

Direction – section 574

Offshore Petroleum and Greenhouse Gas Storage Act 2006

Direction number: RMS 0736

Direction

To: Timor Sea Oil & Gas Australia Pty Limited (TSOGA)

[REDACTED]

Issue of Direction/s - Section 574 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cth)*

Attached is a written notice of direction/s made under s 574 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cth)*. Please provide written acknowledgement of receipt of this direction.

A person commits an offence if:

- (a) the person is subject to a direction under s 574; and
- (b) the person engages in conduct; and
- (c) the person's conduct breaches the direction.¹

Please provide this office with documented evidence of your compliance with the notice of direction/s.

If you have any questions relating to the content of the instrument, please contact Cameron Grebe, Head of Division – Environment on 08 6188 8704.

Yours sincerely



Cameron Grebe

Head of Division - Environment

Dated: 2 April 2019

NOTES: (Please see explanatory statement)

¹ Section 576 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cth)*

Direction number NOPSEMA RMS 0736

I, Cameron Grebe, of the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), make this instrument under section 574 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) pursuant to an instrument of delegation dated 20 August 2018.



Cameron Grebe

Head of Division - Environment

National Offshore Petroleum Safety and Environmental Management Authority

Dated: 2 April 2019

DIRECTION

1. Commencement

This direction takes effect on the date of signature.

2. Application

This direction applies to Timor Sea Oil & Gas Australia Pty Limited (TSOGA), ABN 77 111 708 868, the registered holder of AC/L5 and WA-18-L.

3. Direction

- (1) The titleholder (TSOGA) is given the directions contained in Schedule 1.
- (2) Each direction in Schedule 1 is a separate direction.

Schedule 1 – Directions**Direction 1**

As a result of the operations and activities described under Background in the attached Explanatory Statement, you are directed to take the following action within 60 days:

- Revise the financial assurance requirement, in accordance with the updated APPEA method (2018) or other method endorsed by NOPSEMA;
- Establish timeframes for receiving funds from current forms of financial assurance in the event of an incident that results in pollution. This includes (but is not limited to) the following timeframes:
 - a. timeframe for insurer to determine the event (incident) is an insurable event; and
 - b. timeframe for receiving payments from insurer.
- Establish the contractual terms and expectations of key contractors that are required to activate and implement oil spill response activities, in the event of an oil pollution incident;
- Establish the quantum funds required to activate and implement oil spill response activities prior to receiving funds from the current forms of financial assurance in place; and
- Ensure that TSOGA has adequate forms of financial assurance in place to comply with the financial assurance duty under section 571(2) of the OPGGS Act.

Direction 2

A company director, authorised officer, individual with the registered titleholders express or implied authority or a person appointed under power of attorney on behalf of the titleholder inform NOPSEMA in writing within **70 days** of this notice, as to how you have complied with Direction 1 including any reasons for non-compliance.

Explanatory Statement:

Offshore Petroleum and Greenhouse Gas Storage Act 2006

Directions — Timor Sea Oil & Gas Australia Pty Limited (TSOGA)

Legislation

Part 6.9 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) (the Act) provides that NOPSEMA has functions in relation to the occupational health and safety of persons engaged in offshore petroleum operations or offshore greenhouse gas storage operations; the structural integrity of facilities, wells and well-related equipment; and environmental management.

Under subsection 574(2) of the Act, NOPSEMA may issue a direction about any matter in relation to which regulations may be made.

Section 666(2) of the Act gives the CEO of NOPSEMA the power to issue a direction under section 574 of the Act. The power may be delegated by the CEO under section 675 of the Act.

Under sub section 576(1) of the Act, if a person is subject to a direction under section 574 and the person engages in conduct that breaches that direction, the person commits an offence:

- **Fault-based offence** – 5 years imprisonment or 2,000 penalty units, or both (10,000 penalty units for a body corporate).
- **Strict liability offence** – 100 penalty units (500 penalty units for a body corporate).
- **Civil penalty provision** – 525 penalty units (2,625 penalty units for a body corporate).
- **Continuing offences** – a person who commits a fault-based or strict liability offence commits a separate offence in respect for each day during which the offence continues. The maximum penalty for each day that the offence continues is 10% of the maximum penalty that can be imposed in respect to that offence.
- **Continuing contraventions of civil penalty provisions** – a person who contravenes the civil penalty provision commits a separate contravention in respect for each day during which the contravention continues. The maximum civil penalty for each day that the contravention continues is 10% of the maximum civil penalty that can be imposed in respect to that contravention.

Note: the value of one penalty unit is \$210 pursuant to section 4AA(1) of the *Crimes Act 1914* (current as of 6 September 2017).

Background

In 2016, TSOGA were subject to enforcement in the form of a Prohibition Notice and General Direction in relation to a failure to maintain access to appropriate oil spill response arrangements. Further, a planned environment inspection was conducted late in 2018 and this identified deficiencies with oil spill response arrangements. Given the above compliance history, NOPSEMA decided to conduct a financial assurance investigation which was held 27-28 February 2019 and 6-7 March 2019.

The OPGGS Act 2006, Section 571(2) (Financial assurance – petroleum titles) states that:

The titleholder must, at all times while the title is in force, maintain financial assurance sufficient to give the titleholder the capacity to meet costs, expenses and liabilities arising in connection with, or as a result of:

- (a) the carrying out of the petroleum activity; or
- (b) the doing of any other thing for the purposes of the petroleum activity; or
- (c) complying (or failing to comply) with a requirement under this Act, or a legislative instrument under this Act, in relation to the petroleum activity.

The investigation team found during the course of the above investigation(s) that:

- TSOGA could not clearly define or demonstrate how long it would take to start receiving funds from an insurer in the event of an oil spill;
- The payment terms / expectations for some key contractors required to implement potential oil spill response activities as defined in the accepted EP/OPEP is unclear;
- The quantum of funds required to activate and implement potential oil spill response activities as defined in the accepted EP/OPEP prior to receiving funds from insurers is unclear;
- The ability for TSOGA (in an oil spill event) to source funds prior to receiving funds from insurers is unclear; and
- TSOGA has not revised the calculation in accordance with revised APPEA Method, 2018 (noting that NOPSEMA has provided a 3 month transition period for titleholders to undertake the review (31 March 2019)).

Instrument of direction

Direction number: RMS 0736