



**Australian Government**  
**Department of Industry, Science,  
Energy and Resources**

# Offshore Oil and Gas Safety Review

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Policy Framework

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# Introduction

The Department of Industry, Science, Energy and Resources (the department) has developed this policy framework as part of the review of the offshore petroleum and greenhouse gas storage safety regulatory regime. Amendments to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGGS Act) and the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* (Safety Regulations) are proposed.

The framework sets out the department's proposed policy approach for the offshore oil and gas safety regulatory regime and has been developed following consultation with stakeholders (the offshore workforce, industry, government agencies and unions) and consideration of submissions received in response to the department's discussion paper<sup>1</sup> and draft policy framework<sup>2</sup>.

The department has also taken into account feedback during consultations with the Safety Stakeholder Group which comprises Commonwealth and state governments, offshore industry, union and workforce representation, as well as members of the offshore workforce, collected through an online survey.

Submissions and feedback broadly supported the continuation of an objective-based regime while highlighting elements where amendments could raise the overall level of safety, improve effectiveness of engagement between industry and the regulator, the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), and remove unnecessary administrative duplication and jurisdictional confusion. Workers particularly emphasised the need for industry to consider the overall wellbeing of workers and to improve the effectiveness of fatigue management through rostering systems and design of sleeping conditions.

The framework also includes a policy measure that gives effect to a recommendation from the Walker Review into the circumstances that led to the liquidation of the Northern Oil and Gas Australia Pty Ltd (NOGA) group of companies.

In line with the principles of best practice regulation, the department is committed to ensuring that the offshore safety regulatory regime remains relevant and effective over time. The department considers the proposed amendments in the policy framework continue to support an objective-based regulatory regime, facilitate continuous improvement for safety in the offshore industry and represent effective and proportional solutions to the issues being addressed.

The policy framework outlines the proposed policy responses to the issues considered. The policy positions are described in terms of their objectives and high level principles for how they may be

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<sup>1</sup> Department of Industry, Science, Energy and Resources, URL: [https://consult.industry.gov.au/offshore-resources-branch/safety-review-discussion-paper/supporting\\_documents/offshoresafetyreviewdiscussionpaper.pdf](https://consult.industry.gov.au/offshore-resources-branch/safety-review-discussion-paper/supporting_documents/offshoresafetyreviewdiscussionpaper.pdf)

<sup>2</sup> Department of Industry, Science, Energy and Resources, URL: [https://consult.industry.gov.au/offshore-resources-branch/offshore-oil-and-gas-safety-review/supporting\\_documents/offshoresafetyreviewdraftpolicyframework.pdf](https://consult.industry.gov.au/offshore-resources-branch/offshore-oil-and-gas-safety-review/supporting_documents/offshoresafetyreviewdraftpolicyframework.pdf)

implemented. Finer-level implementation details will be determined once the policy framework has been approved, which will inform the extent to which any cost-recovery will be required.

## Safety case and facility operation

### 1. Inclusion of a Design Notification Scheme (DNS) in the offshore safety regulatory regime

Under the current offshore safety regulatory regime, voluntary early engagement on the safety case is the key mechanism used by the offshore oil and gas industry to engage early with NOPSEMA at the design phase of project development on the management of safety risks for offshore production facilities.

However, the safety case does not provide clear regulatory boundaries within which to assess design concepts and demonstrate that the proposed design for the facility reduces safety risks to as low as reasonably practicable (ALARP).

Recognising the value of early engagement, the department proposes to develop a mechanism with clear regulatory processes to enable industry to engage in constructive dialogue with NOPSEMA on design and concept-selection matters. Early engagement would allow for consideration of alternative concepts that may provide for greater safety outcomes prior to the commencement of facility production.

In order to ensure that the early engagement mechanism yields beneficial results across as many projects as possible, the department is proposing that it will be mandatory for proponents of all new production facilities to engage with and submit design concept details to NOPSEMA through the Design Notification Scheme (DNS). Details of the DNS will be determined in consultation with stakeholders but will likely include the following components:

- engagement with NOPSEMA on the design to begin early in the Front-End Engineering and Design (FEED) Phase (before lodgement of the field development plan (FDP) for the field at which the facility will be operating)
- NOPSEMA will assess whether the submitted design contains sufficient information, and will have a mechanism to request further information if a design is incomplete
- NOPSEMA will assess and provide written feedback on the design concept identifying any safety issues, but will not 'accept' or 'reject' the design
- a requirement governing the timing of NOPSEMA's response to the initial design notification and any submissions made by the proponent following receipt of this response
- a mechanism in the safety case to 'close the loop' and provide assurance that feedback from NOPSEMA on safety issues has been appropriately addressed by the proponent
- a cost-recovery structure to meet the costs incurred by NOPSEMA in reviewing and providing feedback on the design concept.

These changes are intended to:

- raise the overall safety standard in the offshore industry by having facility designs that incorporate best practice safety standards for offshore workers
- reduce the cost burden on industry by having early engagement on design and concept selection at the most appropriate time in order to challenge design defects before facility production has commenced
- ensure that early engagement occurs within a clearer framework by establishing regulatory processes for engagement that are applied consistently across the offshore sector
- provide the proponents of new production facilities with a robust early engagement mechanism through which industry may undertake meaningful consultation with NOPSEMA on design and concept selection
- ensure that decommissioning can be considered and planned for early in the design process.

## **2. Control measures critical to safety and the management of change process**

Current provisions in the Safety Regulations require facility operators to submit a revised safety case to NOPSEMA in certain circumstances, such as when technical knowledge becomes outdated, when activities to be carried out at the facility are different from the activities in the safety case, when a series of proposed modifications to the facility would change the overall level of risk of major accident events, or when there has been a significant increase in the level of risk to the health or safety of persons at or near the facility.

This requirement is in line with the concept in the offshore safety regulatory regime that duty holders are required to ensure that safety risks continue to be reduced to ALARP when any proposed changes are implemented.

Other less significant changes can be undertaken under the operator's Management of Change (MoC) system without formal submission and acceptance of a revised safety case. Using the MoC process is appropriate when the change is temporary and short-term, and when equivalent or better controls are put in place by the operator in the interim. However, MoC is not a substitute for formal revision and acceptance of a safety case, particularly where it is being used to facilitate long-term or permanent change or manage a significant increase in the level of risk.

The department understands that there have been many instances where operators have used the MoC process to address the loss of safety-critical controls (which may be equipment or process), without understanding that this constitutes a significant increase in the level risk to the health or safety of persons at or near the facility and therefore requires a safety case revision.

To address any ambiguity around the circumstances that require a safety case revision rather than a MoC process, the department is proposing to amend the Safety Regulations as follows:

- in addition to the current requirement that operators must include in the safety case details of the technical and other control measures identified as a result of the formal safety assessment (regulation 2.5(1)(b)), operators must also identify which of those control measures are critical to safety, and

- amend the regulations for the revision of a safety case to require that operators submit a revised safety case when there has been, or will be, a loss or removal of a technical or other control measure which they identified in the safety case as being critical to safety.

The department recommends that NOPSEMA produce guidance for the offshore oil and gas industry to assist with determining when it is appropriate to use the MoC process.

These changes are intended to:

- raise the overall safety standard by reinforcing the requirement that a safety case revision must be submitted to NOPSEMA where there has been a change or modification to control measures that increases the level of risk at a facility
- provide clearer direction to operators, thereby assisting them to determine when a safety case revision is required and when they are permitted to use MoC to facilitate a change in the way they manage risk
- ensure NOPSEMA has visibility over issues that are critical to safety via the safety case revision.

### **3. Clarify arrangements for submitting five-yearly safety case revisions**

Under the current Safety Regulations, an operator is required to submit a revised safety case to NOPSEMA five years after the date the safety case was first accepted, as well as five years after the date of *each* acceptance by NOPSEMA of a revised safety case.

Over the life of a safety case there may be multiple minor revisions for change of circumstances or operations at a facility, for example, where the technical knowledge relied upon to formulate the safety case has become outdated, or when NOPSEMA requests a revision of the safety case.

An unintended consequence of these requirements as currently drafted is that many safety case revisions submitted to NOPSEMA due to a change in circumstances or at NOPSEMA's request can trigger the 'five-yearly revision' requirement, which means many smaller-scale, targeted and often technical revisions are coming up for unnecessary periodic reviews.

The department is proposing to:

- amend the Safety Regulations to clarify that a revised safety case must be submitted at five-yearly intervals starting on the day the initial safety case is accepted by NOPSEMA
- remove the sub-regulation requiring safety case revisions five years after the date of each acceptance of a revised safety case.

The intent of the safety case as a 'living document' which can be updated through revision for a change of circumstance or operations at a facility will not be changed. All revisions that take place during each five year period will be subject to review as part of the five year revision of the entire safety case.

This pragmatic approach is intended to remove the current unnecessary requirement for operators to prepare and submit a revised safety case to NOPSEMA five years after each revision to a safety case is accepted.

## 4. Transfer of operator process for a facility

Schedule 3 to the OPGGS Act and the Safety Regulations place legal obligations related to occupational health and safety (OHS) on 'the operator' of a facility. The obligations come into effect when a person is registered by NOPSEMA as the operator of the facility or 'proposed facility'. At this point the operator must take all reasonably practicable steps to ensure the facility is safe and all work and other activities are carried out in a safe manner and without risk to people's health.

The current process does not easily allow for a scenario where the operator for an existing facility is to be replaced by a different operator. Currently, to manage this process the new operator must register with NOPSEMA as the operator for a 'proposed facility' to provide an avenue for submission of the safety case and engagement with NOPSEMA, in advance of a transfer of operational control. In this situation, the new operator needs to submit a safety case relevant to an existing facility (whilst referring to it as a 'proposed facility') while the existing operator maintains the day-to-day management of the facility and all the associated legal duties and obligations. This means that the facility is legally considered a 'proposed facility' in relation to one operator and a 'facility' in relation to the other operator, at the same time.

The department is proposing to include the term 'proposed operator' as an entity under the Safety Regulations to facilitate the transfer of operators in relation to the same facility. This would enable the nomination of a 'proposed operator' for an existing facility and for the submission of the safety case to occur without the 'proposed operator' having the legal responsibilities of the duty holder, which would remain with the current operator. The transfer of operatorship and legal responsibility will take effect at the point when the 'proposed operator' has an accepted safety case in place and the current operator successfully deregisters.

These changes are intended to:

- clarify the interaction between an existing and new operator in relation to an existing facility and reduce any regulatory confusion as to who holds the duty for the health and safety of workers during a phase of operational transition for a facility
- avoid the confusing use of the term 'proposed facility' in relation to an existing facility as a mechanism for the transfer of operational control from an existing operator to the new operator for the same facility.

## 5. Operator registration requirements

Currently, in order to register as an operator of a facility, a person only needs to demonstrate that they will have the day-to-day management and control of a facility and its operations.

The department is proposing to introduce additional requirements on the registration of an operator (or proposed operator) of a facility, similar to the requirements under the *Maritime Transport and Offshore Facilities Security Act 2003* for the designation of offshore facility operators, requiring NOPSEMA to also take into account:

- the ability of the person to undertake the functions of an offshore facility operator,
- the physical and operational features of the facility, and
- the views of the current operator of the facility (if applicable).

This amendment is intended to ensure that registered operators are able to undertake all the functions that may reasonably be expected of them in the management of a facility.

## 6. Titleholder duties in relation to the operator

The OPGGS Act creates the separate roles of titleholder and operator, with differing duties and obligations assigned to each entity. For example the titleholder, as the registered holder of the relevant petroleum exploration permit, retention lease or production licence, is responsible for reducing environmental impacts and risks, ensuring that risks to well integrity are reduced to ALARP and ensuring that the environment is restored after the project is complete. Titleholders also have an obligation to maintain all structures and equipment in the title area in good condition and repair.

The duties of the operator are in relation to the safety of the facility and the health of persons at or near the facility, and the operator must ensure that all work and other activities carried out on the facilities are carried out in a manner that is safe and without risk to the health of any person at or near the facility.

In most cases the titleholder and operator for a project will be the same company, or companies from within the same corporate structure. While not a common occurrence, in some cases the titleholder and operator are completely separate legal entities.

The department has become aware of a potential risk that exists in the regulatory framework when the operator and titleholder are separate entities. In these situations, the titleholder has no direct duty to ensure the safety of the facility and the health of persons at or near the facility and, although it is the entity in control of the project and cash flow to the operator, has no duty to ensure that the operator is able to fulfil its duties in relation to health and safety. To address this, and implement a recommendation made in the Walker review, the department is proposing to introduce new duties on the titleholder, to ensure that where the titleholder appoints a separate operator:

- the titleholder must ensure that the operator is at all times capable of carrying out its duties under the OPGGS Act and regulations
- the titleholder must take reasonable steps to ensure that the operator fulfils its duties under the OPGGS Act and regulations.



If the titleholder does not comply with these requirements, the operator will be able to notify NOPSEMA if the operator reasonably believes that non-compliance is affecting or will affect its ability to operate the facility effectively in accordance with its duties and obligations under the OPGGS Act and regulations.

These changes are intended to:

- make sure that titleholders ensure that operators are appropriately resourced to carry out their duties
- ensure that titleholders maintain reasonable oversight of the standards of health and safety at the facility.

# Workplace arrangements

## 7. Training requirements for HSRs

HSRs play a key role in promoting and ensuring a safe and healthy offshore workplace. HSRs represent the health and safety interests of workers within their DWG, develop and maintain a partnership between workers and the employer and give workers a voice in health and safety matters in the workplace.

Central to a HSR being able to fulfil this role is ensuring they have adequate ongoing training and support. Current provisions in the OPGGS Act mandate that HSRs must undertake training relating to OHS that is accredited by NOPSEMA and be given time off work by the operator to complete training without loss of remuneration or other entitlements.

Training provisions for HSRs under the *Work Health and Safety Act 2011* (WHS Act) provide greater access to training than that which is available to workers in the offshore oil and gas industry. Training provisions in the WHS Act specify that HSRs are entitled to initial training of 5 days; and the operator will pay the course fees and other reasonable costs associated with the HSR's attendance at the course and a one-day annual refresher training course. The WHS Act also requires that an HSR attend the initial training as soon as practicable within 3 months of an HSR's request to attend the training.

Training issues were raised in consultation with offshore workers, where some HSRs indicated they were not provided time off work to complete HSR training; did not have the training paid for by the operator or employer; and/or were not able to attend HSR training within a reasonable timeframe.

The department is proposing to amend training requirements to include provisions that require HSRs to attend one-day annual refresher training and require the operator to pay the course fees and any other reasonable costs associated with the HSR's attendance at the initial NOPSEMA-accredited HSR course of training and the annual refresher course. The operator of the facility will also be required to enable the HSR to undertake the initial course of training as soon as practicable.

These changes are intended to:

- increase the overall safety standards at offshore facilities by ensuring HSRs will have access to best practice and ongoing training in a timely way
- ensure HSRs remain up to date with current legislative and regulatory provisions that relate to the application of their role at the offshore facility by undertaking refresher courses
- strengthen the role of HSRs by removing potential barriers to accessing training by ensuring the cost of the training and reasonable costs associated with undertaking the training will be covered by the operator.

## 8. Worker access to the safety case

Under the OPGGS Act, HSRs have the power to obtain access to any information under the control of the operator or any work group employer relating to risks to the health and safety, or the health and

safety, of any group member. The safety case is the key document produced by the operator of a facility which:

- identifies the hazards and risks at a facility
- describes how the risks are controlled and managed by the operator
- describes the safety management system in place to ensure the controls are effectively and consistently applied.

As the key safety document for a facility it is important that HSRs have access to the safety case to ensure the health and safety of workers is being managed in accordance with the safety management system described in the safety case.

Feedback received at the HSR Forum held in June 2019 and evidence provided at the Senate Inquiry into the Work Health and Safety of Workers in the Offshore Petroleum Industry, 2018 (the Senate Inquiry) indicate that the current practice in relation to providing HSRs access to the safety case is inconsistent between different operators. Some operators provide reasonable access to the safety case and others allegedly keep the safety case in places that require the HSR to seek permission from managers to access it and/or access may not be provided in a timely way.

The department is proposing to amend the Safety Regulations to require that the safety case must be easily accessible, without restriction, to the workforce at all times while they are at the facility, to ensure there is no barrier of access for HSRs or other workers.

These changes are intended to:

- increase the overall safety standards at offshore facilities by ensuring HSRs can access the safety case and check activities align with safety controls detailed in the document
- strengthen the role of HSRs by removing access barriers and increasing transparency by ensuring HSRs can access key safety-related information in a timely way.

The department will explore options for providing guidance on interpretation of this measure, such as through explanatory material.

## **9. Revisions to safety case and safety management-related documents - HSRs**

Under Schedule 3 (clause 34) to the OPGGS Act, HSRs have several powers in exercising their role representing the health and safety interests of workers. The provisions include: inspection of the workplace, obtaining information relating to the health and safety of workers, requesting that NOPSEMA conduct an inspection of a facility, investigating complaints made by workers and issuing a provisional OHS improvement notice.

The provisions do not enable a HSR to request a review of safety management-related documents or the safety case for the facility.

The department is proposing to amend the scope of HSR powers in relation to the safety case and other safety management-related documents to better protect worker safety.

*Safety management-related documents*

- HSRs will be able to request that the operator of a facility review safety management-related documents if the HSR reasonably believes that a circumstance exists that affects the health and safety of workers and the operator has not adequately reviewed the documents in response to the circumstance or in response to feedback from the workforce or HSR.
- The operator would then be required to provide the HSR written confirmation that the safety management document has been reviewed, and required revisions that have been identified (if any), or an explanation why a review is not required, as soon as practicable.

#### *Safety Case*

- HSRs will be able to request that NOPSEMA consider information that demonstrates reasonable cause for the revision of the safety case for a facility.
  - for example, where the loss of control measures critical to safety means that risk is no longer reduced to ALARP
- The HSR will be required to report this issue to the operator first, and may escalate the issue to NOPSEMA if the operator does not take adequate action to rectify the safety risk.
- NOPSEMA would be required to consider the information provided by the HSR and determine whether to request an operator to submit a revised safety case.
- NOPSEMA would be required to provide the HSR a written response advising of the outcome of the HSR's request as soon as practicable.
- NOPSEMA will remain the only entity, other than the operator, that can instigate a revision of the safety case.

These changes are intended to:

- improve safety outcomes by enabling HSRs to request a review of safety management-related documents where a safety issue has been identified which would reasonably require the operator to review and, where necessary, revise safety related documents to manage the identified risk to ALARP
- strengthen the role of HSRs by enabling them to request NOPSEMA to consider information relating to the identification and management of safety risks that may require a revision of the safety case, while NOPSEMA would maintain their role as the only third party able to trigger a safety case revision
- provide additional mechanisms for HSRs and NOPSEMA to ensure that identified safety risks at facilities are properly addressed and managed by the operator to protect the health and safety of all offshore workers, supporting the continual identification and assessment of hazards and how risk will be minimised at an offshore facility.

## **10. Role of HSRs on the Health and Safety Committee**

The OPGGS Act provides that a Health and Safety Committee (HSC) must be established in relation to the members of the workforce at a facility where there are more than 50 workforce members present at the facility, the workforce members are in one or more designated work groups and an HSR for a group asks the operator to establish the HSC.

A key goal in establishing an HSC is to ensure that workers' views are heard on health and safety matters. HSCs are an effective way for operators and employees to consult and work cooperatively to develop best practice health and safety standards. Membership of the HSC is by agreement between the operator and workforce, with no provision for automatic membership for HSRs.

HSRs are provided with specialised training and powers under the OPGGS Act to assist them in giving workers a voice in health and safety matters in the workplace and to ensure safety standards at facilities are being met. As worker representatives HSRs are well placed to understand a broad range of worker safety concerns.

The department proposes to amend HSC membership provisions in the OPGGS Act to require that:

- if there is a HSR at a workplace, that representative, if they consent, will be a member of the HSC
- if there are two or more HSRs at a workplace, those representatives may choose one or more of their number (who consents) to be members of the HSC.

While this amendment ensures a position for at least one HSR on the Committee, it should be noted that other HSRs may be elected as part of the HSC selection process under current provisions in the OPGGS Act.

This change is intended to ensure that the HSC has the strongest possible workforce representation by including an HSR to promote and ensure safe and healthy offshore operations, as well as ensuring a broad range of health and safety views can be provided at the HSC.

## **11. HSR general support (non-legislative change)**

The participation of HSRs is central to the management of safety at an offshore facility. HSRs play a key role in the identification of health and safety risks and hazards and hence should have strong engagement with NOPSEMA and with other HSRs across the offshore workforce.

Some concerns were raised at the Senate Inquiry about the lack of engagement between NOPSEMA and HSRs. NOPSEMA's submission to the department's Safety Review Discussion Paper acknowledges that improvements in engagement could be made.

Consultation with offshore workers has indicated that HSRs would like more support for their role and better opportunities to network, collaborate and learn from other HSRs.

In recognition of the important role HSRs play in the offshore workplace a two-day HSR Forum was held in June 2019 to facilitate open discussions between HSRs and with NOPSEMA on a range of issues including current issues and challenges in the offshore industry.

The HSR Forum was organised by a tripartite committee with representatives from government, industry, and unions, and provided an opportunity for HSRs to engage with regulatory authorities, industry safety bodies, and importantly for HSRs to share their own safety related learnings, experiences and information.

The department proposes that a HSR Forum be held on an annual basis<sup>3</sup> (continuing with the tripartite structure) and that to further support ongoing engagement, NOPSEMA establish a dedicated online portal or webpage for HSRs and workers. It is envisioned the portal/webpage would increase the provision of relevant information to HSRs and workers, as well as create a protected online space where current HSRs can communicate and share experiences and information with each other.

The department is also seeking a commitment from operators to pay reasonable associated costs for HSRs to attend the annual forum. This would include remuneration for HSRs during their attendance, as well as travel and accommodation expenses.

A key flow-on benefit anticipated from running the annual forum and developing the webpage/portal is to enable NOPSEMA to communicate directly with HSRs and providing a pathway for HSRs to engage with NOPSEMA if they are concerned about safety issues and standards.

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<sup>3</sup> Once restrictions on travel and gatherings of large groups due to COVID-19 permit this to occur.

# General health and safety protections

## 12. Offshore workers - mental health provisions

Under the current offshore safety regulatory regime, operators and other specified persons and parties must ensure they take all reasonably practicable steps to provide a physical environment at the facility that is safe and without risk to health. Within these duties, physical and psychological health are not differentiated and health is not defined in the OPGGS Act or Safety Regulations.

Although the OPGGS Act does not include a definition of health, the term is generally considered to have a broader meaning than a reference to physical well-being. For example the World Health Organisation states in its constitution that health is ‘a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity’.<sup>4</sup>

Other health and safety regimes have moved to embed a broad meaning in their definition of health. For example, the WHS Act defines health as both physical and psychological health. Comparable international offshore safety regulations also extend the understanding of workers’ health to include psychological elements. Norway requires employers to ensure a good psychosocial working environment by considering conditions that can influence employees’ health, safety and welfare.

Research shows that Fly-In-Fly-Out (FIFO) workers experience higher levels of poor mental health and wellbeing than workers in general<sup>5</sup>, and identifies the need to develop a stronger workplace culture that prioritises and incorporates strategies and practices to support workers’ wellbeing and health, such as fatigue management and access to communication so offshore workers can keep in regular contact with family. This research also aligns with views expressed by offshore workers consulted by the department about the impact of their work on their mental health and wellbeing.

The COVID-19 pandemic has emphasised the importance of managing physical and mental health impacts for FIFO workers in the offshore industry and the need for industry to have proactive mental health strategies in place to ensure workers’ overall wellbeing.

The department is proposing to include a definition of health in the OPGGS Act as ‘physical and psychological health’ in order to better support the overall wellbeing of the offshore workforce and to formalise the concept of health, as comprising both physical and mental aspects, in the offshore safety regulatory regime.

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<sup>4</sup> World Health Organisation, 2020, URL: <https://www.who.int/about/who-we-are/constitution>

<sup>5</sup> Curtin University, 2018, Impact of the FIFO work arrangements on the mental health and wellbeing of FIFO workers, Research Report commissioned by the Western Australian Mental Health Commission, URL: [https://360e1fd0-be66-41c9-867d-7a6618e5d7fe.filesusr.com/ugd/bd06d8\\_4b5157e278a6427ea51af44501aee14a.pdf](https://360e1fd0-be66-41c9-867d-7a6618e5d7fe.filesusr.com/ugd/bd06d8_4b5157e278a6427ea51af44501aee14a.pdf)

In addition, operators and persons in control of any part of the facility will be required to take all reasonably practicable steps to provide and maintain a *working environment* at the facility that is safe and without risk to health. This will replace the current requirement to provide only a *physical environment* at the facility that is safe and without risk to health.

This change is intended to:

- ensure that the importance of mental health is recognised alongside physical health
- embed a positive and supportive workplace culture.

To support the implementation of this policy measure, the department recommends that NOPSEMA produce guidance for the offshore oil and gas industry on how they can implement strategies to support mental health.

### **13. Avoiding fatigue**

Under the current Safety Regulations, provisions for avoiding offshore worker fatigue only address the duration of shifts and time between shifts as the conditions which must be managed.

While shift duration is clearly a causal factor in fatigue there are many other causes of fatigue that impact on the safety of offshore workers that the Safety Regulations do not address.

Worker fatigue can be caused by a range of conditions such as:

- sleeping arrangements, in particular shared rooms and close quarters in an unfamiliar environment
- long travel times to facilities which are often not accounted for as ‘work’ and thus not included as part of a shift in the roster.

Consultation with offshore workers indicates quality of sleep and long travel times to get to facilities without a break before starting a shift are two contributing factors to fatigue resulting in poor mental health and wellbeing in the workplace.

To address this issue the department proposes to amend the Safety Regulations to include a broader range of factors that cause fatigue that duty holders must take into consideration before allowing or requiring a person at an offshore facility to commence work.

These changes are intended to:

- raise the overall standard of safety by ensuring that fatigue in workers is identified and managed to reduce the possibility of injury and accidents on offshore facilities
- ensure a high standard of worker mental health and wellbeing is maintained.

### **14. Protection for workers against discrimination and coercion**

Current provisions in clause 88 of the OPGGS Act require that an employer must not dismiss an employee, perform an act that results in injury to an employee in their employment, perform an act that prejudicially alters the employee’s position, or threaten to do any of these things, because that



employee has raised OHS issues, assisted the conduct of an OHS-related inspection by NOPSEMA, or ceased work in accordance with a direction by a HSR.

While these provisions provide some protection from discrimination, the offshore safety regulatory regime does not provide the same degree of protection from discrimination or coercion as the WHS Act and could go further.

The WHS Act extends the protection of workers by including a broader range of factors that are prohibited, most notably that an employer cannot discriminate against a worker who is, has been, or proposes to be an HSR or a member of a HSC.

In addition, the WHS Act extends protection against discrimination by prohibiting the requesting, instructing, inducing, encouraging, authorising or assisting another person to engage in discriminatory conduct. This provision recognises that discrimination and coercion may be perpetrated by a broader range of people in the workplace, not just an employer.

The department proposes to amend the OPGGS Act so it aligns with the provisions protecting workers against discrimination and coercion in the WHS Act.

These changes are intended to:

- strengthen protection for offshore workers against discriminatory or coercive behaviour
- strengthen the role of HSRs by including provisions against discrimination relating to that role
- align legislative requirements for worker discrimination with the WHS Act
- embed a best practice workplace culture.

# Diving

## 15. Diving Safety Management System

The Diving Safety Management System (DSMS) is a comprehensive, integrated system for managing the safety of activities connected with a diving project. It must include information on the diving contractor's policies and operational protocols and procedures, equipment certification, maintenance and operating procedures, risk assessment procedures and management arrangements to ensure that risks to the safety of personnel involved in the diving operations are reduced to a level as low as reasonably practicable. The DSMS is a vital part of ensuring the safety of offshore diving activities and no diving can occur without an accepted DSMS in place.

The Safety Regulations require diving contractors to submit their DSMS to NOPSEMA for assessment, and require NOPSEMA to reject any DSMS that does not adequately comply with the regulations. However, unlike for a safety case, the Safety Regulations do not include a specific provision by which NOPSEMA could request further information in relation to a DSMS during the assessment.

The department proposes to:

- introduce a mechanism to allow NOPSEMA to request more information on a DSMS, similar to that already provided for safety cases under regulations 2.25 and 2.33 of the Safety Regulations
- establish a process and grounds for NOPSEMA to withdraw acceptance of a DSMS, similar to that already provided for safety cases under regulations 2.37 and 2.38 of the Safety Regulations
- align the requirement for a revision five years after the first accepted DSMS with the proposed changes to the safety case revision requirements
- include a provision that before a dive can begin, the diving contractor must provide the DSMS to divers on the diving project where requested.

These amendments are intended to:

- improve the contents of accepted DSMSs and streamline the assessment process for a DSMS by providing for the diving contractor to submit further information to improve the DSMS and facilitate acceptance
- ensure that, if warranted by the circumstances, acceptance of a DSMS can be withdrawn by NOPSEMA to ensure that no unsafe diving activities go ahead
- in recognition of the important role of a DSMS in ensuring diving safety, clarify the requirement for a DSMS to be revised at least every five years and strengthen the offence provision for non-compliance with requirements of an accepted DSMS
- ensure that the DSMS is available to members of a dive project similar to provisions that ensure the safety case for a facility is accessible to all workers at the facility.

## 16. Diving Project Plan

A Diving Project Plan (DPP) is a detailed plan developed by the diving contractor to manage a specific diving project. It is prepared in consultation with the operator, divers and other members of the workforce involved in the project, and must be approved by the operator before diving can commence on the project. In rare cases where there is no operator, NOPSEMA can assess and accept a DPP.

The objects of the Safety Regulations currently include objects in relation to ensuring that activities are carried out in accordance with safety cases and DSMSs. The department proposes to include DPPs in the objects of the Safety Regulations in a similar manner, to recognise the importance of the DPP as an approval document in ensuring safety.

The department also proposes the following amendments to requirements relating to DPPs:

- require that the approved DPP for a diving activity should be provided to NOPSEMA along with the diving start-up notice
- establish an offence provision for the operator if they breach their duty to ensure that a DPP complies with the relevant regulations
- Amend the Safety Regulations to require that NOPSEMA maintains a register of DPPs it accepts, rather than all DPPs it receives for assessment, and all DPPs it receives along with diving start-up notices.

## 17. Diving Start-Up Notice

The Safety Regulations require that, at least 14 days before the day when diving is to begin, or any other day agreed with NOPSEMA, the operator or, if there is no operator, the diving contractor, must provide a start-up notice for a diving project to NOPSEMA.

The current provisions give limited time for NOPSEMA to consider the safety of the dive before it begins, conduct an inspection if necessary, or to stop a dive if there are safety concerns. The department is proposing to amend the scope and timing of the diving start-up notice to ensure that NOPSEMA can confirm that a dive is occurring safely and in accordance with an approved DPP. These amendments will strengthen assurance and due diligence by:

- requiring additional information in the start-up notice, for example: dive table and breathing mixture to be used, compression rate(s) for deep diving, number of people to be in the dive team and their roles and a list of the relevant related permissioning documents (DSMS and the relevant safety case(s))
- requiring NOPSEMA to assess and either accept or refuse a diving start-up notice
- establishing provisions for NOPSEMA to request further information if a start-up notice does not include sufficient information to meet the requirements under the Safety Regulations
- requiring NOPSEMA to provide a statement of reasons if a start-up notice has been refused
- increasing the notification period from 14 days to 28 days to allow NOPSEMA to assess the start-up notice, ensure it is consistent with the DPP and undertake an inspection if needed

- creating a provision for NOPSEMA to delay and/or refuse the commencement of the diving activity if there are reasonable concerns about the safety of the proposed dive.

The inclusion of additional information in the start-up notice is not intended to duplicate information provided in the DSMS or the DPP, but to ensure that each start-up notice includes information specific and relevant to that particular offshore dive.

## 18. Diving inspections

Part 4 of Schedule 3 to the OPGGS Act sets out the powers exercisable by NOPSEMA inspectors to undertake OHS inspections. These include powers to enter and undertake inspections at petroleum or greenhouse gas facilities in Commonwealth waters. NOPSEMA inspectors may conduct inspections in relation to compliance with listed OHS laws which include obligations under the Safety Regulations.

Under the OPGGS Act, a 'facility' includes an 'associated offshore place' in relation to a facility. An associated offshore place is defined in clause 3 to mean an offshore place near a facility where activities (including diving activities) relating to the construction, installation, operation, maintenance or decommissioning of the facility take place. A facility, for the purposes of the exercise of NOPSEMA inspectors' powers under Schedule 3, therefore includes a dive vessel while diving activities related to the facility are taking place.

NOPSEMA inspectors are entitled to enter and to remain on facilities, including associated offshore places in relation to facilities, for the purposes of undertaking OHS inspections. In relation to diving vessels, this entitlement only begins when a vessel is considered to be an associated offshore place in relation to a facility under the OPGGS Act, and ends when a vessel ceases to be an associated offshore place. A dive vessel is an associated offshore place in relation to a facility only when facility-related diving activities are taking place (e.g. diving activities relating to the construction, installation, operation, maintenance or decommissioning of a facility).

Under the Safety Regulations, OHS obligations in relation to diving continue for the full duration of the diving operation. Under regulation 4.2 a diving operation begins when the diver, or first diver, who takes part in the operation starts to prepare to dive, and ends when the diver, or last diver, leaves the water or the chamber or environment in which the dive took place and has completed any necessary decompression procedures. Decompression and other activities that follow a dive are often undertaken after the vessel has sailed away from the facility or dive site (at which time it is no longer an associated offshore place in relation to a facility). Likewise, diving activities such as saturation often commence when a vessel is still in port and not yet considered to be an associated offshore place in relation to a facility.

Under current arrangements, NOPSEMA inspectors are therefore unable to board a vessel before it has reached the dive site, or remain on a diving vessel after the vessel has sailed away, to monitor compliance with OHS obligations. This is undesirable, as it means that NOPSEMA cannot effectively monitor compliance with OHS obligations associated with diving related activities before the vessel

reaches the dive site, or following the vessel leaving the dive site, and risks to health and safety associated with these activities may not be properly identified or assessed.

To address this, the department proposes to amend the relevant legislation to expressly permit NOPSEMA inspectors to monitor compliance with diving-related obligations under the Safety Regulations on a vessel under the command of a master, before and after the vessel is considered to be an associated offshore place in relation to a facility but still conducting activities relating to a diving project (such as preparation to dive and decompression activities post dive).

This would enable NOPSEMA to monitor compliance in relation to all aspects of a diving operation regardless of the vessels location, for example pre-dive compression and preparation, and decompression and other activities which are often performed away from the facility.

### **19. Diving reporting obligations for diving supervisors**

The Safety Regulations currently require diving supervisors to report serious matters occurring during a diving operation (such as death, serious injury, illness or failure of life support equipment) to the operator, if there is an operator for the diving project. Notifying the operator of an accident or dangerous occurrence would then trigger provisions under clause 82 of Schedule 3 to the OPGGS Act that require the operator to notify NOPSEMA.

In some cases there is no operator for a diving project, which would mean no notification is required to be given to an operator, and there is no subsequent notification to NOPSEMA.

The department proposes to expand the reporting obligation on diving supervisors to include titleholders and NOPSEMA in the event there is no operator for that diving project, thus closing any gap of non-reporting. This will ensure adequate reporting and regulatory oversight in the event of a serious occurrence during a diving project.

# Compliance and enforcement

## 20. Introduction of graduated enforcement mechanisms, including a civil penalty regime

Under current provisions in the Safety Regulations where an obligation is contravened, regulators are limited to seeking the enforcement of pecuniary criminal penalties in court, which requires prosecutors to prove beyond reasonable doubt (the criminal standard of proof) that an alleged offender has breached an obligation.

In addition to challenges with satisfying that high standard of proof, prosecution can be lengthy and expensive, and is particularly difficult given the technical complexity of high hazard industries including the offshore petroleum and greenhouse gas storage industries. This can create a barrier to the enforcement of contraventions of the Safety Regulations and a weakening of the compliance culture in relation to the safety of offshore workers.

As offshore petroleum and greenhouse gas storage operations involve significant safety risks, effective regulation underpinned by strong compliance and enforcement measures is critical.

To address this concern the department proposes to introduce a civil penalty regime in the Safety Regulations which would apply where a breach is serious but proving the elements of an offence beyond reasonable doubt would be difficult, or where a strong financial disincentive for contraventions is required.

The introduction of civil penalties would further enable a range of penalties and enforcement tools of increasing levels of severity to be utilised to encourage compliance. The choice and application of the enforcement tools are intended to more accurately reflect the seriousness of contraventions and the harm or potential harm caused by the contravention.

In addition to civil penalties, the department also proposes to introduce additional graduated enforcement mechanisms for appropriate provisions in the Safety Regulations. The additional mechanisms would include infringement notices, injunctions and enforceable undertakings<sup>6</sup>. This would be consistent with the range of enforcement mechanisms available in the OPGGS Act.

These changes are intended to:

- raise the overall safety standard in the offshore industry by creating sufficient disincentives to non-compliance through civil penalties that are proportionate to and specifically target particular breaches

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<sup>6</sup> Enforceable undertakings are an alternative penalty for alleged non-compliance with a person's legislative obligations. Undertakings are agreed between the person and the regulator, and are enforceable in a court. Enforceable undertakings typically provide a commitment by the person to implement initiatives designed to deliver tangible benefits for the industry or broader community, which seek to resolve the alleged non-compliance and rectify the consequences of that non-compliance.

- add to NOPSEMA’s existing compliance framework to facilitate a stronger compliance culture and behavioural change across industry
- enable regulators to respond to the diverse spectrum of contraventions that may be committed under the regulations with enforcement mechanisms that are proportionate to and that specifically target the circumstances of non-compliance
- improve regulatory compliance by providing consistency between the enforcement mechanisms in the OPGGS Act and the Safety Regulations
- reducing reliance on costly, complex prosecution by introducing alternative mechanisms that can be exercised by NOPSEMA.

The department recommends that guidance on relevant enforcement and prosecution policy is developed by NOPSEMA to accompany these changes.

## **21. Notification and reporting requirements**

Under the current safety regulatory regime at Clause 82 of the OPGGS Act, operators have a duty to notify and report to NOPSEMA if a member of the workforce has been in an accident that causes death, serious injury or incapacitation from performing work, or where there has been a dangerous occurrence at a facility. The Safety Regulations set out the notification and reporting requirements, including that an operator must notify NOPSEMA as soon as practicable (sub-regulation 2.42(1)) in the event of an incident and a written report must be provided within 3 days of the incident (sub-regulation 2.42(2)).

An additional reporting requirement at sub-regulation 2.42(4) requires the operator to provide NOPSEMA with a monthly report summarising the number of deaths and injuries at a facility. The requirement for a monthly report summarising any incidents operators have already notified and reported to NOPSEMA is an unnecessary duplication of information. This regulation also requires the operator of a facility to report to NOPSEMA even where there has been nil activity at a facility.

The department is proposing to:

- modify the requirement in the regulations so monthly reports detail hours worked, number of persons that worked at the facility, and specified operational activities and incidents that are otherwise not-notifiable similar to the requirements for ‘recordable incident’ reporting. Some of this information that is currently requested by NOPSEMA on a voluntary basis (such as hours worked) is essential for interpretation in relation to the deaths/injury incident reports required by the Safety Regulations
- modify the requirement so that monthly reports are not required where there has been nil operational activity at a facility, for example, where there has been no work carried out that falls within the scope of the safety case
- amend the OPGGS Act to include a new clause that provides clear legal authority for the monthly reports to be made under the Safety Regulations.

The department recommends that to accompany these changes NOPSEMA produce guidance for the offshore oil and gas industry to clarify their reporting requirements.

These changes are intended to:

- reduce the administrative burden on industry by removing the requirement for duplicative reporting on death, injury or dangerous occurrences at facilities
- reduce the administrative burden on industry by removing the requirement to provide NOPSEMA with a monthly report even when there has been nil activity
- reduce confusion for the reporting requirements between serious incident reporting and non-serious operational activities
- improve the information available to NOPSEMA for interpretation of deaths/injury incident reports required by the Safety Regulations.



# Jurisdictional coverage

## 22. Vessel activity notification scheme

Under the current OPGGS regime, NOPSEMA may conduct inspections to monitor compliance or conduct investigations on vessels that are facilities or vessels that are associated offshore places. However, there is no mechanism by which NOPSEMA can be made aware of the exact point that a mobile facility/vessel is operating as a “petroleum facility” and thus comes under NOPSEMA’s jurisdiction. Improvements are needed to strengthen compliance monitoring of vessel facilities such as Offshore Production Units, or vessels that are operating as “associated offshore places”.

Monitoring compliance of vessel facilities is particularly challenging as they often engage in relatively short scopes of work of which only a portion of the activities may cause them to meet the definition of a facility. Without a legislative basis NOPSEMA is relying on ad hoc liaison with the operators of vessel facilities, and encouraging operators to indicate in monthly reports when vessels are entering and exiting the offshore regulatory regime. These practices are not enforceable and do not support adequate assurance that best practice safety standards are occurring. This is of particular concern in relation to emergency situations, such as a cyclone, when the Commonwealth Government will need to establish situational awareness quickly.

The department is proposing to introduce an obligation into the OPGGS regime requiring operators to notify NOPSEMA of the intention to commence a scope of work that includes activities that would cause the vessel to be a facility. This requirement is not expected to be onerous, as operators would only be required to provide basic information to NOPSEMA to ensure they are aware of which facilities are in the OPGGS regime at any given time. The content information in the notification would likely include the following:

- the name, address, telephone number and email address of a representative of the operator who can be contacted by NOPSEMA at any time during the scope of work
- the date when the scope of work is expected to begin
- the expected duration of the scope of work
- the location of the scope of work
- a description of the activity or activities that would cause the vessel to be a facility.

It is also intended that NOPSEMA will share the vessel notification with the Australian Maritime Safety Authority (AMSA) to ensure both regulators have the same up-to-date information on the location and activities of facilities and vessels in their respective jurisdictions.

These changes are intended to:

- increase overall safety standards by ensuring that vessels operating as a facility or an associated offshore place in Commonwealth waters are operating in accordance with the Safety Regulations

- reduce jurisdictional confusion for operators as a vessel notification scheme would enable NOPSEMA to be aware of, and monitor, when vessels are being used as facilities and thus move from AMSA's to NOPSEMA's jurisdiction depending on activity and locations
- provide regulatory assurance for Government on when these vessels are carrying out an offshore petroleum activity and assist with maritime emergency management situations to enable reporting on whether these vessels are being impacted by emergency situations e.g. cyclones.

### **23. Clarification of terms (non-legislative change)**

The terms "accident" and "dangerous occurrence" are defined in the OPGGS Act, and the term "at or near a facility" is referred to in the OPGGS Act and the Safety Regulations. Stakeholders have expressed a view that there is a need to provide clarification on these terms to assist industry to understand their duties in relation to reporting incidents to NOPSEMA.

The department recommends that NOPSEMA provide further industry guidance and practical examples for the terms in order to enhance and improve consistency of industry reporting on incidents and patterns of behaviour that may be indicators of a major accident event.

## Minor technical amendments

Issue	Proposed change
Use of 'OHS Inspector'	Change to 'NOPSEMA Inspector' as the current references are incorrect.  Amend the definition of OHS inspector (which will now be NOPSEMA Inspector) in the Safety Regulations to correctly reference that inspectors are appointed under s602 of the OPGGS Act, not s680.
Use of 'Safety Authority'	Change to 'NOPSEMA' as the current references are incorrect.
Use of 'a project' for example, under Safety sub-regulation 4.4(2)(b)	Change to 'a diving project' as the current references are incorrect.
Use of 'practical' in Safety sub-regulations 4.5(3) and 4.6(3)	Change to 'practicable' as the current references are incorrect.
Inconsistent/missing numbering references in Safety Regulations	Amend to ensure consistent numbering in parts of Act and Safety Regulations.
Typographical and grammatical errors in Safety Regulations Chapter 4	Correct errors.
Typographical errors - Regulation 2.40(4)(b), currently reads 'the facility incorporate measures'	Amend to read 'the facility incorporates measures' to correct errors.
Incorrect cross referencing to clauses under Schedule 3 in the Safety Regulations	For instance, Safety sub-regulation 2.42(2) should reference clause 82(6) of Schedule 3, not clause 82(1).

Issue	Proposed change
Terms 'safety case' and 'revised safety case' are used interchangeably	Ensure consistency – the same term should be applied to that suite of Safety sub-regulations.
References to facsimile numbers	Remove references to facsimile numbers and instead require an email address.
Certain Safety Regulations should be updated to specifically exclude licensed pipeline facilities or otherwise be amended to reflect the different nature of licensed pipeline facilities	<p>See Safety Regulations 2.15, 2.16, 2.17, 2.18, 2.19, 2.20 and 2.22.</p> <p>The Safety Regulations were not holistically updated when licenced pipeline facilities moved from the requirement to have a Pipeline Management Plan, including a Pipeline Safety Management Plan (PSMP), to the requirement to have a safety case.</p>
Remove legacy transitional provisions	<p>Safety Regulations Chapter 5, Part 4 – Pipelines.</p> <p>Safety Regulations 5.6 relate to existing PSMPs in force that are no longer required or relevant.</p> <p>Safety Regulations 5.10 and 5.13 refer to legacy DSMS and DPPs required by now-redundant regulations.</p>
Remove legacy definitions in Chapter 5 – Transitional arrangements	Chapter 5 of the Safety Regulations contains legacy definitions that are now obsolete given they deal with transitional arrangements that have already been implemented.
Compliance – forms of notices	<p>Amendment to remove the requirement for certain notices such as prohibition and improvement notices to be set out in accordance with the forms in Schedule 3.1 to the Regulations.</p> <p>Removing the requirement for certain notices to be in prescribed forms gives NOPSEMA greater flexibility to present notices in an appropriate format.</p>

Issue	Proposed change
Foreign-owned facility operators	<p>Amend the Safety Regulations 2.3 to include a provision that foreign-owned companies must be registered with the Australian Securities and Investments Commission (ASIC) to be nominated and registered as an operator.</p> <p>Under the current Safety Regulations, operators of offshore facilities are not required to be registered with ASIC. This presents a potential barrier to prosecution of foreign-owned facility operators for contraventions of the OPGGS Act or the Safety Regulations.</p>
Use of “operator for a diving project”	Change to “operator of a facility” as the current references are incorrect.
Diving contractor compliance with the DPP	Amend the Safety Regulations to include the requirement that the diving contractor must take all necessary steps to ensure that a diving operation for which the diving contractor is responsible is carried out in a way that complies with the accepted DSMS and DPP for the diving project.
Reference to “short length flexible pipe”	Remove the reference to “short length flexible pipe” from Safety Regulations 1.6 and 1.7 as there is uncertainty and potential for different interpretation as to what is considered to be a short length flexible pipe.
Clarify the definition of facility and associated offshore place	Amend Safety Regulations 1.6 and 1.7 to clarify that if a vessel that is located at a site in Commonwealth waters is being used <i>only for one or more</i> of the purposes listed in the exemption table in regulations 1.6 or 1.7, while located at that site, the vessel is not a facility or associated offshore place.
Reporting of accidents and dangerous occurrences	Amend Safety sub-regulations 2.42(2) and (3) to remove references to a NOPSEMA determination and include at sub-regulation 2.42(2)(c) the details required for reporting of accidents and dangerous occurrences by operators to NOPSEMA.

Issue	Proposed change
	<p>These details are currently included in NOPSEMA's <i>Determination, Reporting of Accidents and Dangerous Occurrences</i>, available at: <a href="https://www.nopsema.gov.au/assets/Safety-resources/A213560.pdf">https://www.nopsema.gov.au/assets/Safety-resources/A213560.pdf</a></p>
<p>Regulations that pertain to persons, applying to facilities that are unmanned at all times (e.g. pipelines)</p>	<p>Amend the safety regulations to ensure that regulations such as reg 2.15, that requires the management of drugs and intoxicants, do not apply to facilities that have no persons at any time, such as pipeline facilities.</p>