

Facility definition includes an associated offshore place

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1 Introduction and scope

This guideline discusses the definition of *facility* and *associated offshore place* in the context of the Commonwealth *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act) and indicates the obligations for operators if their vessel or structure is a facility or an associated offshore place as part of a facility.

2 Relevant legislation

Schedule 3 to the OPGGS Act.

Commonwealth Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009 [OPGGs(S) Regulations].

3 Clarification of terms

3.1 Facility

The definitions in Clause 3 of Schedule 3 to the OPGGS Act indicate that a facility is defined by Clause 4, and includes:

- a facility being constructed or installed
- an associated offshore place.

Clause 4 defines a facility as a vessel or structure (whether floating or fixed) whether or not it is capable of independent navigation, while the vessel or structure is located in Commonwealth waters and is being used, or is being prepared for use, at the site [Schedule 3, Clause 4] for the recovery, processing, storage, offloading of petroleum (sub-clause 4(1)(b)(i)). In accordance with sub-clause 4(4), this includes:

- any wells, associated plant, equipment by which petroleum processed or stored at the vessel or structure is recovered
- any pipes from a well, or secondary lines associated with the facility.

Other activities that cause vessels or structures to be facilities include activity categories covered in sub-clause 4(1)(b)(ii) - (vi), and include:

- accommodation for persons working on another facility
- drilling or servicing a well for petroleum or work associated with drilling or servicing
- laying pipes for petroleum, including any manufacturing of such pipes, or for doing work on an existing pipe
- erection, dismantling or decommissioning of a facility.

Categories of activities cause relevant vessels or structures to be defined as facilities and the Clause 4 definition lists these activities.

Sub-clause 4(6) lists the following that are not facilities:

- off-take tankers
- tugs or anchor handling vessels
- vessels used for supplying facilities or for travelling to or from a facility
- any vessel or structure declared by regulations not to be a facility.

With respect to the last bullet point above, OPGGS(S) Regulation 1.6 includes a list of activities that exclude a vessel from being a facility and regulation 1.7 includes a list of activities that exclude a vessel from being an associated offshore place. However, where a facility is causing a risk other than a normal marine risk to the vessel the exclusions under Regulation 1.7 do not apply.

Sub-clause 4(7) notes that a vessel or structure is considered a facility not only when it is being used for offshore petroleum activities, but from the time it arrives at the site where it is to be used, until it has ceased its operations and has been returned to either a navigable form or to a form in which it can be towed to another place.

The main objective of the facility definition is to specify the physical boundaries of the regulatory regime. Hardware is drawn into the regime based on the type of activity and a general duty of care and a safety case obligation are imposed to ensure risks are reduced as low as reasonably practicable (ALARP).

3.2 Associated offshore place

As noted above, a facility includes an associated offshore place. Clause 3 of Schedule 3 to the OPGGS Act defines associated offshore place as any offshore place near the facility where activities (including diving activities) relating to construction, operation, maintenance or decommissioning of the facility takes place. A facility includes an associated offshore place in relation to a facility.



Further information is available in the NOPSEMA Guidance Note:

"Vessels subject to the Australian Offshore Petroleum Safety Legislation"

4 Consequences of Schedule 3, Clause 3 facility definition

4.1 Obligations if a vessel is a facility

A vessel which is determined to be a facility is subject to requirements of Schedule 3 to the OPGGS Act and the associated regulations. One of the obligations relating to a facility is the requirement for the operator of the facility to have a safety case covering the facility (vessel), and the proposed activities, accepted by NOPSEMA prior to undertaking those activities.

In general, a facility comprises:

- hardware: vessel or structure
- activity: recovering petroleum, drilling or servicing a well, etc.
- extension: wells, associated plant
- associated offshore place: place near facility where related activities occur.

4.2 Obligations if a vessel or structure is an associated offshore place

If a vessel or structure is an associated offshore place it, together with its associated facility, is subject to the requirements of Schedule 3 to the OPGGS Act and the associated regulations, including the existing (host) facility safety case. If the activities conducted by the vessel in relation to the host facility are not covered by the existing safety case, a revision to the host facility safety case will be required.

4.3 Obligations if a vessel is not a facility or an associated offshore place

If a vessel or structure is not a facility or an associated offshore place, the vessel or structure does not fall under the occupational health and safety (OHS) provisions of the OPGGS Act administered by NOPSEMA. However, it may be subject to maritime legislation or state/Northern Territory OHS laws.

4.4 General duties relating to OHS and requirement for safety cases

While the associated offshore place itself is not a facility, all duties of the operator in respect of the facility apply equally in respect of the associated offshore place as it is part of the facility.

The operator's duties and obligations under the legislation include:

- to ensure that the facility is safe, work is safe, etc. [Schedule 3, Clause 9]
- to facilitate designated work groups, health and safety committees and health and safety representatives (HSRs), etc. [Schedule 3, Part 3]
- to provide a NOPSEMA inspector with transport, accommodation and subsistence. [Schedule 3, Clause 73]
- to notify NOPSEMA of accidents and dangerous occurrences at or near the facility, including those involving an associated offshore place. [Schedule 3, Clause 82]
- to keep records of accidents, etc. [Schedule 3, Clause 83].

The NOPSEMA inspector has powers in an associated offshore place since it is included as part of the facility:

- power to direct that a workplace etc. not be disturbed [Schedule 3, Clause 76]
- power to issue a prohibition notice to the operator of the facility, or the titleholder under certain circumstances [Schedule 3, Clause 77]. (Note: this is unlike an improvement notice which can be issued to various parties).

The following also apply to a facility, including an associated offshore place:

- NOPSEMA must be satisfied the operator is in day-to-day management and control [regulation 2.3]
- NOPSEMA can de-register an operator who is not in day-to-day management and control [regulation 2.4]
- The operator must carry out validation as agreed [regulation 2.24 and 2.40]. However, this need not extend to cover the equipment on a vessel which is an associated offshore place. For example, for an associated offshore place which is a dive support vessel, the diving contractor's commitments in relation to validation/verification of diving equipment should be addressed in the diving contractor's diving safety management system. However, the facility operator should ensure that all equipment used while the dive support vessel is an associated offshore place is fit for its function and use.

A safety case is required for the relevant stage in the life of a facility [regulation 2.44]. The treatment of an associated offshore place in a safety case must meet all the contents requirements of the regulations.

If introducing activities related to an associated offshore place, a safety case revision is likely to be required as the activities to be carried out at the facility are likely to be different from the activities contemplated in the facility safety case [regulation 2.30(1)(f)].

Under Clause 9 of Schedule 3 to the OPGGS Act, the operator has a duty to take all reasonably practicable steps to ensure the facility is safe and without risk to the health of any person at or near the facility, and that all work and other activities carried out on the facility are carried out in a manner that is safe and without risk to the health of any person at or near the facility – this includes the associated offshore place and any activities carried out at the associated offshore place.

Where there is a party in control of part of a facility or particular work, say an activity at an associated offshore place, then Clause 10 (Duties of persons in control of parts of facility or particular work) is relevant [Schedule 3, Clause 10]. Clause 10 does not substitute for Clause 9 and the operator still needs to take all reasonably practicable steps in relation to activities at the associated offshore place. This may include the facility operator assuring themselves that the party (e.g. a contractor) undertaking the activity has implemented systems to properly manage risk.

4.5 Requirements relating to the safety investigation levy

In relation to the Commonwealth *Offshore Petroleum (Regulatory Levies) Act 2003*, Clauses 5 and 6 require the operator of a facility to pay a safety investigation levy in relation to notifiable accidents and dangerous occurrences under certain conditions. Such notifiable accidents and dangerous occurrences may occur in an associated offshore place included as part of a facility.

5 Disclaimer

This document is intended to provide guidance as to the approach that NOPSEMA takes in carrying out its regulatory functions under the OPGGS Act and associated regulations, and any state or NT equivalent, where powers have been conferred on NOPSEMA.

Any views expressed in this guidance should not be relied on as advice on the law, nor treated as a substitute for legal advice in any relevant situation.