

Offshore OHS Legislative Framework – information paper

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

The OHS laws under this Act are:

- Offshore Petroleum (Safety) Regulations 2009

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 MoSOF regulations were made to introduce a safety case obligation to strengthen the implementation of the duty of care regime. 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.

NOPSA commenced on 1 January 2005 with a clear set of functions set out in section 646 of the OPGGSA 2006, including:

- Promotion of OHS
- Monitoring and enforcement to secure compliance
- Investigating incidents
- Provide advice
- Cooperate 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 safety case is a regulatory requirement that forms part of the duty of care 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. NOPSAs assesses the operator arrangements in its decision to accept or reject the safety case. Once a safety case is accepted by NOPSAs, the risk management commitments made by the operator must be complied with. These commitments are then verified by NOPSAs during inspections of facilities.

Planned Inspections:

Planned inspections by NOPSAs 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, based on the accepted safety case. NOPSAs'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 systems as laid out in its safety case.

Investigation:

Investigations are conducted when information obtained or received by NOPSAs 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:

- there is an accident that causes death or serious injury;
- there is an abandonment of a facility 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 a performance-based regime 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.