



OHS INSPECTOR ENFORCEMENT DECISION APPEALS

GUIDELINE

Approved for Publication

1. Purpose

The purpose of this document is to provide guidance to the National Offshore Petroleum Safety Authority (NOPSA) and the offshore petroleum industry on the appeal processes for OHS inspector enforcement and other decisions.

For enforcement action taken by an OHS inspector, there are appeal rights to [Fair Work Australia](#). For enforcement action taken by NOPSA, there are internal review provisions, detailed in the [Compliance and Enforcement Policy](#) (N-05000-PL0067). The [Enforcement Management Model](#) (N-05000-SOP0147) also includes review processes, which must be followed prior to the final enforcement decision being made.

2. Scope of this Work Instruction

The scope of this guideline includes the appeal processes for any enforcement or other action taken by an OHS inspector in administering the offshore safety legislation [OPGGSA Schedule 3 Clause 81]. These appeals relate to OHS inspectors issuing improvement notices [OPGGSA Schedule 3 Clause 78], prohibition notices [OPGGSA Schedule 3 Clause 77], directions not to disturb [OPGGSA Schedule 3 Clause 76] and notices to take possession [OPGGSA Schedule 3 Clause 75].

Appeals can also be made when an OHS inspector makes a decision when dealing with a disputed Provisional Improvement Notice issued by a Health and Safety Representative [OPGGSA Schedule 3 Clause 50(1) (a)].

NB: Specific references in this Guideline relate to the Commonwealth provisions. Refer to the relevant State or Territory *Petroleum (Submerged Lands) Act 1982* and the associated regulations for use in designated coastal waters.

3. Enforcement Action

OHS inspectors are empowered to issue notices and directions to responsible parties to ensure compliance with a duty specified in the OPGGSA or a requirement of the associated Regulations. For example, an OHS inspector may issue an improvement notice when he or she has formed an opinion, on reasonable grounds, that the responsible party:

- is contravening a duty or a requirement of OPGGSA Schedule 3 or the regulations; or
- has contravened a duty or requirement of OPGGSA Schedule 3 or the regulations in circumstances that make it likely that the contravention will continue or be repeated.

Persons to whom a notice or direction is issued may appeal to the reviewing authority against the notice or direction, within 14 days of it being issued.

4. The Reviewing Authority

The reviewing authority for appeal of notices and directions in Commonwealth waters is Fair Work Australia [OPGGSA Schedule 3 Clause 3]. On an appeal, Fair Work Australia may:

- affirm or revoke the decision appealed against; and
- if it revokes the decision – substitute any other decision of the kind appealed against that it thinks appropriate.

If the decision is –

- varied; or
- revoked; or
- revoked with the substitution of another decision,

the decision is taken to have effect, and always to have had effect, accordingly.

5. Who can apply?

Appeals can be lodged by a range of persons, depending on the enforcement or other action taken [OPGGSA Schedule 3 Clause 81].

Appeals against an OHS inspector's decision can be made to Fair Work Australia by:

- the operator of the facility or any employer who is affected by the decision;
- a person to whom a notice has been given;
- a health and safety representative (HSR);
- a workforce representative for the designated work group (DWG) affected by the decision; or
- where relevant, a person who owns a workplace, plant, substance or thing referred to in any notice.

The table in Attachment 1 lists the persons who can appeal in more detail.

6. Appealing a Decision

A person eligible to lodge an appeal against enforcement or other action with Fair Work Australia must abide by the reviewing authority rules. Further information is available on the Fair Work Australia website (www.fwa.gov.au).

Fair Work Australia has the power to make rules with respect to the practice and procedure to be followed; or the conduct of business; and, in particular:

- the manner in which, and the time within which, applications, submissions and objections may be made to reviewing authority; and
- the manner in which applications, submissions and objections may be dealt with by reviewing authority.

The rules were amended in July 2005 to take into consideration changes to the then PSLA. These amendments include:

- Insertion of a new Rule 76A providing for the referral of a disagreement concerning the manner in which designated work groups are established or varied [OPGGSA Schedule 3 Clauses 23(1)];

- the insertion of a new Rule 76B providing for an appeal against a decision by the OHS inspector under either clause 39, 75, 76, 77 or 77 of Schedule 3 to that Act [OPGGSA Schedule 3 Clause 81]; and
- Insertion of a new Form R54A arising from new Rule 76A; a new Form R54B arising from new Rule 76B and a new Form R54C arising from new Rule 76B.

Applications to Fair Work Australia must be made to the Registrar in accordance with the appropriate form.

Form Intention

[R54A](#) Referral of Disagreement Concerning Manner of Establishing or Varying a Designated Work Group

[R54B](#) Notice of appeal under Section 81 of Schedule 3

[R54C](#) Notice for an extension of time for instituting an appeal

The applicant must submit three copies of the notice together with three copies of:

- The OHS inspector's decision under appeal;
- Any notices, or other documents, issued relating to the decision under appeal; and
- Any other document in the possession of the appellant that is relevant to the decision under appeal.

The person making the appeal should also provide a copy of the documentation to the relevant OHS inspector and to NOPSA as soon as practicable after lodging the appeal documents with Fair Work Australia. Documents must also be provided to other parties as outlined in the reviewing authority rules.

7. After an application is lodged

Lodging an appeal against a decision of an OHS inspector to issue a notice does not affect the decision or prevent the taking of action to implement the decision, except to the extent that the reviewing authority makes an order to the contrary [OPGGSA Schedule 3 Clause 81(3)].

Therefore, the responsible party to whom the notice was served must continue to work towards complying with the notice. The responsible party can request that the appeal does affect the operation of the decision or prevent the taking of action to implement the decision. However, to do this they must include an application to that effect with their application to the reviewing authority.

If the appeal is against an improvement notice, the notice is suspended pending determination of the appeal unless the reviewing authority makes an order to the contrary [OPGGSA Schedule 3 Clause 81(4)].

Likewise, if the appeal is against a decision to confirm or vary a Provisional Improvement Notice issued by an HSR, the operation of the notice is further stayed pending determination of the appeal, except to the extent that the reviewing authority makes an order to the contrary [OPGGSA Schedule 3 Clause 81(5)].

The reviewing authority will fix a time and place for the hearing or the appeal. The reviewing authority will give notice to the OHS inspector and NOPSA CEO of this information. The reviewing authority is required to give at least 10 days notice of the time

and place for the hearing of a matter. However, consideration of the urgency or importance of the matter may warrant an earlier hearing.

Once the OHS inspector and NOPSA CEO have been advised of the appeal having been lodged, the OHS inspector and the Team Leader should meet to discuss the issue and extract any information from NOPSA files that may be relevant to the appeal.

8. Attending the Appeal

The OHS inspector who issued the notice and their Team Leader will attend the appeal hearing. Unless circumstances warrant it, the NOPSA CEO will not normally attending the appeal hearing.

9. Related Documents

Policy

N-05000-PL0067 Compliance and Enforcement

Standard Operating Procedure

N-05000-SOP0147 Enforcement Management Model

N-05000-SOP0034 Prosecution

Work Instructions

N-05000-WN0108 Prosecution Considerations

N-05000-WN0068 Enforcement Measures

Attachment 1 –
Persons who can appeal enforcement action by an OHS inspector

OHS inspector decision to	Person eligible to lodge an appeal
To confirm or vary a provisional improvement notice under clause 17 [OPGGSA Schedule 3 Clause 81(1)(a)]	<ul style="list-style-type: none"> the facility operator or any employer who is affected by the decision a person to whom a notice has been issued
To take possession of plant, a substance or a thing at a workplace [OPGGSA Schedule 3 Clause 81(1)(b)]	<ul style="list-style-type: none"> the HSR for a DWG with a group member affected by the decision workforce representative in relation to the DWG that includes a group member who is affected by the decision and who has requested the workforce representative to make the appeal
To direct that a workplace, a part of a workplace, plant, a substance or a thing not be disturbed [OPGGSA Schedule 3 Clause 81(1)(c)]	<ul style="list-style-type: none"> if there is no such DWG, and a member of the workforce affected by the decision has requested a workforce representative in relation to the member to make the appeal—that workforce representative a person who owns any workplace, plant, substance or thing to which the decision relates
To issue an improvement notice [OPGGSA Schedule 3 Clause 81(1)(f)]	
To issue a prohibition notice [OPGGSA Schedule 3 Clause 81(1)(d)]	<ul style="list-style-type: none"> the facility operator or any employer who is affected by the decision the HSR for a DWG with a group member affected by the decision workforce representative in relation to the DWG that includes a group member who is affected by the decision and who has requested the workforce representative to make the appeal
The operator of a facility to whom a prohibition notice has been issued has not taken adequate action to remove the threat to health and safety that caused the notice to be issued [OPGGSA Schedule 3 Clause 81(1)(e)]	<ul style="list-style-type: none"> if there is no such DWG, and a member of the workforce affected by the decision has requested a workforce representative in relation to the member to make the appeal—that workforce representative
If an OHS inspector, having conducted an inspection decides under clause 17 to cancel a provisional improvement notice [OPGGSA Schedule 3 Clause 81(2)(a)]	<ul style="list-style-type: none"> the HSR for a DWG with a group member affected by the decision workforce representative in relation to the DWG that includes a group member who is affected by the decision and who has requested the workforce representative to make the appeal
If an OHS inspector, having conducted an inspection decides that the facility operator has taken adequate action to remove the threat to health and safety that caused the prohibition notice to be issued [OPGGSA Schedule 3 Clause 81(2)(b)]	<ul style="list-style-type: none"> if there is no such DWG, and a member of the workforce affected by the decision has requested a workforce representative in relation to the member to make the appeal—that workforce representative
