

Statements of Reasons under the *Administrative Decisions (Judicial Review) Act 1977*

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1. Purpose

This policy sets out how NOPSEMA prepares and issues statements of reasons under the *Administrative Decisions Judicial Review Act 1977* (ADJR Act) for decisions made under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act) and associated regulations.

2. Scope

This policy applies to decisions made by NOPSEMA under relevant powers conferred on it by the OPGGS Act and associated regulations.

3. Legislative framework

The legislative basis to request a statement of reasons for decisions of an administrative character is s 13 of the ADJR Act. This Act defines:

- the persons entitled to receive a statement of reasons (persons aggrieved)
- the timeframe within which a statement of reasons must be prepared.

4. Policy statements

4.1. Provision of a statement of reasons

Persons requesting a statement of reasons from NOPSEMA must ascertain whether they have legal standing to obtain a statement of reasons under the ADJR Act, i.e. that they are a 'person aggrieved' (s 3(4) ADJR Act).

Where an applicant is entitled to receive a statement of reasons, NOPSEMA will provide the statement as soon as practicable and in any event within 28 days of receipt of the request.

NOPSEMA may be unable to provide a statement of reasons where:

- an applicant is not a person aggrieved for the purposes of the ADJR Act
- an applicant does not make a request within 28 days of receiving notice of the decision, or within a reasonable time after the decision was made
- the statement contains certain confidential information, and the statement would be false or misleading without that information (section 13A of the ADJR Act).

Where NOPSEMA is uncertain that an applicant is a person aggrieved for the purposes of the ADJR Act, NOPSEMA may seek further information and evidence from the applicant to confirm their entitlement to a statement of reasons.

NOPSEMA considers that posting a notice of a decision on the NOPSEMA website constitutes notice of the decision to any potential person aggrieved. Where a request for a statement of reasons for a decision is received, NOPSEMA will assess whether the request has been made within the statutory 28 day period. Where circumstances prevent a person from receiving notice of a decision through publication on the NOPSEMA website, NOPSEMA will take into account the circumstances of the individual case when determining what constitutes a reasonable time for a particular request.

4.2. Content of a statement of reasons

Section 13(1) of the ADJR Act requires that a statement of reasons must:

- contain findings on material questions of fact
- refer to the evidence or other material on which those findings were based
- give the reasons for the decision.

In all cases where NOPSEMA provides a statement of reasons, findings and reasons will be given against the requirements and decision making criteria of the OPGGS Act and/or the regulations under which the decision was made.

The statement of reasons will refer to relevant and credible evidence on which each material finding of fact is based. Evidence on which findings are based may consist of:

- the name and designation of the decision maker
- the documents submitted to NOPSEMA by a duty holder where required under the OPGGS Act or its regulations
- any responses to requests for written information made by NOPSEMA
- documents and other evidence collected as a result of an inspection or investigation undertaken by NOPSEMA
- any other information that NOPSEMA considers relevant in informing a decision.

4.3. Certain information not included in a statement of reasons

Section 13A of the ADJR Act provides that personal or business affairs of someone other than the person making the request do not need to be disclosed if:

- the information was supplied in confidence
- the publication of the information would reveal a trade secret
- the publication of the information would breach a statutory duty to keep the information confidential.

Where NOPSEMA is unable to provide certain information to an applicant, NOPSEMA will provide notice in writing explaining why the information has not been provided¹.

4.4. Publication of statements of reasons

NOPSEMA may consider it appropriate to publish statements of reasons on its website. A determination on publication of a statement of reasons will be made by NOPSEMA on a case-by-case basis based on the type of decision for which the statement was requested and the potential for the decision to affect multiple persons.

¹ Note, if a decision progresses to the Federal Court on judicial review, the Court is not restricted from ordering discovery of documents or requiring the giving of evidence or production of documents.