committee should be comprised of senior managers from across key areas of the organisation. It should examine performance against the stated performance standard, identify areas for improvement, identify priorities for remedial actions and identify dependencies and resource implications. The senior management committee's activities and decisions should be made transparent.

Stakeholder Reference Group

A stakeholder reference group should be established to examine the regulator's performance (from an external perspective). The stakeholder reference group should be comprised of representatives from the offshore petroleum exploration and production industry and other relevant stakeholders (such as environmental interest groups). It should examine the regulator's performance against the stated performance standard and its own expectations. It should be tasked to identify areas for improvement, and recommend priority action. It should provide advice to the senior management committee. The stakeholder reference group's recommendations (and the response of the senior management committee) should be made transparent.

- 3 Develop and publish a policy describing the regulator's governance arrangements and how these arrangements will ensure regulatory independence and objectivity. The policy should describe codes of conduct for all personnel. If necessary, codes of conduct would be tailored to distinguish between those performing regulatory roles and those performing purely internal administrative roles. The code should provide specific advice about how personnel should behave regarding their interactions with proponents and duty-holders. Specific advice should also be provided to assist personnel avoid 'industry capture' or any conflict of interest. The policy document should describe what procedures will be in place for assuring the code of conduct is implemented effectively. At a minimum this would include line management mechanisms and regular reviews of compliance with the code (e.g. via regular sampling) to ensure that line management has been effective.
- Ideally, regulatory functions should be clearly separated from industry promotion functions. However, if both of these functions are performed by the same organisation, the organisation should clearly explain what is in place to ensure the functions remain independent of each other. This is necessary because there could be a conflict of interests between industry promotion and industry regulation. In particular, the organisation should explain what governance arrangements are in place to ensure the separation of the functions and avoid conflicts of interest. The organisation should also identify how potential conflicts are identified, managed and addressed. There should be a high level of transparency around identifying and addressing potential conflicts of interest to allow a high degree of scrutiny. To achieve this, the organisation should identify some 'independence' indicators and report performance against these.
- 4 Develop and publish a document describing the regulator's high level objectives for enforcement of the legislative framework. The document should include statements on the organisation's:
- + vision (a statement of the desired end state);
 - + mission (a statement of the role of the regulator in achieving the vision);
 - + principles or values that underpin the regulator's approach to its activities (e.g. helpfulness, transparency, accountability, consistency, effectiveness and efficiency, etc);
 - + scope of regulatory activities;
 - + the role of the regulator;
 - + relevant legislation; and
 - + the full spectrum of compliance strategies (incorporating encouragement, education, monitoring, inspection, enforcement measures, etc);
 - + explanations or examples of where compliance strategies might be implemented (for example, under what circumstances an inspection will occur or when a prosecution might occur).
- 5 Develop guidance material in consultation with proponents and duty-holders to ensure the guidance material meets their needs. The guidance material should provide advice on how compliance can be achieved across the full spectrum of regulated activities. Guidance should also cover the full spectrum of regulatory functions from applying for a title to developing a remedial action plan following non-compliance. Guidance should also cover what governance an organisation has established to assure their own compliance. Guidance should provide advice on what information should be regularly monitored by an organisation and how this information should be used. Guidance should include indicative checklists for organisations to determine whether they are demonstrating effective practice¹⁷. Guidance should also include examples of effective practice and be tailored to different types and sizes of organisations.

¹⁷ Regulators should emphasise that the checklists are provided as a guide only and that duty-holders should identify additional items or actions and not limit their own compliance assurance to what is suggested on the checklist.

6	<p>Develop and publish policies and procedures for the conduct of regulatory activities. These policies and procedures should include education, awareness raising, assessments of applications or plans (including Well Operations Management Plans and Environmental Plans), inspections, issuing of notices, development of remediation plans, prosecutions. Regulators should consult with proponents and duty-holders to ensure the policies and procedures provide a useful level of certainty about the issues and circumstances considered by the regulator in determining what activities to undertake and when¹⁸. At a minimum the regulator should publish the criteria used to design the inspection/ compliance monitoring program (for example, size and experience of company, past compliance history, risks inherent in operations, etc).</p>
7	<p>Regulators should document and publish the criteria (or factors) used to determine compliance or non-compliance. Where the criteria are set in legislation or Regulation, the regulator should provide guidance on the practical meaning of these criteria, how they are weighted (if weighted) and what might be examined to determine compliance/ non-compliance.</p> <p>Where criteria are not specified in legislation or Regulation, the regulator should articulate and publish the criteria/ factors considered in determining compliance/ non-compliance. A clear rationale (and an evidence base) for why these criteria are used should also be provided so that proponents and duty-holders can understand what is being examined and why. The regulator should also demonstrate how it ensures compliance/ non-compliance decisions are based on the published criteria. To do this, the regulator should publish its internal decision quality assurance processes (such as the use of an Enforcement Management Model, auditing or peer review processes).</p>
8	<p>Document and publish information on the spectrum of regulatory responses used and under what circumstances they are used. If graduated responses are not used, the regulator should provide a public explanation as to why. Where graduated responses are used, they should be based on clearly defined (and published) risk-based criteria. The guidance provided by the regulator should include practical examples (such as case studies) of where graduated responses have or would be used and why.</p>
9	<p>To demonstrate the principle of 'helpfulness', regulators should provide reasonable and practical assistance to proponents and duty-holders to ensure their compliance. Assistance should include providing practical information and advice both in writing and in person. Regulators should ensure the advice provided to a proponent or duty-holder does not give it an unfair advantage or disadvantage. Regulators should discuss with industry representatives what assistance might be needed and what assistance is reasonable to provide. The assistance should, at a minimum, include providing advice about what issues a remedial action plan should address.</p>

¹⁸ This does not mean that regulators are not able to conduct surprise inspections. However, duty-holders should be provided with clear guidance about the circumstances in which they might be subject to surprise inspections.

10	Develop internal quality assurance policies for internal quality assurance. The policy should be applied to ensure that regulatory decisions are of a good standard. The policy should explain the need for internal quality assurance, objectives to be achieved and strategies adopted to achieve them. The policy should be endorsed by the CEO and enacted by line management. Documents should also be developed (based on the policy) to describe how the policy will be implemented, including the mode and frequency of internal quality assurance processes. These documents and procedure should (as a minimum) include sampling policy, where documentation on regulatory decisions is reviewed by a line manager or independent reviewer. The sampling regime should be based on clearly articulated risk-based criteria. These criteria should include the experience of the decision maker, track record on the quality of past decisions, the complexity of the decision process and the risks of a decision of lower quality and any other relevant factors. These criteria should be based on evidence and described in internal policy documentation.
11	As described in Action 10, regulatory decisions should be reviewed in accordance with an internal quality assurance policy. The policy should describe the risk-based factors used to determine the internal review regime. Whatever the internal review processes used (e.g. internal review or Enforcement Management Model), the documentation should include a clear statement explaining why a particular process has been chosen. It may also explain why a combination of processes is appropriate and in what circumstances they are applied.
12	In addition to establishing a procedure to respond to complaints, regulators should establish a policy that allows for compliance decisions to be reviewed by the regulator. This policy should establish procedures aimed at reducing the likelihood that a dispute over a compliance decision will proceed to formal review (either by Administrative Appeals Tribunal or by a court under the Administrative Decisions (Judicial Review) Act 1977). The policy should apply equally to decisions regardless of whether they are 'reviewable delegated decisions' or non-reviewable delegated decisions. The policy should be published along with information about the administrative and judicial review processes so that proponents or duty holders are aware of the opportunities available for reviewing disputed decisions ¹⁹ .
13	Develop and publish a complaint handling policy and procedure that describes how complaints will be handled. The complaints handling policy should describe what complainants can expect from the Regulator in terms of timing and consideration. A complaints procedure is clearly described and published so that complainants can understand how to make a complaint, how it will be examined (i.e. what the process of consideration is and how and when they will be contacted for further information or notified of the outcome). The published information should also include an easy to complete complaints form. This form should capture all relevant information but reduce the need for duplicative entry of information where practicable.
14	Develop and publish a document that articulates the core capabilities (types of skill) and degree of competency required of personnel at various levels in core regulatory positions. The capabilities should include technical or domain specialist skills and inter-personal skills where these are relevant. The document should articulate the minimum knowledge and experience expectations for key regulatory decisions.

¹⁹ Also see *Reconsideration and review of decisions of the Joint Authority and Designated Authority under the Offshore Petroleum and Greenhouse Gas Storage Act 2006* available at http://www.ret.gov.au/resources/Documents/upstream-petroleum/Review_ofJAandDA_decisions_under_theOPGGSA.pdf.

15	<p>Develop a performance management framework based on organisational objectives and the set of core competencies (and standards of competence) to be applied to the recruitment, development and performance management of personnel. The framework should allow for performance expectations to be articulated at the organisational (strategic) level, through division or group level and to the individual. Performance indicators should be developed, measured and monitored. Under performance should be addressed and good performance recognised and rewarded²⁰ to encourage effective personnel to remain and encourage good performance.</p>
16	<p>A performance management framework should be developed and implemented which encourages individual professional development. The framework should allow for both formal (e.g. training) and informal (e.g. on the job and coaching) development. It should also allow for professional exchanges (such as via secondments to other regulators) and development of industry experience. Organisations should make it clear to personnel that professional development is a legitimate work activity. A professional development policy should be developed that includes options for study leave, secondments and other professional development opportunities.</p>
17	<p>A recruitment and retention policy should be developed aimed at acquiring and retaining personnel with the required core competencies (and competency levels). The policy should include clearly stated recruitment and retention objectives, implementations strategies, targets and performance indicators. Retention strategies should at least include meaningful reward and recognition of effective performance. The effectiveness (performance) of the policy should be monitored and reported to senior management.</p>
18	<p>Regulators should identify the capabilities and competencies required to fulfil the expected service standard demanded by parliaments, ministers, stakeholders, proponents and duty-holders. This information should inform a capability framework and performance management framework and minimum staffing requirements. Regulators should develop a minimum staffing requirement outlining the number of personnel that are required to have certain capabilities and competencies. Documentation should also be prepared on the expected cost of these staffing requirements. Where available funding and cost recovery does not match staffing requirements, the regulator should explicitly explain which expected service standard cannot be met and why. Where necessary and practicable, regulators should develop resource sharing arrangements with other regulators within their own jurisdiction or with other jurisdictions. Resource sharing arrangements should include cost sharing arrangements (or fee for service) and procedures on how to resolve conflicts.</p>
19	<p>Regulators should have established policies and procedures in place to enable regulatory decisions to be recorded and published in a timely manner. This does not mean that commercially sensitive information should be published. The decision should be published with clear reasons for grounds for the decision so as to enable the decision to be scrutinised by any third party.</p>
20	<p>Regulators should develop an information/ knowledge base to support intelligence-led compliance monitoring. The information/ knowledge base should, at a minimum, retain information about the identify of duty holders, their past compliance performance and the nature of their operations. This information should be combined to determine the risk the duty-holder presents for non-compliance. This risk rating is then used to determine the nature and frequency of compliance monitoring activity undertaken on the duty holder.</p>

²⁰ Rewards may be financial or non-financial.

- 21 Regulators should develop and embed continuous improvement (CI) frameworks into their operations. The CI framework should enable the organisation to identify where there is potential to improve any policy, procedure or process within the organisation. The CI framework, as a minimum, should incorporate:
- + routine quality management processes (such as line management);
 - + regular risk-based sampling;
 - + audits,
 - + opportunity for external stakeholders to provide advice on how policies, procedures or processes may be improved (e.g. surveys or stakeholder reference groups);
 - + reviews of implementation of previous improvements to ensure benefits were realised; and
 - + performance monitoring and management.

ANNEX G: GLOSSARY

Short Version	Long Version
AFMA	Australian Fisheries Management Authority
ALARP	as low as reasonably practicable
ANAO	Australian National Audit Office
APPEA	Australian Petroleum Production and Exploration Association
ATO	Australian Taxation Office
DA	Designated Authority
DRET	Department of Resources, Energy and Tourism
EAF	Environmental Assessors Forum
EMM	Enforcement Management Model
EPs	Environmental Plans
JA	Joint Authority
MRT	Mineral Resources Tasmania
NLCF	National Legislative Compliance Framework
Noetic	Noetic Solutions Pty Limited
NOPSA	National Offshore Petroleum Safety Authority
NOPSEMA	National Offshore Petroleum Safety and Environmental Management Authority
NOPTA	National Offshore Petroleum Titles Administrator
NT	Northern Territory (also refers to Government of the Northern Territory)
OPGGs Act	<i>Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Commonwealth)</i>
PIRSA	Primary Industries and Resources South Australia
PSA	Petroleum Safety Authority Norway
RFT	Request for Tender
TGA	Therapeutic Goods Administration
UPGS	Upstream Petroleum and Geothermal Subcommittee
Vic DPI	Victorian Department of Primary Industries
WOMPs	Well Operations Management Plans

