

Responses to Public Comment on section 572 regulatory policy

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1. Background

Section 572 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act) places duties on titleholders in relation to the maintenance and removal of equipment and property brought onto title.

In the October 2019 Statement of Expectations from the Minister for Resources and Northern Australia, the Minister highlighted the need for heightened oversight of titleholders' compliance with their obligations under section 572 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act).

The Statement of Expectations requires NOPSEMA, through its regulatory processes, to ensure that titleholders maintain property in the title area and remove all property when no longer in use. Deviations from the requirement to remove property can only be accepted where deemed appropriate under the Australian Government *Offshore Petroleum Decommissioning Guideline*.

NOPSEMA's statement of intent issued in November 2019 outlined that NOPSEMA will, through its compliance monitoring and enforcement activities, ensure that titleholders are planning for and executing decommissioning activities in a timely and responsible manner.

To give effect to the statement of expectations and NOPSEMA's statement of intent, NOPSEMA drafted the N-00500-PL1903 - Section 572 Maintenance and removal of property regulatory policy (section 572 regulatory policy) to communicate how it will focus on titleholders' compliance with section 572 through compliance monitoring and enforcement activities.

NOPSEMA published the draft section 572 regulatory policy seeking feedback from stakeholders to inform its refinement prior to final publication. Input from stakeholders was also sought to develop further detailed guidance to assist titleholders in demonstrating compliance with section 572 requirements in the content of permissioning documents.

This document has been prepared to communicate how feedback received during the public comment period has been considered and incorporated in producing the final policy.

NOPSEMA would like to take the opportunity to thank stakeholders for their considered feedback on the draft document and for providing valuable input to the process.

2. Stakeholder Response

During the eleven-week public comment period between April and June 2020, submissions were received from the following stakeholders:

- Oil and gas companies and consultants
- Industry representative bodies

- Commonwealth and state departments
- International regulators
- Universities
- Non-government organisations (NGO's)
- The general public.

A total of 25 submissions addressing the draft section 572 regulatory policy were received. The submissions raised common items, which have been grouped into the following key themes:

- Requests to defer development and publication of the section 572 regulatory policy until the Department of Industry, Science, Energy and Resources (DISER) completes the decommissioning framework review
- Concerns the section 572 regulatory policy focuses on the Environment Plan as the key permitting document for decision making, regulation and compliance with section 572 of the Act
- Requests to expand the section 572 regulatory policy to provide more detail on comparative assessment considerations
- Requests to expand the section 572 regulatory policy to include equal or better environmental, safety and well integrity outcomes associated with removal of property
- The section 572 regulatory policy itself does not capture the full spectrum of issues needed to adequately manage property maintenance and removal, particularly for decommissioning as a permanent solution. These shortcomings include resource recovery, removal of equipment and potential adverse effects to economic viability to resources nearby
- Clarification of the expected timeframes to remove property that is, neither used nor to be used in connection with the operations
- Maintaining property to an appropriate standard such that decommissioning outcomes are not precluded is different to maintenance required for property whilst it is in active hydrocarbon service
- NOPSEMA's consideration of environmental impacts and risks of decommissioning activities outside a petroleum title area increases regulatory burden
- The section 572 regulatory policy needs to provide further detail on decommissioning monitoring requirements and expectations
- Application of the section 572 regulatory policy should not be applied to current environment plans, nor applied retrospectively
- The section 572 regulatory policy should address decommissioning liability and financial capability considerations
- Inclusion of decommissioning in a cessation of operation environment plans will be difficult to achieve where cessation of production is unexpectedly brought forward by economic decisions or unexpected reservoir performance

- Request for further detail on NOPSEMA's compliance and enforcement measures to ensure compliance with section 572
- Inclusion of the requirement for the annual environmental performance report to include a description of how section 572 requirements are being met is beyond the environmental reporting requirements of Regulation 26C. NOPSEMA should consider assessing performance with section 572 via regulatory inspection, rather than mandating additional annual reporting
- Public comment is only a requirement on exploration activity environment plans (EP) and does not extend to decommissioning activities. Decommissioning activity detail is often very high level with the public limited to commenting on decommissioning activities as part of an offshore project plan, with significant periods of time occurring between OPP and decommissioning planning/execution.

A response to each of the key themes is provided below.

3. Published Policy

The NOPSEMA section 572 regulatory policy (PL1903) has been finalised and published and complements the DISER decommissioning framework. NOPSEMA will continue to work cooperatively with industry to develop further guidance to ensure compliance with the requirement.

Stakeholder feedback	NOPSEMA's review of feedback	Section 572 Policy Considerations
<p>1. Defer the section 572 regulatory policy until the Department of Industry, Science, Energy and Resources (DISER) complete the Decommissioning Framework Review</p>	<p>The requirements of section 572 in relation to the maintenance and removal of property have been in effect under the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPGGGS Act) and similar provisions were in effect in the preceding Petroleum (Submerged Lands) Act 1967. The enduring Statement of Expectations issued in October 2019 by the Federal Resources Minister requires NOPSEMA to heighten its focus and oversight of titleholders' compliance with section 572 of the OPGGS Act, and update regulatory policies and practices and communicate how NOPSEMA will give effect to them.</p> <p>NOPSEMA has developed the section 572 regulatory policy to provide clarity to industry on how to comply with the longstanding legislative requirement. NOPSEMA recognises that outputs of the DISER Offshore Oil and Gas Decommissioning Framework Review (Decommissioning Framework Review) may lead to legislative change and may require amendments to the section 572 regulatory policy. However, until such time that legislative change is effected or an alternative policy direction is announced, it is important for titleholders to meet the current requirements of section 572.</p>	<p>No change to the section 572 regulatory policy. The section 572 regulatory policy has been published in consideration of drafting of DISER's Decommissioning Framework Review.</p> <p>NOPSEMA has also confirmed the current Minister's support for the NOPSEMA Statement of Expectations.</p>
<p>2. Concern the section 572 regulatory policy focuses on the environment plan (EP) as the key permissioning document for decision making, regulation and compliance with section 572 of the Act.</p>	<p>The Ministerial Statement of Expectations issued by the Federal Resources Minister in October 2019 requires NOPSEMA through its regulatory process to ensure that titleholders are planning to manage property in accordance with section 572 requirements.</p> <p>In response to the Minister's expectations, NOPSEMA has developed the section 572 regulatory policy to provide clarity to industry on how to comply with these legislative requirements. NOPSEMA considers it is more efficient and effective to use existing approval and compliance monitoring processes to reduce regulatory burden, to regulate the maintenance and removal of property from the title area. The EP is the most appropriate permissioning</p>	<p>NOPSEMA has amended the section 572 regulatory policy to reinforce the regulatory requirements and role of well operation management plans and safety cases.</p>

document for demonstrating compliance with section 572 requirements of the Act as:

- Compliance with the Act and regulations is an acceptance criteria for an EP under the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (Environment Regulations)[regulation 10A(h)], therefore titleholders must demonstrate compliance with section 572 in EPs under this acceptance criteria;
- An EP is required for all activities associated with decommissioning such as removal and deviations to removal.

3. The section 572 regulatory policy would benefit from detailing comparative assessment considerations where titleholders seek alternatives to removal of property.

Section 572 of the OPGGS Act recognises that removal may not always be practicable to be done immediately/concurrent at the point when property is neither used, nor to be used. Section 572(7) provides for titleholders to deviate from the requirement to remove property that is neither used, nor to be used. NOPSEMA will apply the following principles where a deviation is sought:

- An EP must meet the criteria for acceptance under the Environment Regulations;
- An EP must demonstrate that a deviation delivers equal or better environmental outcomes compared to complete property removal;
- Property must be maintained to allow for full removal whilst planning for any deviations takes place;
- Planning towards the proposed end-state for property above the seabed must be supported by information appropriate for the current stage of the activity and include justified timeframes;
- While approval for deviations are being pursued and the necessary planning progressed, titleholder submissions must recognise that unless deviations are approved at that point in time, complete property removal is the requirement.

MCDAs take into account a broader range of factors than is relevant to decision making under the Environment Regulations and can be structured to inappropriately favour short-term economic and other non-

NOPSEMA has updated the section 572 regulatory policy to provide further clarification on considerations for deviations to section 572 to assist understanding of required EP content. In addition, further clarification has been provided about the use and limitations of multi criteria decision making tools such as comparative assessment in EPs.

environmental considerations over environmental factors. MCDA may be used to support consultation with relevant persons and stakeholders on an alternatives analysis prior to the submission of an EP, but does not substitute for the consultation requirements specified in the Regulations.

Titleholders may include the outcomes of MCDAs in the EP, however, as MCDAs apply criteria that are different to the acceptance criteria under the Environment Regulations, titleholders relying on summaries of these outputs in EPs are unlikely to be able to demonstrate the regulatory criteria for acceptance have been met.

NOPSEMA's *Environment Plan Decision Making Guideline* (GL1721) sets out the considerations of NOPSEMA in making decisions in accordance with the criteria for acceptance of an EP. These are the basis for NOPSEMA being reasonably satisfied the acceptance criteria have been met, not the single output form a MCDA.

4. Expand the section 572 regulatory policy to include equal or better environmental, safety and well integrity outcomes associated with removal of property in line with the Offshore Petroleum Decommissioning guideline.

Current regulatory requirements and acceptance criteria for a safety case (SC), EP and well operations management plan (WOMP) constrain NOPSEMA to the specific decision making criteria of each individual permissioning document. As such the section 572 regulatory policy does not provide policy guidance for titleholders to equally evaluate environmental, safety and well integrity outcomes concurrently across all permissioning documents. However, given the Australian Government's *Offshore Petroleum Decommissioning Guideline* identifies this principle, NOPSEMA will have regard to it against the relevant criteria for decision making in the regulations.

Changes to current legislation to incorporate equal consideration of well, safety and environmental outcomes may be considered in future legislative amendments. NOPSEMA has passed this item to DISER to consider during the Decommissioning Framework Review.

NOPSEMA provided all comments relating to legislative change to DISER for consideration during the Decommissioning Framework Review. NOPSEMA has amended the section 572 regulatory policy to provide further clarification on the use and limitations of multi criteria decision analysis tools such as comparative assessment.

<p>5. Section 572 regulatory policy does not capture the full spectrum of issues needed to adequately manage property maintenance and removal, particularly for decommissioning as a permanent solution. These shortcomings include resource recovery, removal of equipment and potential adverse effects to economic viability to resources nearby.</p>	<p>NOPSEMA's section 572 regulatory policy has been developed based on existing legislative requirements. Current regulatory requirements and acceptance criteria for permissioning documents (e.g. SC, EP and WOMP) do not allow NOPSEMA to consider outcomes that are beyond the regulatory remit of each individual permissioning document. Consideration of aspects such as resource recovery and the potential impacts to the economic viability of nearby resources would require legislative change. NOPSEMA has passed this item to DISER to consider during the Decommissioning Framework Review.</p>	<p>No change to the section 572 regulatory policy.</p>
<p>6. Clarification of property removal timeframes is required. The draft section 572 regulatory policy refers to removal "as soon as reasonably practicable" and "when property is neither used nor to be used in connection with the operations". As a result the section 572 regulatory policy is inflexible and inappropriate, leading to increased costs and missed alternative decommissioning opportunities.</p>	<p>Section 572 of the OPGGS Act recognises that removal may not always be practicable to be done immediately/concurrent at the point when property is neither used, nor to be used. Section 572(7) provides for titleholders to deviate from the requirement to remove property that is neither used, nor to be used. NOPSEMA has provided principles in the section 572 regulatory policy that will be applied where a deviation to removal is sought. This recognises planning towards removal and any deviations that are being explored must be accompanied by appropriate justification and timeframes. Titleholders proposing a deviation must obtain acceptance of the deviation through an accepted EP prior to property moving into a state of non-use. While approval for deviations are being pursued and the necessary planning progressed, titleholder submissions must recognise that until a deviation is approved, full removal is the requirement and must be carried in the EP.</p> <p>To reduce compliance risks associated with the requirement to remove all property under section 572(3), NOPSEMA encourages the submission of EPs proposing deviations sufficiently in advance to obtain EP approval and provide certainty for titleholders and stakeholders.</p>	<p>NOPSEMA has updated the section 572 regulatory policy to clarify the timeframe for removal and to provide further policy guidance on deviations to full removal.</p>

<p>7. Maintaining property to an appropriate standard such that decommissioning outcomes are not precluded is different to maintenance required for property whilst it is in active hydrocarbon service.</p>	<p>NOPSEMA agrees that maintaining property to an appropriate standard such that decommissioning outcomes are not precluded is different to maintenance required for property whilst it is in active hydrocarbon service.</p> <p>Property must be maintained in good condition and repair, and maintained to allow for removal when it is neither used, nor to be used, in connection with the operations. Section 572(2) maintenance requirement relates to maintenance that will ensure property is fit for purpose and is able to be removed when neither used, nor to be used. This includes but is not limited to ensuring that all elements of the property continue to be regularly inspected, maintained and repaired where necessary.</p>	<p>NOPSEMA has updated the section 572 regulatory policy to clarify that maintaining property for hydrocarbon service is different to maintenance required so that property can be removed.</p>
<p>8. NOPSEMA's consideration of environmental impacts and risks of decommissioning activities outside a petroleum title area increases regulatory burden.</p>	<p>The Environment Regulations require that an EP must demonstrate that the environmental impacts and risks of an activity are reduced to as low as reasonably practicable (ALARP) and will be of an acceptable level in order to be accepted by NOPSEMA. Regulation 13(5) and (6) states that an EP must include details and an evaluation of all environmental impacts and risks for the activity arising directly or indirectly from all operations of the activity. Where an EP describes impacts and risks of removing property from a title area and relocating that property in the marine environment, the indirect consequences that may arise from the petroleum activity of removing property from a title area must be described and evaluated in the EP.</p> <p>NOPSEMA is continuing to work with Commonwealth agencies to explore opportunities that will streamline processes to reduce regulatory burden with decommissioning approvals. For example approvals under the <i>Environmental Protection (Sea Dumping) Act 1981</i>.</p>	<p>NOPSEMA has updated the section 572 regulatory policy to provide further clarification of the EP requirements where the decommissioning activity may have direct and/or indirect environmental impacts outside a title area. Direct and indirect impacts from decommissioning activities are within the scope and jurisdiction of the OPGGS Act and Environment Regulations.</p>
<p>9. The section 572 regulatory policy needs to clarify decommissioning monitoring requirements and expectations with particular emphasis where a deviation to complete removal is proposed.</p>	<p>NOPSEMA's section 572 regulatory policy states that titleholders are expected to address arrangements for long term monitoring and management where deviations to removal of property or relocation of property is proposed. This should include appropriate completion criteria to ensure that the environmental performance outcomes identified in the EP in relation to the impacts and risks of property left on the seabed will be met.</p>	<p>No change to section 572 regulatory policy.</p>

	<p>Environment plans requiring long term monitoring for property will be subject to environmental performance reporting requirements and compliance monitoring by NOPSEMA for the duration of the monitoring program.</p> <p>Decommissioning monitoring requirements will be assessed by NOPSEMA on a case by case basis. Titleholders will be required to justify and support decommissioning monitoring timeframes, and where uncertainty of impacts remain, additional work may be required to support monitoring programs.</p> <p>NOPSEMA recognises the potential challenges presented by decommissioning monitoring for the process of relinquishment of title. NOPSEMA has raised this matter with DISER for consideration in the Decommissioning Framework Review.</p>	
<p>10. The section 572 regulatory policy should not be applied to current environment plans, nor applied retrospectively.</p>	<p>The requirements of section 572 in relation to the maintenance and removal of property is an ongoing obligation that has been in effect under the OPGGS Act since 2006 and similar provisions were in effect in the preceding legislation in the Petroleum (Submerged Lands) Act 1967.</p> <p>NOPSEMA will consider compliance with section 572 in new submissions, as well as proposed revisions submitted for assessment. Titleholders should therefore be preparing to address the requirements of section 572 and document this in permissioning documents. NOPSEMA has published this section 572 regulatory policy to provide clarification of how all titleholders can comply with these existing requirements.</p> <p>As compliance with the Act and regulations is an acceptance criteria for an EP under the Environment Regulations [regulation 10A(h)], the EP must demonstrate compliance with section 572(2) and (3) of the Act.</p>	<p>No change to section 572 regulatory policy.</p>
<p>11. The section 572 regulatory policy does not address decommissioning</p>	<p>DISER's Decommissioning Framework Review is considering a broad scope of matters including those relating to decommissioning liability and financial</p>	<p>NOPSEMA has provided all comments relating to legislative change to DISER for consideration</p>

<p>liability and financial capability considerations.</p>	<p>capability. NOPSEMA will continue to administer the framework under current government policy settings pending the outcomes of the review.</p> <p>Reforms to policy and legislation relating to decommissioning liability and financial capability are a matter for DISER. NOPSEMA understands that these issues have been raised during DISER's review and NOPSEMA has provided public comments relating to these matters to DISER for consideration through that process.</p>	<p>during the Decommissioning Framework Review. No change to section 572 regulatory policy.</p>
<p>12. NOPSEMA expects that an EP proposing cessation of production will describe plans for property removal and a justified schedule for the removal of property in the title area. This will be difficult to achieve where cessation of production is unexpectedly brought forward by economic decisions or unexpected reservoir performance.</p>	<p>NOPSEMA expects that titleholders have plans in place for how they will manage property on the title throughout the life of the activity with decommissioning a normal stage in the lifecycle of a petroleum project.</p> <p>NOPSEMA considers that cessation of production is a new stage of operations and must be provided for in an accepted EP before the commencement of the new stage. If a titleholder plans to cease production, and cessation is not adequately addressed in the accepted EP, then a revision to the EP is required.</p> <p>Plans for property removal and plans for work towards future removal or any deviations must be supported by appropriate justification and timeframes. These plans will become more detailed as an activity progresses towards cessation activities. NOPSEMA considers that it is entirely foreseeable that production of operations will cease and therefore, there is no justification for failing to plan from the outset.</p>	<p>No change to section 572 regulatory policy.</p>
<p>13. Further detail on NOPSEMA's compliance and enforcement measures for enforcing the section 572 regulatory policy are required.</p>	<p>NOPSEMA has legislated functions to develop and implement strategies to effectively monitor and enforce compliance with the requirements of the OPGGS Act. The section 572 regulatory policy (section 7) has been updated to provide greater clarity, outlining NOPSEMA's risk based compliance strategy and details the compliance monitoring and graduated enforcement measures available to NOPSEMA, where titleholders fail to comply with section 572 requirements.</p>	<p>NOPSEMA has updated the section 572 regulatory policy to provide further clarification of compliance and enforcement measures for enforcing the legislative requirement.</p>

14. Inclusion of the requirement for the annual environmental performance reporting to include a description of how Section 572 requirements are being met is beyond the environmental reporting requirements of Regulation 26C. NOPSEMA should consider assessing performance with section 572 via regulatory inspection, rather than mandating additional annual reporting.

Regulation 26C requires titleholders undertaking an activity to submit a report detailing the titleholder's environmental performance for the activity. Criteria for acceptance of an EP under regulation 10A(h) includes compliance with the Act and regulations. Subsequently environmental performance of an activity includes compliance with the EP as well as the OPGGS Act and regulations.

NOPSEMA expects annual environmental performance reports to include a summary of the activities undertaken to meet section 572 requirements. Should further detail be required, NOPSEMA may undertake further compliance activities such as inspections as detailed in section 7 of the section 572 regulatory policy.

NOPSEMA has updated the section 572 regulatory policy to provide further clarification of compliance and enforcement measures for enforcing the legislative requirement.

15. Public comment is only a requirement on exploration activity environment plans and does not extend to decommissioning activities. Decommissioning activity detail is often very high level with the public limited to commenting on decommissioning activities as part of an offshore project plan, with significant periods of time occurring between OPP and decommissioning planning/execution.

NOPSEMA recognises the significance of decommissioning approvals and the public interest in these activities. Relevant person's consultation still applies, however the regulations only allow for public comment on exploration EPs. NOPSEMA has raised this issue with DISER for consideration in the Decommissioning Framework Review.

No change to section 572 regulatory policy.