

# Background to Direction – Section 574 – CGG Services (Australia) Pty Ltd

Document No: A738553

Date: 7/07/2020

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## 1. Purpose

The document provides background to NOPSEMA's issuance of Direction (ID number 791) made under section 574 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* to CGG Services (Australia) Pty Ltd. This document does not constitute a part of the Direction.

## 2. Background

The Environment Plan (EP) for the activity identified that loss of catch and income through displacement during and after the activity was a key concern to fishers. In order to reduce the impacts and risks of the activity to levels which were as low as reasonably practicable and acceptable, the EP described that CGG Services (Australia) Pty Ltd (CGG) would establish a formally managed claims system by which commercial fishing stakeholders could make claims for costs due to relocation and loss of catch as a consequence of survey activities. The EP committed to developing the Fisheries Displacement Mitigation Plan (FDMP) as the process to implement the claims system to achieve this.

During an inspection of the activity conducted in March 2020, NOPSEMA Inspectors observed that the main method of communicating the criteria for valid claims, evidential requirements and process to fishers was the FDMP.

In June 2020, NOPSEMA undertook an investigation in response to complaints received from fishers relating to the implementation of the FDMP. The complaints referred to confusion about the process. In particular, the criteria used to demonstrate a valid claim, including geographic boundaries applied to loss of catch claims and criteria used to assess relocation claims. The investigation sought to understand whether these complaints were isolated occurrences or related to substantive issues with the effectiveness of the FDMP as a control measure and whether the process for assessing claims is in keeping with the intent of the EP.

A summary of the NOPSEMA Inspectors' conclusions in relation to loss of catch, relocation expenses and contributing factors has been provided below:

### ***Loss of catch claims***

- CGG appear to be implementing a process that provides evidence-based compensation for loss of catch as a consequence of the survey activities as required by the EP.
- There still appears to be some confusion regarding the approach to calculating loss of catch based on geographical area and CGG should consider making further enhancements to communication practices.

***Relocation expenses***

- The criteria and methods for assessing relocation expenses do not appear to be consistently applied or communicated to fishers from the outset.
- There are cases when further information or clarification from fishers is necessary and this has not been sought in order to process claims in a timely manner.

***Contributing factors***

There are a range of contributing factors that have exacerbated problems with CGG's ability to administer an effective compensation process. A lack of transparency of the process has contributed to some of the issues observed by NOPSEMA.

Based on NOPSEMA's observations it appears that CGG has some relevant concerns as to the actions and motives of some stakeholders who may not be engaging in constructive behaviour at all times.

Failure of either party to operate cooperatively has the potential to damage relationships and erode trust between industries, which increased transparency could assist in addressing.

### **3. Compliance response**

NOPSEMA has concluded that compliance action needs to be taken to ensure that there will be effective implementation of a compensation process to formally manage claims by commercial fishing stakeholders for costs due to relocation and loss of catch as a consequence of survey activities.

After taking into considerations the concerns of all parties, NOPSEMA has determined that the most appropriate compliance response is the issuance of a Direction to CGG.

NOPSEMA encourages all parties to work constructively to try and resolve any remaining concerns in order for the compensation process to work as effectively as possible. Any fisher who is dissatisfied with the outcome of a claim decision is encouraged to pursue the dispute escalation process provided for in the Fisheries Displacement Mitigation Plan.

## Direction – section 574

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*Offshore Petroleum and Greenhouse Gas Storage Act 2006*

**Direction number: 791**

### Direction

To: CGG Services (Australia) Pty Ltd

### 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.<sup>1</sup>

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 David Christensen on (08) 6188 8801.

Yours sincerely

**Signed:**



Cameron Grebe

Head of Division – Environment

**Dated: 7 July 2020**

NOTES: (Please see explanatory statement)

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

Direction number NOPSEMA 791

I, Cameron Grebe, Head of Division - Environment 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 a CEO instrument of delegation dated 20 August 2018.



Cameron Grebe

Head of Division – Environment

National Offshore Petroleum Safety and Environmental Management Authority

**Dated: 7 July 2020**

## **DIRECTION**

### **1. Commencement**

This direction takes effect on date of signature.

### **2. Application**

This direction applies to CGG Services (Australia) Pty Ltd (ABN 70 081 777 755) the registered holder of the titles VIC-03-SPA and VIC-23-AA (the titleholder).

### **3. Direction**

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

**Schedule 1 – Directions****Direction 1**

1. The titleholder is required to take action within 30 days, or prior to expiration of the titles (whichever occurs sooner), to ensure effective implementation of a compensation process to formally manage claims by commercial fishing stakeholders for costs due to relocation and loss of catch as a consequence of survey activities.

**Direction 2**

1. The titleholder must review and revise the Fisheries Displacement Mitigation Plan (the compensation process) to ensure that it is consistent with the Environment Plan for the activity, so that:
  - a. the criteria and methods used to manage claims for loss of catch and costs due to relocation will allow for costs as a consequence of the activity to be reimbursed;
  - b. determination of claims are based on practical, evidence based calculations reflecting the actual loss incurred and consistent with the revised compensation process;
  - c. all claims are assessed, the decision made and reasons for it are communicated in a reasonable timeframe to claimants consistent with the revised compensation process.
2. To assist with 1.a, 1.b and 1.c, contract a suitable independent person, to review and provide advice on the revised compensation process.

**Direction 3**

The titleholder must provide a report to NOPSEMA within 30 days of completion and resolution of all claims made by commercial fishing stakeholders describing the effective implementation of a compensation process to formally manage claims by commercial fishing stakeholders for costs due to relocation and loss of catch as a consequence of survey activities.



**Explanatory Statement:****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).