

# Consideration of HSR Requests for Consultant Assistance

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## 1. Purpose

The purpose of this policy is to provide a documented, systematic and consistent approach for considering requests by health and safety representatives seeking NOPSEMA's agreement to the provision of assistance by a consultant (at a workplace or by provision of information).

## 2. Scope

This policy applies to the consideration of all requests submitted to NOPSEMA related to the provisions of Clause 35 of Schedule 3 to the Commonwealth *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

## 3. Relevant Legislation

*Commonwealth Offshore Petroleum and Greenhouse Gas Storage Act 2006* [OPGGSA].

It should be noted that dependent on the location of a facility, State or Territory legislation may apply which may or may not mirror the Commonwealth legislation. For simplicity this policy only makes explicit reference to the Commonwealth legislation; however the policy will be applied to each jurisdiction, where powers have been conferred on NOPSEMA.

Unless otherwise noted all clause references are references to clauses in Schedule 3 to the OPGGSA.

## 4. Policy

### 4.1. General Principles

#### 4.1.1. Agreement by operator

NOPSEMA supports effective involvement of the workforce and HSRs in promoting and ensuring the health and safety of all personnel at a facility and encourages productive working relationships between the workforce and operators. As a matter of expediency, NOPSEMA advises HSRs to consider seeking the agreement of the facility operator to the request for assistance by a consultant (at a workplace or by provision of information) in the first instance, and only if agreement cannot be reached with the operator; to seek the agreement of NOPSEMA.

#### 4.1.2. Who can request assistance?

NOPSEMA can only consider a request for its agreement to HSR assistance by a consultant if the request relates to:

- a facility for which NOPSEMA has jurisdiction; and
- the exercise of HSRs' powers under the OPGGSA.

#### **4.1.3. Request for NOPSEMA agreement to be in writing**

NOPSEMA requires that the requests for agreement be in writing commensurate with the requirement of sub-clause 35 (2) that requires NOPSEMA's agreement be in writing.

To facilitate the process of making a request to NOPSEMA, the request form N-04900-FM1069 is available on the NOPSEMA website. Use of the form is recommended to facilitate NOPSEMA's timely consideration of the request.

#### **4.1.4. Confirmation a request has been received**

NOPSEMA will, as soon as reasonably practicable, notify the HSR making the request and the operator of the facility that a request has been received.

#### **4.1.5. Consideration conducted on the request**

NOPSEMA will consider the request against the items in section 4.2 below.

#### **4.1.6. Notification of decisions shall be timely**

NOPSEMA shall ensure that the HSR is notified of a decision within seven days of receipt of a request.

#### **4.1.7. Notification of agreement**

If the request is agreed NOPSEMA shall notify the HSR in writing and provide a copy of the agreement to the operator of the facility.

The notification shall clearly state that NOPSEMA agrees to the HSR's request for assistance by the specified consultant (either at the workplace or by provision of information) and not of the work-scope at the facility or of specific information to be provided to the consultant as applicable.

The notice shall also alert the HSR to the following relevant clauses of schedule 3 to the OPGGSA as applicable:

- Clause 11 "Duties of employers" and;
- Clause 15 "Duties of persons in relation to OHS"
- Clause 35(3) "Operator etc. not liable for consultant's remuneration, etc."; and
- Clause 36(1) "Legal professional privilege"; and
- Clause 36(2) "Medical information"; and

the following regulations from the Commonwealth Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009:

- Regulation 2.48 "Person on a facility must comply with safety case"
- Regulation 2.49 "Interference with accident sites".

#### **4.1.8. If NOPSEMA does not agree**

Where the request is not agreed, the reasons shall be included in a written response to the HSR. The written response shall also include advice that there is no impediment to the HSR revising and resubmitting a further request. The operator of the facility will be advised the request has not been agreed.

#### **4.2. Relevant considerations**

NOPSEMA shall take the following items into account when considering a request:

##### **General (assistance at a workplace or by provision of information)**

- (1) the HSR making the request is an HSR for a designated workgroup at the facility; and
- (2) the request is being made with respect to the exercising of one or more powers under clause 34; and
- (3) the matter for which the assistance is requested is a health and safety matter; and
- (4) the consultant whose assistance is requested from, or to whom it is requested to provide information, is competent to assist the HSR in the exercise of his or her powers in relation to the particular matter; and, as applicable:

##### **Assistance at a workplace**

- (5) in the case that NOPSEMA agreement to HSR assistance by a consultant at a workplace at which work is performed is being sought:
  - (i) that the workplace(s) are appropriately related to the exercising of specified powers and to the specified health and safety matter; and
  - (ii) the duration of that assistance at the facility is reasonable;

and/or, as applicable

##### **Provision of information**

- (6) in the case that NOPSEMA agreement to HSR assistance by provision of information to a consultant is being sought:
  - (i) the information relates to the risk to the health or safety of any group member; or
  - (ii) the information relates to the health or safety of any group member; and the HSR is aware of the limitations to their and the consultants entitlement to such information (i.e. that it is not subject to legal professional privilege and where applicable, written authority has been provided regarding access to confidential medical information or the information is appropriately anonymised).