

## Workplace arrangements

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### Core concepts

- All members of the workforce play an important role in ensuring occupational health and safety on offshore petroleum facilities.
- Facility operators must develop a policy that will facilitate effective cooperation between the operator and members of the workforce in managing occupational health and safety on the facility.
- The requirements for workplace arrangements are described in Part 3 of Schedule 3 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act)
- The legislation provides for workplace arrangements including designated work groups, health and safety representatives, and health and safety committees.
- Workplace arrangements must be established when requested by the workforce.
- Workplace arrangements can also assist operators in meeting the requirements of the legislation pertaining to workforce involvement in safety case development and revision.
- This guidance note provides a consolidation of the elements of the legislation pertaining to workplace arrangements, to assist facility operators and employers in meeting their legal obligations.

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## Definitions

The following are some useful definitions for terms used in this guidance note. Unless prescriptively defined in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act) or associated Safety Regulations and is suggested as a starting point only.

<b>Designated work group</b>	<ul style="list-style-type: none"> <li>(a) A group of members of the workforce at a facility that is established as a designated work group under clause 19 or 20; or</li> <li>(b) That group varied in accordance with clause 21 or 22</li> </ul>
<b>Group member</b>	<p>In relation to a designated work group at a facility, means a person who is:</p> <ul style="list-style-type: none"> <li>(a) A member of the workforce at that facility; and</li> <li>(b) Included in that designated work group</li> </ul>
<b>Health and safety representative</b>	A person selected as a health and safety representative for a designated work group under Clause 25 of Schedule 3 to the Act.
<b>Health and safety committee</b>	A group consisting of members chosen by the workforce representing the interests of the workforce, and members chosen by the operator representing the interests of the operator, which is responsible for assisting in the development, implementation, review, and update of measures designed to protect the health and safety of members of the workforce, and for facilitating cooperation between the operator and the workforce in relation to occupational health and safety matters.
<b>Member of the workforce</b>	<p>In relation to a facility, an individual who does work at the facility:</p> <ul style="list-style-type: none"> <li>(a) Whether as an employee of the operator of the facility or of another person;</li> <li style="text-align: center;"><i>or</i></li> <li>(b) Whether as a contractor of the operator or of another person</li> </ul>
<b>Operator</b>	In relation to a facility, the person who, under the regulations, is registered by NOPSEMA as the operator of that facility.
<b>Reviewing authority</b>	The Fair Work Commission
<b>Workforce representative</b>	<ul style="list-style-type: none"> <li>(a) In relation to a person who is a member of the workforce at a facility – an organisation registered or an association recognised under the <i>Fair Work (Registered Organisations) Act 2009</i>, of which that person is a member, if the person is qualified to be a member of that organisation or association because of the work the person performs at the facility; or</li> </ul>

- (b) In relation to a designated work group or a proposed designated work group – an organisation registered or an association recognised under the *Fair Work (Registered Organisations) Act 2009*, of which a person who is, or who is likely to be, in the work group is a member, if the person is qualified to be a member of that organisation or association because of the work the person performs, or will perform, at a facility as a member of the group



**Work group employer** In relation to a designated work group at a facility, means an employer of one or more group members, but does not include the operator of the facility.

**Workplace arrangements** Arrangements as described in the OPGGS Act, including the interrelationships between members of the workforce, designated work groups, health and safety representatives and health and safety committees, in relation to occupational health and safety matters.

## Abbreviations/acronyms

DWG	Designated work group
HSR	Health and safety representative
NOPSEMA	National Offshore Petroleum Safety and Environmental Management Authority
OHS	Occupational health and safety
OPGGS Act	<i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i>
Safety Regulations	Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009

## 1. Introduction

### 1.1. Intent and purpose of this guidance note

All members of the workforce play an important role in ensuring occupational health and safety on offshore petroleum facilities. Schedule 3 to the OPGGS Act obliges operators and employers to engage with members of the workforce, and provides for the mechanisms through which this engagement can occur. The legislation stipulates that all operators must take all reasonably practicable steps to develop, in consultation with members of the workforce and workforce representatives, an occupational health and safety policy that will facilitate effective cooperation between the operator and members of the workforce in managing occupational health and safety on the facility [Clause 9(2)(i)]. In addition to this policy, the legislation also provides for workplace arrangements including designated work groups (DWGs), health and safety representatives (HSRs), and health and safety committees, as illustrated in Figure 1.

Figure 1 - Hierarchy of workplace arrangements



This guidance note provides a consolidation of the elements of the OPGGS Act pertaining to workplace arrangements, to assist facility operators and employers in meeting their obligations under the legislation.

*Guidance notes indicate what is explicitly required by the regulations, discuss good practice and suggest possible approaches. An explicit regulatory requirement is indicated by the word must, while other cases are indicated by the words should, may, etc. NOPSEMA acknowledges that what is good practice and what approaches are valid and viable may vary according to the nature of different offshore facilities and the hazards existing at those facilities.*

## 1.2. Benefits of workforce consultation and engagement

While there are legislative requirements to consult with the workforce, there are many other benefits of this consultation, including:

- Members of the workforce are more likely to work safely if they are involved in the identification of hazards and the selection of risk control measures associated with planning their work
- Members of the workforce who have been actively involved in health and safety decisions will better understand those decisions and feel a sense of ownership over the outcomes
- Workforce engagement helps create a collaborative culture and a shared commitment to safety across the facility
- Understanding the views of others helps to establish and maintain positive working relationships
- In situations where responsibility for health and safety is shared, workforce engagement can help identify gaps in managing health and safety risks that occur when:
  - there is a lack of understanding of how the activities of each person may add to the hazards and risks to which others may be exposed
  - different duty holders assume that someone else is taking care of the health and safety matter
  - the person who takes action is not the best person to do so
- Research has shown that workforce input and participation improves decision-making about health and safety matters and assists in reducing work-related injuries and disease.

The establishment of workplace arrangements are legally required when requested by members of the workforce. However, the existence of HSRs and health and safety committees and their subsequent activities can also assist operators in meeting the requirements of the legislation pertaining to workforce involvement in safety case development and revision. Therefore, operators may choose to encourage the workforce to request health and safety representation, and highlight the benefits for both the workforce and the operator that can be achieved through such representation.

## 2. Develop a policy

All facility operators must take all reasonably practicable steps to develop a policy, in consultation with members of the workforce, to facilitate cooperation between the operator and members of the workforce in developing, promoting, and reviewing measures to ensure occupational health and safety (OHS) at the facility. The policy must also provide for an agreement between the operator and members of the workforce. That agreement must describe how the parties will engage in ongoing consultation, and any other matters that are agreed. The policy may be a standalone document, or incorporated into a broader OHS policy document.

### **OPGGSA – Duties of operator**

- Cl. 9(2) The operator of a facility is taken to be subject, under subclause (1), to each of the following requirements:
- (i) to take all reasonably practicable steps to develop, in consultation with:
    - (i) members of the workforce; and
    - (ii) if a member of the workforce at the facility has requested a workforce representative in relation to the member to be involved in those consultations – that workforce representative;
- a policy, relating to occupational health and safety, that:
- (iii) will enable the operator and the members of the workforce to cooperate effectively in promoting and developing measures to ensure the occupational health and safety of persons at the facility; and
  - (iv) will provide adequate mechanisms for reviewing the effectiveness of the measures; and
  - (v) provides for the making of an agreement that complies with subclauses (5) and (6).
- Cl. 9(5) The agreement referred to in subparagraph 2(i)(v) must be between:
- (a) on the one hand – the operator; and
  - (b) on the other hand:
    - (i) the members of the workforce; and
    - (ii) if a member of the workforce at the facility has requested a workforce representative to be a party to that agreement – that workforce representative.
- Cl. 9(6) The agreement referred to in subparagraph 2(i)(v) must provide appropriate mechanisms for continuing consultation between:
- (a) on the one hand – the operator; and
  - (b) on the other hand:
    - (i) the members of the workforce; and
    - (ii) if a member of the workforce at the facility has requested a workforce representative to be a party to that agreement – that workforce representative.
- The agreement must provide for such other matters (if any) as are agreed between the parties to the agreement.

### 3. Establishing designated work groups

Designated work groups (DWGs) can be established or varied upon request from a member of the workforce, or they can be established or varied if the operator chooses to do so. A facility is not required to establish DWGs unless requested by a member of the workforce. However, once a request has been made to the operator, the operator must enter into consultations with relevant parties, and must establish the DWGs after consultations are complete.

#### 3.1. Request for designated work groups

Any member of the workforce, or a workforce representative acting on request of a member of the workforce, may request that the facility operator enter into consultations to establish DWGs.

##### ***OPGGSA Schedule 3 – Establishment of designated work groups by request***

- Cl. 19(1) A request to the operator of a facility to enter into consultations to establish designated work groups in relation to the members of the workforce at the facility may be made by:
- (a) any member of the workforce; or
  - (b) if a member of the workforce requests a workforce representative in relation to the member to make the request to the operator – that workforce representative.

When a member of the workforce requests that the operator establish DWGs for the facility, the operator must enter into consultations with relevant parties within 14 days of that request. The legislation stipulates the parties who must be involved in the consultations.

##### ***OPGGSA Schedule 3 – Consultation***

- Cl. 19(2) The operator of a facility must, within 14 days after receiving a request under subclause (1), enter into consultations with:
- (a) if any member of the workforce made a request to establish designated work groups:
    - (i) that member of the workforce; and
    - (ii) if that member requests that the operator enter into consultations with a workforce representative in relation to the member – that workforce representative; and
    - (iii) each employer (if any) of members of the workforce; and
  - (b) if a workforce representative made a request to establish designated work groups:
    - (i) if a member of the workforce requests that the operator enter into consultations with that workforce representative – the workforce representative; and
    - (ii) each employer of members of the workforce.

The operator may also choose to establish DWGs independent of a request from the workforce. In this situation, the operator must enter into consultations with all members of the workforce and other relevant parties as defined within the legislation.



**OPGGSA Schedule 3 – Establishment of designated work groups at initiative of operator**

- Cl. 20(1) If, at any time, the operator of a facility considers that designated work groups should be established, the operator must enter into consultations with:
- (a) all members of the workforce; and
  - (b) if a member of the workforce requests that the operator enter into consultations with a workforce representative in relation to the member – that workforce representative; and
  - (c) each employer (if any) of members of the workforce.

### 3.2. Manner of grouping members of the workforce

The consultations between the operator and relevant parties must primarily aim to determine the most appropriate way to group members of the workforce. Members of the workforce should be grouped in such a way that best enables representation of their OHS interests through a HSR who is accessible to each group member. The legislation stipulates matters that must be considered when determining the manner in which members of the workforce shall be grouped.

**OPGGSA Schedule 3 – Manner of grouping members of the workforce**

- Cl. 24(1) Consultations about the establishment or variation of a designated work group must be directed principally towards the determination of the manner of grouping members of the workforce:
- (a) that best and most conveniently enables their interests relating to occupational health and safety to be represented and safeguarded; and
  - (b) that best takes account of the need for any health and safety representative selected for that designated work group to be accessible to each group member.
- Cl. 24(2) The parties to the consultations must have regard, in particular, to:
- (a) the number of members of the workforce at the facility to which consultation relates; and
  - (b) the nature of each type of work performed by such members; and
  - (c) the number and grouping of such members who perform the same or similar types of work; and
  - (d) the workplaces where each type of work is performed; and
  - (e) the nature of any risks to health and safety at each such workplace; and
  - (f) any overtime or shift working arrangement at the facility.
- Cl. 24(3) The designated work groups must be established or varied in such a way that, so far as is practicable, each of the members of the workforce at a facility is in a designated work group.
- Cl. 24(4) All the members of the workforce at a facility may be in one designated workgroup.

In practice, the manner of grouping members of the workforce is different on each facility. Some facilities with very low numbers of personnel undertaking routine work choose to establish one DWG per swing for the entire facility. Other facilities establish DWGs according to shift, work classification (e.g. operations,

maintenance, marine, catering), trade, work allocation (e.g. core crew, campaign maintenance, project work), work location, or a combination of these.

Within 14 days of consultations being complete, the operator must establish the DWGs by notifying the members of the workforce of the outcomes of the consultations.

#### ***OPGGSA Schedule 3 – Establishment***

Cl. 19(3); Cl. 20(2) Within 14 days after the completion of consultations about the establishment of the designated work groups, the operator must, by notifying the members of the workforce, establish the designated work groups in accordance with the outcomes of the consultations.

### **3.3. Variation of designated workgroups**

It may become necessary or desirable to vary the DWGs that have been established. The process for variation of DWGs is stipulated in the legislation and is similar to the process required to establish DWGs. The manner of grouping members of the workforce applies to both the establishment and variation of DWGs.

Any member of the workforce, or a workforce representative acting on request of a member of the workforce, may request that the operator enter into consultations to vary an established DWG.

#### ***OPGGSA Schedule 3 – Variation of designated workgroups by request***

Cl. 21(1) A request to the operator of a facility to enter into consultations to vary designated work groups that have already been established in relation to the members of the workforce at the facility may be made by:

- (a) any member of the workforce; or
- (b) if a member of the workforce requests a workforce representative in relation to the member to make the request to the operator – that workforce representative.

Upon receiving a request to vary a DWG, the operator must enter into consultations with relevant parties within 14 days.

**OPGGSA Schedule 3 – Consultation**

- Cl. 21(2) The operator of a facility must, within 14 days after receiving a request under subclause (1), enter into consultations with:
- (a) if any member of the workforce made a request to vary designated work groups:
    - (i) that member of the workforce; and
    - (ii) the health and safety representative of each designated work group affected by the proposed variation; and
    - (iii) each work group employer (if any) in relation to each designated work group affected by the proposed variation; and
  - (b) if a workforce representative made a request to vary designated work groups:
    - (i) if a member of a designated work group affected by the proposed variation requests that the operator enter into consultations with a workforce representative in relation to the group – that workforce representative; and
    - (ii) the health and safety representative of each designated work group affected by the proposed variation; and
    - (iii) each work group employer (if any) in relation to each designated work group affected by the proposed variation.

The operator may also initiate consultations to vary a DWG, in which case the legislation specifies the parties who must be consulted.

**OPGGSA Schedule 3 – Variation of designated workgroups at initiative of operator**

- Cl. 22(1) If the operator of a facility believes the designated work groups should be varied, the operator may, at any time, enter into consultations about the variations with:
- (a) the health and safety representative of each of the designated work groups affected by the proposed variation; and
  - (b) if a member of a designated workforce affected by the proposed variation requests that the operator enter into consultations with a workforce representative in relation to the group – that workforce representative; and
  - (c) each work group employer (if any) in relation to each designated work group affected by the proposed variation.

If the outcome of the consultations is that an established DWG shall be varied, then the operator must vary the DWG within 14 days.

**OPGGSA Schedule 3 – Variation**

Cl. 21(3); Cl. 22(2) If:

- (a) consultations take place about the variation of designated work groups that have already been established; and
- (b) as a result of the consultations, it has been determined that the variation of some or all of those designated work groups is justified;

then, within 14 days after the completion of the consultations, the operator must, by notifying the members of the workforce who are affected by the variation, vary the designated work groups in accordance with the outcomes of the consultations.

### 3.4. Disagreement during consultations

If the parties involved in consultations are unable to arrive at an agreement for DWGs, the matter can be referred to the reviewing authority, the Fair Work Commission.

**OPGGSA Schedule 3 – Referral of disagreement to reviewing authority**

Cl. 23(1) If, in the course of consultations under clause 19, 20, 21 or 22, there is disagreement between any of the parties to the consultation about the manner of establishing or varying a designated work group, any party may, for the purpose of facilitating that consultation, refer the matter of disagreement to the reviewing authority.

Cl. 23(2) If the matter of disagreement is referred to the reviewing authority, the parties to the disagreement must complete the consultation in accordance with the resolution of that matter by the reviewing authority.

## 4. Establishing health and safety representatives

### 4.1. Selection of HSRs

Once DWGs are established for the facility, health and safety representatives (HSRs) can be selected. Selection must also occur when the office of the HSR becomes vacant. Selection can occur through either unanimous agreement or through election. Where there is more than one candidate, the OPGGS(S) Regulations (see Appendix A) provide for the election process.

**OPGGSA Schedule 3 – Selection of health and safety representatives**

Cl. 25(1) One health and safety representative may be selected for each designated work group.

Cl. 25(2) A person is not eligible for selection as the health and safety representative for a designated work group unless the person is a member of the workforce included in the group.

Cl. 25(3) A person is taken to have been selected as the health and safety representative for a designated work group if:

- (a) all the members of the workforce in the group unanimously agree to the selection; or
- (b) the person is elected as the health and safety representative of the group in accordance with clause 26.

The operator must notify members of a DWG when their HSR office is vacant. If a HSR is not selected within a reasonable time of the office becoming vacant, the operator must invite nominations from all group members.

***OPGGSA Schedule 3 – Members of the designated work force must be notified***

Cl. 28(a) The operator of a facility must notify members of a designated work group in relation to the facility of a vacancy in the office of health and safety representative for the designated work group within a reasonable time after the vacancy arises.

***OPGGSA Schedule 3 – Nomination of health and safety representatives***

*Nominations*

Cl. 26(1) If:

- (a) there is a vacancy in the office of health and safety representative for a designated work group; and
- (b) within a reasonable time after the vacancy occurs, a person has not been selected under paragraph 25(3)(a) of this Schedule;

the operator of the facility must invite nominations from all group members for election as the health and safety representative of the group.

Cl. 26(2) If the office of health and safety representative is vacant and the operator has not invited nominations within a further reasonable time no later than 6 months after the vacancy occurred, NOPSEMA may direct the operator to do so.

After the close of the nomination period, if only one candidate was nominated, that candidate becomes the selected HSR. If more than one candidate was nominated, elections must be held. The regulations provide a process for undertaking an election, which must be applied when so requested by the DWG. However, members of the DWG may choose an alternative approach to election.

**OPGGSA Schedule 3 – Election of health and safety representatives**
*Election – more than one candidate*

- Cl. 26(3) If there is more than one candidate for election at the close of the nomination period, the operator must conduct, or arrange for the conduct of, an election at the operator's expense.
- Cl. 26(4) An election conducted or arranged to be conducted under subclause (3) must be conducted in accordance with regulations made for the purposes of this subclause if this is requested by the lesser of:
- (a) 100 members of the workforce normally in the designated work group; or
  - (b) a majority of the members of the workforce normally in the designated work group.

*Election – only one candidate*

- Cl 26(5) If there is only one candidate for election at the close of the nomination period, that person is taken to have been elected.

*Disqualified person cannot be a candidate*

- Cl 26(6) A person cannot be a candidate in the election if he or she is disqualified under clause 32.

*Voting*

- Cl 26(7) All members of the workforce in the designated work group are entitled to vote in the election.

*Directions*

- Cl 26(8) An operator conducting or arranging for the conduct of an election under this clause must comply with any relevant directions issued by NOPSEMA.

The term of office for a HSR is two years unless otherwise agreed. The legislation does not limit the number of terms of office a selected HSR may hold.

**OPGGSA Schedule 3 – Term of office**

- Cl. 29(1) A health and safety representative for a designated work group holds office:
- (a) if, in consultations that took place under clause 19, 20, 21 or 22, the parties to the consultations agreed to the period for which the health and safety representative for the group was to hold office – for such a period; or
  - (b) in any other case – for 2 years;
- beginning at the start of the day on which he or she was selected.
- Cl. 29(2) However, the health and safety representative is eligible to be selected for further terms of office.

Deputy HSRs can also be selected for each DWG. The process for selection of a deputy HSR is the same as that for selection of a HSR. The legislation stipulates the conditions under which the deputy HSR can exercise HSR powers for their DWG.

**OPGGSA Schedule 3 – Deputy health and safety representatives**

- Cl. 33(1) One deputy health and safety representative may be selected for each designated work group for which a health and safety representative has been selected.
- Cl. 33(2) A deputy health and safety representative is to be selected in the same way as a health and safety representative under clause 25.
- Cl. 33(3) If the health and safety representative for the designated work group:
- (a) ceases to be the health and safety representative; or
  - (b) is unable (because of absence or any other reason) to exercise the powers of a health and safety representative;
- then:
- (c) the powers may be exercised by the deputy health and safety representative (if any) for the group; and
  - (d) this Schedule (other than this clause) applies in relation to the deputy health and safety representative accordingly.

## 4.2. Operator actions following selection of HSRs

After each DWG has selected their HSR, the operator must compile a current list of HSRs, and make that list available to facility personnel. The list compiled by the operator must include the names of all selected HSRs for the facility, regardless of whether they are employed by the operator or another employer. The list must be updated every time a new HSR is selected. The normal practice of making the list available to personnel is by placing the list on noticeboards throughout the facility. Some operators choose to include photographs of each HSR next to their name.

**OPGGSA Schedule 3 – List of health and safety representatives**

- Cl. 27 The operator of a facility must:
- (a) prepare and keep up to date a list of all the health and safety representatives of designated work groups comprising members of the workforce performing work at the facility; and
  - (b) ensure that the list is available for inspection, at all reasonable times, by:
    - (i) the members of the workforce at the facility; and
    - (ii) OHS inspectors.

Following HSR selection, the operator must notify members of each DWG of the name of their HSR regardless of the manner in which the HSR is selected.

**OPGGSA Schedule 3 – Members of the designated work force must be notified**

- Cl. 28(b) The operator of a facility must notify those members of the name of any person selected (whether under paragraph 25(3)(a) or (b) of this Schedule) as health and safety representative for the designated work group within a reasonable time after the selection is made.

The operator and/or employer of each HSR must permit the HSR to take time off work to attend NOPSEMA-accredited HSR training. HSRs should attend training as soon as is practical, to ensure HSRs understand their role and appropriate use of their powers.

***OPGGSA Schedule 3 – Training of health and safety representatives***

- Cl. 30(1) A health and safety representative for a designated work group must undertake a course of training relating to occupational health and safety that is accredited by NOPSEMA for the purposes of this clause.
- Cl. 30(2) The operator of the facility concerned must permit the representative to take such time off work, without loss of remuneration or other entitlements, as is necessary to undertake the training.
- Cl. 30(3) If a person other than the operator is the employer of the representative, that person must permit the representative to take such time off work, without loss of remuneration or other entitlements, as is necessary to undertake the training.

The operator and/or employer of a HSR must not levy, or permit to be levied, the HSR in relation to undertaking HSR training.

***OPGGSA Schedule 3 – Members of workforce not to be levied***

- Cl. 87 A person commits an offence if:
- (a) the person is:
    - (i) the operator of a facility; or
    - (ii) an employer (other than the operator) of members of the workforce at a facility; and
  - (b) the person levies, or permits to be levied, on any member of the workforce at the facility, any charge in relation to anything done or provided in accordance with a listed OHS law in order to ensure the health, safety or welfare of persons at or near the facility.

A list of accredited training providers is published on NOPSEMA's webpage, via the following hyperlink: <https://www.nopsema.gov.au/safety/health-and-safety-representatives/>

### 4.3. Cessation of health and safety representative duties

The legislation stipulates the conditions under which a person must cease to be a HSR, and describes the associated processes for resignation and notification.



**OPGGSA Schedule 3 – Resignation etc. of health and safety representatives***When person must cease to be health and safety representative*

- Cl. 31(1) A person ceases to be a health and safety representative for the designated work group if:
- (a) the person resigns as the health and safety representative
  - (b) the person ceases to be a group member of that designated work group; or
  - (c) the person's term of office expires without the person having been selected, under clause 25, to be the health and safety representative for the designated work group for a further term; or
  - (d) the person is disqualified under clause 32.

*Resignation*

- Cl. 31(2) A person may resign as the health and safety representative for a designated work group by written notice delivered to the operator and to each work group employer.
- Cl. 31(3) If a person resigns as the health and safety representative for a designated work group, the person must notify the resignation to the group members.

*Notification*

- Cl. 31(4) If a person has ceased to be the health and safety representative for a designated work group because of paragraph (1)(b), the person must notify in writing,
- (a) the group members; and
  - (b) the operator and each work group employer;
- that the person has ceased to be the health and safety representative for that designated work group.

The legislation also contains provisions for the disqualification of HSRs on specified grounds. An application for disqualification can be made to NOPSEMA. The legislation provides two grounds upon which an application for disqualification can be made. These should be detailed within the application. If NOPSEMA is satisfied that the grounds for disqualification occurred, and after having regard to the consequences of the HSR action and the HSR's past record, NOPSEMA may disqualify the HSR for a specified period of up to five years.

***OPGGSA Schedule 3 – Disqualification of health and safety representatives***
*Application for disqualification*

- Cl. 32(1) An application for the disqualification of a health and safety representative for a designated work group may be made to NOPSEMA by:
- (a) the operator; or
  - (b) a work group employer; or
  - (c) at the request of a group member of the designated work group – a workforce representative in relation to the designated work group

*Grounds for disqualification*

- Cl. 32(2) An application under subclause (1) may be made on either or both of the following grounds:
- (a) that action taken by the health and safety representative in the exercise or purported exercise of power under subclause 34(1) or any other provision of this Schedule was taken:
    - (i) with the intention of causing harm to the operator or work group employer or to an undertaking of the operator or work group employer; or
    - (ii) unreasonably, capriciously or not for the purpose for which the power was conferred on the health and safety representative;
  - (b) that the health and safety representative has intentionally used, or disclosed to another person, for a purpose that is not connected with the exercise of a power of a health and safety representative, information acquired from the operator or work group employer.

*Disqualification*

- Cl. 32(3) If, on application under subclause (1), NOPSEMA is satisfied that the health and safety representative has acted in a manner referred to in subclause (2), NOPSEMA may, after having regard to:
- (a) the harm (if any) that was caused to the operator or work group employer or to an undertaking of the operator or work group employer as a result of the action of the representative; and
  - (b) the past record of the representative in exercising the powers of a health and safety representative; and
  - (c) the effect (if any) on the public interest of the action of the representative; and
  - (d) such other matters as the Authority thinks relevant;
- disqualify the representative, for a specified period not exceeding 5 years, from being a health and safety representative for any designated work group.

## 5. Duties of the operator and employers in relation to health and safety representatives

Operators and employers must consult with HSRs on matters relevant to the health and safety of their DWG members, permit HSRs to exercise their powers, and provide access to such facilities as are necessary for HSRs to exercise their powers.

### ***OPGGSA Schedule 3 – Duties of the operator and other employers in relation to health and safety representatives***

#### *Duties*

- Cl. 40(1) The operator of a facility, in relation to which a designated work group having a health and safety representative has been established, must:
- (a) on being requested to do so by the representative, consult with the representative on the implementation of changes at any workplace at which some or all of the group members perform work, where the changes may affect their health and safety; and
  - (b) in relation to a workplace at which some or all of the group members perform work:
    - (i) permit the representative to make such inspection of the workplace as the representative is entitled to make in accordance with subparagraph 34(1)(a)(i) of this Schedule and to accompany a NOPSEMA inspector during an OHS inspection at the workplace by the inspector; and
    - (ii) if there is no health and safety committee in relation to the members of the workforce – on being requested to do so by the representative, consult with the representative about the development, implementation and review of measures to ensure the health and safety of group members; and
  - (c) permit the representative to be present at any interview at which the representative is entitled to be present under paragraph 34(1)(c); and
  - (d) provide to the representative access to any information to which the representative is entitled to obtain access under subparagraph 34(1)(d)(i) or (ii) of this Schedule and to which access has been requested; and
  - (e) permit the representative to take such time off work, without loss of remuneration or other entitlements, as is necessary to exercise the powers of a health and safety representative; and
  - (f) provide the representative with access to such facilities as are:
    - (i) prescribed for the purposes of this paragraph; or
    - (ii) necessary for the purposes of exercising the powers of a health and safety representative.
- Cl. 40(2) Paragraph (1)(d) has effect to subclauses (3) and (4).

Provision of facilities that are necessary for exercising HSR powers generally include permission to use a private office or conference room, a computer with internet connection and access to local networks, the company intranet, and relevant safety documents (e.g. facility safety case, policies, procedures, etc.). Some operators provide individual HSRs with company email accounts; others establish a generic 'facility HSR' email account. Access to a printer, telephone, and office supplies should also be provided, along with hard copies of the safety case and other relevant safety documents if electronic versions are unavailable or inaccessible.

The legislation limits the nature of information that a HSR can access, and stipulates the type of information to which an operator must not permit access by a HSR.

***OPGGSA Schedule 3 – Duties of the operator and other employers in relation to health and safety representatives – Information***

- Cl. 40(3) The operator must not permit a health and safety representative in relation to a designated work group to have access to information that:
- (a) is of a confidential medical nature under the control of the operator; and
  - (b) relates to a person who is or was a group member;
- unless:
- (c) the person has delivered to the employer a written authority permitting the representative to have access to the information; or
  - (d) the information is in a form that does not identify the person or enable the identity of the person to be discovered.
- Cl. 40(4) The operator is not required to give a health and safety representative access to any information in relation to which the operator is entitled to claim, and does claim, legal professional privilege.

The duties of the operator in relation to HSRs are equally applicable to work group employers and supervisors of work. That is, supervisors and work group employers must consult with HSRs on matters relevant to the health and safety of their DWG members, permit HSRs to exercise their powers, provide access to such facilities as are necessary for HSRs to exercise their powers, and must not permit access to certain information.

***OPGGSA Schedule 3 – Duties of the operator and other employers in relation to health and safety representatives – Employer and supervisor***

- Cl. 40(5) The duties imposed by this clause on the operator in relation to the health and safety representative for a designated work group apply equally, to the extent that the matters to which the duties relate are within the control of a work group employer or of a supervisor of particular work, to that employer and to that supervisor.

## 6. Health and safety committees

Health and safety committees can provide a useful forum for facility management and members of the workforce to discuss and resolve health and safety issues. The legislation specifies the conditions following which a committee must be established; however, a committee may also be established voluntarily.

**OPGGSA Schedule 3 – Health and safety committees – Establishment**

- Cl. 41(1) A health and safety committee must be established in relation to the members of the workforce at a facility if:
- (a) the number of those members normally present at the facility is not less than 50 (whether or not those members are all at work at the facility at the same time); and
  - (b) the members of the workforce are included in one or more designated work groups; and
  - (c) the operator is requested to establish the committee by the health and safety representative for the designated work group or for one of the designated work groups.

The legislation specifies that the constitution of the committee be agreed between the operator and members of the workforce. If there is no agreement, the committee constitutes equal numbers of members representing the interests of the workforce and members representing the interests of the operator and other employers. While the legislation does not stipulate that HSRs must form part of the committee, their inclusion as members of the committee is considered good practice and is a typical approach across facilities.

**OPGGSA Schedule 3 – Health and safety committees – Constitution**

- Cl. 41(2) The health and safety committee consists of:
- (a) the number of members specified in an agreement reached between the operator and the members of the workforce; or
  - (b) if there is no such agreement – an equal number of:
    - (i) members, chosen by the members of the workforce, to represent the interests of members of the workforce; and
    - (ii) members, chosen by the operator, to represent the interests of the operator and the employers (other than the operator) of members of the workforce.
- Cl. 41(3) The agreement referred to in paragraph (2)(a) may:
- (a) specify the persons who are to be members to represent the interests of the operator and employers (other than the operator) of members of the workforce; and
  - (b) provide for the way in which persons who are to be members to represent the interests of members of the workforce are to be chosen.

The committee must meet every three months, but may choose to meet more frequently. Minutes of meetings must be recorded and retained for at least three years.

**OPGGSA Schedule 3 – Health and safety committees – Meetings**

- Cl. 41(5) A health and safety committee must hold meetings at least once every 3 months.
- Cl. 41(6) The procedure at meetings of a health and safety committee must, except to the extent provided for by the regulations, be the procedure agreed upon by the committee.
- Cl. 41(7) A health and safety committee must cause minutes of its meetings to be kept, and must retain those minutes for a period of not less than 3 years.

The functions and powers of the committee are prescribed within the legislation; however, the committee is able to perform additional functions as agreed between the committee and the operator. Essentially, the function of the committee is to assist the operator in protecting the health and safety at work of members of the workforce, and to facilitate cooperation and communication between the operator, employers, and members of the workforce in relation to occupational health and safety matters.

**OPGGSA Schedule 3 – Functions of health and safety committees**

- Cl. 42(1) A health and safety committee has the following functions:
- (a) to assist the operator of the facility concerned:
    - (i) to develop and implement measures designed to protect; and
    - (ii) to review and update measures used to protect; the health and safety at work of members of the workforce;
  - (b) to facilitate cooperation between the operator of the facility, employers (other than the operator) of members of the workforce, and members of the workforce, in relation to occupational health and safety matters;
  - (c) to assist the operator to disseminate among members of the workforce, in appropriate languages, information relating to health and safety at work;
  - (d) such functions as are prescribed;
  - (e) such other functions as are agreed upon between the operator and the health and safety committee.
- Cl. 42(2) A health and safety committee has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.
- Cl. 42(3) This Schedule does not:
- (a) impose an obligation on a person to do any act, because the person is a member of a health and safety committee, in connection with the performance of a function conferred on the committee or
  - (b) render such a person liable in civil proceedings because of:
    - (i) a failure to do such an act; or
    - (ii) the manner in which such an act was done.

When a committee is established, the legislation stipulates that the operator and employers must make available to the committee information relating to workforce health and safety risks, and must allow committee members the time to participate in the performance of the committee's functions. The legislation also stipulates certain information that must not be made available to committee members.

**OPGGSA Schedule 3 – Duties of the operator and other employers in relation to health and safety committees***Duties*

- Cl. 43(1) If there is a health and safety committee, the operator and any employer (other than the operator) of a member of the workforce must:
- (a) make available to the committee any information possessed by the operator or that employer relating to risks to health and safety to members of the workforce; and
  - (b) permit any member of the committee who is a member of the workforce to take such time off work, without loss of remuneration or other entitlements, as is necessary for the member adequately to participate in the performance by the committee of its functions.

*Information*

- Cl. 43(3) The operator or any employer (other than the operator) of a member of the workforce must not make available to a health and safety committee information of a confidential nature relating to a person who is or was a member of the workforce, unless:
- (a) the person has authorised the information to be made available to the committee or
  - (b) the information is in a form that does not identify the person or enable the identity of the person to be discovered.
- Cl. 43(4) The operator or any employer (other than the operator) of a member of the workforce is not required to make available to a health and safety committee any information in relation to which the operator or employer is entitled to claim, and does claim, legal professional privilege.

## 7. Considerations for short-term members of the workforce

The workplace arrangements described above are an effective means to ensure continued workforce involvement in health and safety matters, particularly for 'core crew' members who attend the facility as part of a regular roster. However, established ongoing arrangements may not provide representation for short-term members of the workforce, such as those engaged for specific or specialised work campaigns. Examples of such campaigns include:

- well interventions
- campaign maintenance
- emergency maintenance
- project work
- inspection and testing campaigns (e.g. rope-access work)
- shutdowns.

As noted above, once DWGs are established the operator must ensure that each member of the workforce at a facility is in a DWG, so far as is reasonably practicable. As such, facility operators should consider how best to provide DWGs for short-term members of the workforce and plan for this in advance of mobilisation.

The approach taken may vary depending on the nature of the work being carried out, and the configuration of different work groups. If individuals are allocated to existing work groups, then informing them of their DWG and HSR may be sufficient. However, if a specialist crew are being mobilised from a particular supplier or contractor, then it may be more appropriate that the specialist crew are established as a separate DWG. With sufficient forward planning, such a crew could mobilise to the facility with their HSR already selected and trained. This would streamline the process and ensure that all members of the workforce are appropriately represented through an accessible HSR. NOPSEMA encourages operators to include a requirement for a pre-selected and trained HSR into their contract terms when engaging specialist or campaign crew.



## 8. References, acknowledgments & notes

*Offshore Petroleum and Greenhouse Gas Storage Act 2006*

Offshore Petroleum and Greenhouse Gas (Safety) Regulations 2009

Note: All regulatory references contained within this Information Paper are from the Commonwealth *Offshore Petroleum and Greenhouse Gas Storage Act 2006* and the associated Commonwealth regulations. For facilities located in designated coastal waters, please refer to the relevant State or Northern Territory *equivalents* and the associated regulations.

For more information regarding this information paper, contact the NOPSEMA:

- Telephone: +61 (0)8 6188- 8700, or
- e-mail: [information@nopsema.gov.au](mailto:information@nopsema.gov.au).

## Appendix A: Election of health and safety representatives<sup>1</sup>

### ***Division 1—Returning officer***

#### ***3.8 Appointment of returning officer***

- (1) If, under subclause 26(3) of Schedule 3 to the Act, an operator is required to conduct an election, or arrange for the conduct of an election, the operator must nominate a person to act as the returning officer for the election.
- (2) The operator must notify NOPSEMA of the nomination.
- (3) NOPSEMA may:
  - (a) approve the nomination and appoint the nominee as returning officer; or
  - (b) appoint another person as returning officer.

### ***Division 2—The poll***

#### ***3.9 Number of votes***

Each person eligible to vote in an election is entitled to one vote only in the election.

#### ***3.10 Right to secret ballot***

A person eligible to vote in an election may request the returning officer for the election to conduct the poll for the election by secret ballot.

#### ***3.11 Conduct of poll by secret ballot***

- (1) As soon as practicable after a request under regulation 3.10, the returning officer must issue ballot-papers for the poll to voters.
- (2) The returning officer must conduct the poll in accordance with Divisions 3 and 4.

#### ***3.12 Conduct of poll if no request made for secret ballot***

Subject to Division 5, if no request is made for a secret ballot, the returning officer for an election may conduct a poll for the election in a manner determined by him or her to produce a fair result.

#### ***3.13 If no candidate is elected***

If, in an election, no candidate is elected, the election is taken to have failed.

### ***Division 3—Polling by secret ballot***

#### ***3.14 Ballot-papers***

A ballot-paper must:

- (a) state the election to which it relates; and
- (b) set out the name of each candidate in alphabetical order; and
- (c) state the manner of voting.

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<sup>1</sup> OPGGS(S) Regulations, Chapter 3, Part 2

### 3.15 Distribution of ballot papers

- (1) As soon as practicable before the close of a poll by secret ballot, the returning officer for an election must give to each voter:
  - (a) a ballot-paper that is initialled by the returning officer; and
  - (b) an envelope that:
    - (c) is addressed to the returning officer; and
    - (d) shows on its face that it relates to the election.
- (2) The envelope given to a voter by a returning officer:
  - (a) may be pre-paid as to postage; and
  - (b) in that case—may include on its face a statement by the returning officer that the envelope may be posted to the returning officer without expense to the voter.
- (3) The returning officer must ensure that the ballot-paper and envelope are enclosed in a covering envelope that is sealed and addressed to the voter.

### 3.16 Manner of voting by secret ballot

- (1) A voter in a poll by secret ballot must mark the ballot-paper to indicate his or her preference by placing the number 1 in the box printed opposite the name of the candidate for whom that person wishes to vote.
- (2) After marking the ballot-paper, the voter must:
  - (a) fold the ballot-paper so as to conceal the marking; and
  - (b) put the ballot-paper in the envelope referred to in paragraph 3.15(1)(b) and seal the envelope; and
  - (c) lodge the ballot by:
    - (i) putting the envelope containing the ballot-paper in a locked and sealed ballot box, provided for the election by the returning officer, in a secure part of the workplace where the members of the workforce in the designated work group to which the election relates may place envelopes of that kind; or
    - (ii) sending the envelope to the returning officer so as to reach him or her not later than the close of the poll.
- (3) If, before lodging his or her ballot, a voter:
  - (a) claims that he or she has spoiled his or her ballot-paper; and
  - (b) returns the ballot-paper to the returning officer; and
  - (c) requests a further ballot-paper;

the returning officer must:

- (d) give the voter a fresh ballot-paper; and
- (e) write the word 'spoilt' across the returned ballot-paper and sign and date the writing; and
- (f) retain the spoiled ballot-paper until the end of 6 months after notification of the result of the poll is given under regulation 3.27.

### **Division 4—The count**

#### **3.17 Envelopes given to returning officer**

- (1) A returning officer for an election must:
  - (a) keep the ballots received by him or her before the close of the poll secure; and
  - (b) keep the envelopes containing the ballot-papers unopened until the count.
- (2) The returning officer must not admit to the count ballot-papers received by him or her after the close of the poll.

#### **3.18 Scrutineers**

Each candidate in a poll conducted by secret ballot may appoint one scrutineer to represent him or her at the count.

#### **3.19 Returning officer to be advised of scrutineers**

A candidate must tell the returning officer for the election the name of his or her scrutineer (if any) before the commencement of the count.

#### **3.20 Persons present at the count**

- (1) The returning officer for an election may direct a person to leave the place where the count is being conducted if the person:
  - (a) is not entitled to be present, or to remain present, at the count; or
  - (b) being entitled to be present, interrupts the count, except as provided by subregulation (2).
- (2) A candidate's scrutineer may interrupt the count and so inform the returning officer if the scrutineer:
  - (a) objects to a decision by the returning officer that a ballot paper is formal or informal, as the case may be; or
  - (b) considers that an error has been made in the conduct of the count.
- (3) A person who does not comply with a direction given to him or her under subregulation (1) is guilty of an offence.

**Penalty:** 5 penalty units.

- (4) However, it is a defence to a prosecution for an offence against subregulation (3) if the person has a reasonable excuse.

**Note:** A defendant bears an evidential burden in relation to the question whether he or she had a reasonable excuse (see section 13.3 of the *Criminal Code*).

- (5) An offence against subregulation (3) is an offence of strict liability.

**Note:** For ***strict liability***, see section 6.1 of the *Criminal Code*.

#### **3.21 Conduct of the count**

- (1) As soon as practicable after the close of the poll, the returning officer must count the votes for each candidate.

- (2) A scrutineer, appointed under regulation 3.18, may be present at the count.
- (3) A returning officer must, as soon as practicable before the count, notify each candidate, or a scrutineer of each candidate, of the place where, and the time when, the count is to occur.
- (4) The candidate who receives the most votes is the successful candidate.
- (5) If 2 or more candidates receive the same number of votes, the successful candidate is to be determined by lots drawn by the returning officer.

### 3.22 *Informal ballot-papers*

A ballot-paper is informal if:

- (a) it is not initialled by the returning officer; or
- (b) it has no vote marked on it; or
- (c) it is so imperfectly marked that the intention of the person who marked the ballot-paper is not clear; or
- (d) it has any mark or writing on it by which the person who marked the ballot-paper can be identified.

### 3.23 *Completion of the count*

After the count conducted in respect of a poll has been completed, the returning officer must prepare, date and sign a statement setting out:

- (a) the number of valid votes given to each candidate; and
- (b) the number of informal ballot-papers.

### 3.24 *Destruction of election material*

At the end of 6 months after notification of the result of the poll for an election is given under regulation 3.27, the returning officer may destroy:

- (a) the nominations for that election; and
- (b) the ballot-papers, including any spoilt ballot-papers, for the election.

## ***Division 5—Result of election***

### 3.25 *Request for recount*

- (1) At any time before notification of the result of the poll for an election is given under regulation 3.27, the returning officer:
  - (a) on his or her own initiative—may conduct a recount of any ballot-papers received in the election; or
  - (b) if a candidate makes a request, either orally or in writing, for a recount of any ballot-papers received in the election and gives reasons for the request—must conduct a recount of the ballot-papers.
- (2) In conducting a recount, the returning officer:
  - (a) in the case of a poll by secret ballot—has the same powers for the purposes of the recount as he or she had in the count; and
  - (b) in any other case—may make any reasonable decision in respect of the allowance and admission, or disallowance and rejection, of a vote cast in the poll.

### 3.26 Irregularities at election

- (1) Subject to subregulation (2), if the returning officer has reasonable grounds to believe that there has been an irregularity in the conduct of an election, he or she may, at any time before notification of the result of the poll is given under regulation 3.27, declare the election to be void.
- (2) An election must not be declared to be void only because of:
  - (a) a defect or irregularity in the conduct of the election that did not affect the result of the election; or
  - (b) an error or defect in an instrument or other document made, or purporting to be made, for the purposes of this Part; or
  - (c) an illegal practice, other than bribery or corruption, or attempted bribery or corruption, having been engaged in by a person, unless:
    - (i) it is likely that the result of the election was affected by the practice; and
    - (ii) it is just that the election be declared void.
- (3) If an election is declared void, regulation 3.27 applies as if the election had failed.

### 3.27 Result of poll

- (1) As soon as practicable after the failure of an election, a returning officer must notify in writing:
  - (a) the operator of the facility to which the election relates; and
  - (b) NOPSEMA;
 of the failure of the election.
- (2) As soon as practicable after the close of the poll for an election that has not failed, the returning officer must notify in writing the candidate who is elected and enclose with the notification a copy of the statement prepared under regulation 3.23.