

## **Offshore OHS Legislative Framework Information Paper**

The legislative framework for occupational health and safety (OHS) of persons engaged in offshore petroleum and greenhouse gas storage operations falls under the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPGGSA 2006).

The listed OHS laws for the purposes of this Act include:

- Offshore Petroleum and Greenhouse Gas (Safety) Regulations 2009;
- Part 5 of the Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011
- Section 603 or 609 of the Act, to the extent which the conduct prohibited by that section results in damage to, or interference with, a facility, or interference with any operations or activities being carried out at a facility; and
- Schedule 3 to the Act.

Schedule 3 to the OPGGSA 2006 imposes duties relating to OHS on a number of parties. The operator of the facility bears the principal duty in the regime. This duty is for the operator to take all reasonably practicable steps to ensure the facility and its activities are safe and without risk to health.

This is a performance-based regime typical of all modern OHS regimes, whether applying offshore or more generally at workplaces. These regimes impose general duties on parties to the regime, especially operators and employers. The principle underlying these performance-based, general duties regimes is: the primary responsibility for ensuring health and safety should lie with those who create risks and those who work with them.

Following the 1988 Piper Alpha disaster in the North Sea, the Management of Safety on Offshore Facilities (MoSOF) regulations were made in Australia to introduce a safety case obligation to strengthen the implementation of the duty of care regime. These safety case obligations were later included in the consolidated Offshore Petroleum and Greenhouse Gas (Safety) Regulations 2009 in effect today.

In 2005 an independent national regulator, NOPSA, was established with bipartisan and tripartite support.

As noted in the Explanatory Memorandum to the Petroleum (Submerged Lands) Amendment Bill 2003: “The term ‘safety case’ is used to describe a sophisticated, comprehensive, integrated risk management system. This is characterised by an acceptance that the direct responsibility for the ongoing management of safety on individual facilities is the responsibility of the operators and not the regulator.”

The role of the regulator in performance-based regimes is to provide independent assurance that health and safety risks are properly controlled by challenging the operator's risk management arrangements during safety case assessment and then verifying by planned inspection that the operator has implemented its risk management commitments documented in the safety case.

NOPSEMA replaced NOPSA on 1 January 2012 and continues to do the regulation for safety and well integrity. NOPSEMA's functions are set out in section 646 of the OPGGSA 2006, and include:

- Promotion of OHS
- Structural integrity of facilities, wells and well related equipment
- Monitoring and enforcement to secure compliance
- Investigation of incidents and complaints
- Providing advice
- Cooperation with government agencies

These functions are discharged mainly through the following core activities: safety case assessment; planned inspection, and investigation of accidents & dangerous occurrences.

### ***Safety Case Assessment:***

The requirement to develop a safety case is a requirement that forms part of the regulatory regime. The safety case documents the operator's commitments to reducing risks to a level that is as low as reasonably practicable. It is a document that describes the facility, provides details on the hazards and risks associated with the facility, the risk controls and the safety management system that will be used to minimise the risks. NOPSEMA assesses the operator arrangements in its decision to accept or reject the safety case. Once a safety case is accepted by NOPSEMA, the risk management commitments made by the operator must be complied with. These commitments are then verified by NOPSEMA during inspections of facilities.

### ***Planned Inspections:***

Planned inspections by NOPSEMA verify the risk management commitments of the operator as specified in its safety case. Planned inspections provide assurance that the operator is discharging its responsibility to manage risks to as low as reasonably practicable, as required by the duty of care obligations of Schedule 3 to the Act, and based on the accepted safety case. NOPSEMA's planned inspections do not physically inspect every portion of the facility – rather they operate on a quality assurance basis. Planned inspections are a sampled evaluation of the safety management system and its implementation by the operator to manage the risks associated with the facility to a level as low as reasonably practicable. The operator is responsible for ensuring compliance with the safety management system as described in its safety case.

***Investigation:***

Investigations are conducted when information obtained or received by NOPSEMA justifies seeking evidence of non-compliance with relevant OHS legislation as a basis for enforcement. All reports of accidents and dangerous occurrences are reviewed. Investigations can have either an administrative outcome, which is any outcome not involving prosecution, or a prosecution outcome. An administrative outcome includes enforcement such as a written warning or issuing an Improvement Notice.

An investigation will generally be conducted when:

- an accident causes death or serious injury;
- a facility is abandoned due to an emergency;
- there is an accident or dangerous occurrence which could easily have led directly to death or serious injury;
- there is an accident, dangerous occurrence or complaint which creates suspicion of a significant lack of compliance with relevant legislation;
- there is an accident, dangerous occurrence or complaint which creates suspicion of an immediate threat to health or safety; or
- the operator has a history of similar incidents or relevant enforcement.

In summary, the regime under the offshore OHS laws is largely a performance-based regime, with some prescriptive elements, where the safe operation of the facility is the responsibility of the operator. It is regulated by a government inspectorate using the safety case as the basis for the operator's permission to operate.

For more information, contact NOPSEMA at [info@nopsema.gov.au](mailto:info@nopsema.gov.au) or visit [www.nopsema.gov.au](http://www.nopsema.gov.au)