

Section 572 Maintenance and removal of property

Background to policy

In October 2019, the former Minister for Resources and Northern Australia issued a statement of expectations requiring NOPSEMA to give heightened focus to oversight of titleholders' compliance with the OPGGS Act section 572 obligations in relation to the maintenance and removal of equipment and property brought onto title.

The statement of expectations requires NOPSEMA, through its regulatory processes, to ensure that titleholders maintain property in the title area used in connection with the operations authorised by the title and to remove property when it is no longer used; and only accept alternative arrangements where justification is appropriate and with regard to the Australian Government *Offshore Petroleum Decommissioning Guideline*.

NOPSEMA's statement of intent issued in November 2019 in response to the former Minister's statement of expectations outlined that NOPSEMA will, through its compliance monitoring and enforcement activities, ensure that titleholders are appropriately planning for, and executing decommissioning activities in a timely and responsible manner.

To give effect to the statement of expectations and NOPSEMA's statement of intent, NOPSEMA will establish a policy to communicate how it will focus on titleholders' compliance with section 572 through compliance monitoring and enforcement activities.

The figure in Attachment A clarifies how NOPSEMA will determine titleholders' compliance with the obligation to maintain and remove property through the permissioning process.

Next steps:

NOPSEMA is seeking feedback on this draft policy to inform its refinement prior to final publication as well as seeking input from stakeholders to develop further detailed guidance on how titleholders can demonstrate compliance with section 572 in the content of permissioning documents.



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1. Purpose

This policy describes the National Offshore Petroleum Safety and Environment Management Authority's (NOPSEMA's) compliance oversight and where necessary, enforcement, of the requirements for titleholders to maintain all structures, equipment and property in a title area in good condition and repair, and to remove property when it is neither used nor to be used in connection with operations authorised by the title, in accordance with section 572 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGGS Act).

2. Scope

This policy applies to all petroleum or greenhouse gas equipment and infrastructure, wells, facilities and structures, subsea equipment and property brought onto the area of a title granted under the OPGGS Act during any stage of the operations (collectively referred to hereafter as 'property').

This policy sets out how NOPSEMA will develop and implement effective monitoring and enforcement strategies to secure titleholder's compliance with the obligations to maintain property used in connection with the operations authorised by the title in good condition and repair, and to remove property from the title area when it is neither used nor to be used, as required by section 572 of the OPGGS Act.

The policy does not cover financial liabilities that may be associated with property as addressed in the Australian Government *Offshore Petroleum Decommissioning Guideline*.

Titleholders should be aware that other legislative requirements may apply such as the *Sea Dumping Act 1981*, and this policy does not cover all requirements that may apply.

3. Duties and requirements under section 572

Maintenance of property

A titleholder must maintain in good condition and repair all structures that are, and all equipment and other property that is:

- (a) in the title area; and
- (b) used in connection with the operations authorised by the permit, lease, licence or authority.

Removal of property

A titleholder must remove from the title area all structures that are, and all equipment and other property that is, neither used nor to be used in connection with the operations:

- (a) in which the titleholder is or will be engaged; and
- (b) that are authorised by the permit, lease, licence or authority.

NOPSEMA clarifies that the operations authorised by the title or authority include but are not limited to exploratory activities, drilling, construction, installation, production, the plugging of wells and removal activities.



3.1. Maintenance of property

Section 572 places an obligation on titleholders to maintain all property in good condition and repair until the property is removed from the title area. Maintenance of property is to be undertaken in accordance with the suite of permissioning documents required under the Environment, Safety and Resource Management and Administration Regulations.

NOPSEMA will apply the following principles to monitoring compliance with the obligation to maintain property in good condition and repair:

- Property must be fit for purpose to perform its intended function during operations including removal¹. This includes but is not limited to ensuring that all elements of the property continue to be regularly inspected, maintained and, where necessary, repaired;
- Property is monitored, maintained and, where necessary, repaired so that it can be removed in a safe and environmentally responsible manner. This includes holding an inventory of all property in the title area at all times including records of the condition of all property;
- Where titleholders engage contractors to operate facilities, titleholders remain ultimately responsible and therefore must ensure that adequate provisions including assurance and oversight are in place to meet the titleholders' obligations under section 572 of the OPGGS Act.

3.2. Removal of property

Section 572 places an obligation on titleholders to remove property when it is neither used nor to be used. NOPSEMA will apply the following principles as applicable in Safety Case, Well Operations Management Plan (WOMP) and Environment Plan (EP) assessments and in monitoring compliance with the obligation to remove property:

- All property is designed, installed and operated with the intention of being removed when it is no longer in use;
- Removal is planned to take place throughout the operations authorised by the title when property is neither used nor to be used in connection with the operations;
- When a field permanently ceases production, all remaining property is removed if it is not to be used in connection with the operations;
- Full removal of property is completed while the title is still in force;
- NOPSEMA's acceptance of the final state of property is obtained through the suite of permissioning documents under the Environment, Safety and Resource Management and Administration Regulations;
- Where titleholders engage contractors to operate facilities, titleholders remain ultimately responsible and therefore must ensure that adequate provisions including assurance and oversight are in place to meet the titleholders' obligations under section 572 of the OPGGS Act.

¹ Base case is removal, unless alternative arrangements to removal are approved in advance



3.3. Alternative arrangements to removal in environment plans

Section 572 places an obligation on titleholders to remove property when it is no longer in use. The obligation is subject to other provisions of the OPGGS Act, the regulations, directions and other applicable laws. Titleholders may demonstrate in an EP that arrangements other than complete removal are acceptable. NOPSEMA will only accept an EP when it is reasonably satisfied that the EP meets the criteria for acceptance under the Environment Regulations and where the EP demonstrates that the proposed alternative is expected to have equal or better environmental outcomes when compared to removal of property.

NOPSEMA's acceptance of an EP proposing alternative arrangements would mean that the removal obligations under section 572 are met with respect to the property covered under the EP. To avoid delays to the commencement of new stages of activities (e.g. cessation of production operations), NOPSEMA encourages the submission of EPs proposing alternative arrangements sufficiently in advance to ensure an EP is accepted prior to commencement of the new stage. In the absence of NOPSEMA accepting alternative arrangements to full removal, the titleholder must plan for full removal.

NOPSEMA considers that a comparative assessment may be used in an EP as a method to evaluate feasible alternatives to removal of property. A comparative assessment may support but does not replace the requirement for the EP to meet the criteria for acceptance of an EP under the Environment Regulations.

NOPSEMA considers that when an evaluation of impacts and risks are required by the Environment Regulations, they must incorporate a holistic evaluation of the impacts and risks of the alternative arrangements, (including those impacts and risks that may arise from the operation of removing or relocating property outside the title area) and considering community interest.

Where alternative arrangements to removal of property are proposed, NOPSEMA expects titleholders to address arrangements for long term monitoring and management, including appropriate completion criteria to ensure that the environmental performance outcomes identified in the EP in relation to the property left in situ will be met. Environment plans requiring long term monitoring for property will be subject to environmental performance reporting obligations and compliance monitoring by NOPSEMA for the duration of the monitoring programme. NOPSEMA will not accept a notification under regulation 25A ending the operation of the EP until the monitoring obligations in relation to property left in situ have been completed.

NOPSEMA's EP Decision Making Guidelines (GL1721) set out the considerations of NOPSEMA in making decisions in accordance with the criteria for acceptance of an EP.

4. Complying with section 572 of the OPGGS Act

NOPSEMA expects that a Safety Case, WOMP and EP will address the requirements for maintenance of property in good condition and repair and, when appropriate, the removal of property when it is neither used nor to be used in connection with the operations. Where titleholders engage contractors to operate facilities under the Safety Regulations, titleholders must ensure that adequate provisions to contractors including assurance and oversight are in place to meet the titleholder's obligations under section 572 of the Act.



4.1. Safety case requirements under Safety Regulations

Any operations or works conducted at facilities in an offshore area must comply with a safety case accepted by NOPSEMA. Property must be fit for purpose to perform its intended function during operations ensuring that all elements of the property continue to be regularly inspected, maintained and, where necessary, repaired. NOPSEMA expects facilities to be designed, constructed, inspected and maintained such that they can be removed in a manner which reduces risks to health and safety to a level that is as low as reasonably practicable (ALARP). The safety case for a facility must describe how the facility continues to be regularly inspected, monitored, maintained and repaired while operational until the point in time when it is fully decommissioned.

NOPSEMA expect that facilities no longer in use which could present health and safety risks are removed prior to the facility operator deregistration. The activities conducted to decommission a facility or parts of a facility may proceed only once a safety case addressing those activities has been accepted by NOPSEMA. As an example, the permanent departure of a Floating Production Storage and Offtake (FPSO) vessel from a field will require commitments in the accepted safety case for removal of the associated subsea infrastructure.

Please refer to NOPSEMA safety case guidance notes for further information on safety case requirements.

4.2. Well operations management plans requirements under the Resource Management and Administration Regulations

Wells should be designed, constructed and maintained in good order and repair to perform their intended function and in a way such that their permanent abandonment can be conducted in a manner which is safe and reduces risks to a level that is as low as reasonably practicable (ALARP). A WOMP must remain in place for the entire life of a well until the point in time when the well has been permanently plugged and abandoned. Prior to the surrender of a title, a titleholder must have plugged or closed off all wells in the surrender area to the satisfaction of NOPSEMA.

NOPSEMA expects WOMPs to contain a description of the arrangements that will be in place for abandonment of the well, showing how, during the process of abandoning the well, risks to the integrity of the well will be reduced to as low as reasonably practicable (ALARP), and how the actions taken during that process will ensure that the integrity of the well is maintained. It must also contain a justified timetable for carrying out and completing the well activities to which the plan applies. These arrangements should conform to current accepted well integrity standards and guidelines.

Please refer to NOPSEMA WOMP content and level of detail guidance note for further information on requirements.

4.3. Approvals under the Environment Regulations

4.3.1. Offshore project proposal

Compliance with section 572 is an ongoing obligation that applies to all activities throughout the life of an offshore project. Offshore project proposals (OPP) submitted to NOPSEMA for acceptance before commencing an offshore project are expected to include:

- A description of property proposed to be brought into the title area to undertake the activities that are parts of the project;
- A description of the actions proposed to be taken in relation to property following completion of the activities that are parts of the project;
- A description of how property has been selected and designed to facilitate removal when no longer in use.

The OPP system may also be used at any stage in the life of an offshore project to obtain stakeholder feedback on decommissioning options through public comment, prior to a titleholder submitting an EP for decommissioning. NOPSEMA's acceptance of the OPP does not constitute approval for proposed alternative arrangements. NOPSEMA will only accept alternative arrangements to property removal through the EP process as the EP provides for an appropriate level of detail in relation to impact and risk management and demonstrates that impacts and risks will be acceptable and reduced to as low as reasonably practicable. NOPSEMA encourages titleholders who choose to opt into the OPP system for decommissioning activities to begin planning for the OPP sufficiently in advance of the cessation of production stage to ensure an EP is accepted prior to commencement of the new stage.

4.3.2. Environment plan

The EP must comply with the OPGGS Act and the Environment Regulations (Regulation 10A(h)). NOPSEMA expects the EP to include:

- Arrangements for inspection, monitoring and maintenance that ensures property is maintained in good condition and repair to allow for removal when it is no longer in use;
- An implementation strategy that describes an inventory for all property in the title area and provides justified timeframes for removal when the property is neither used, nor to be used in connection with the operations;
- Plans for property removal throughout the operations and a commitment that removal must be completed while the title is still in force;
- Justified timeframes for property removal and a demonstration that the environmental impacts and risks will be acceptable and reduced to a level that is as low as reasonably practicable (ALARP);
- Appropriate environmental performance outcomes and standards for removal of property or proposed alternatives that drives continuous improvement in timely and responsible decommissioning activities;
- A full assessment of the environmental impacts and risks of removal or any proposed alternatives to full removal and a demonstration that proposed alternatives will result in equal or better environmental outcomes when compared to removal and will result in environmental impacts and risks that are acceptable and ALARP;
- For long-term operations, that the level of definition regarding removal of property described in the five yearly revisions of an environment plan will increase as the operations progress. Prior to the expected cessation of production date, the EP must provide for the scope, timeframe and methods to remove property.



4.3.3. Environment plans for cessation of production

If a titleholder's plans to cease production and cessation is not adequately addressed in the accepted EP then a revision to the EP is required. NOPSEMA is of the view that cessation of production is a new stage of operations and must be provided for in an accepted EP before the commencement of the new stage. If an EP is required, it should be submitted to NOPSEMA sufficiently in advance of the cessation of production date to ensure an EP is accepted prior to commencement of the new stage.

NOPSEMA expects that an EP proposing cessation of production activities will describe plans for property removal and a justified schedule for the removal of property in the title area. Removal must be carried out as soon as reasonably practicable following cessation unless specific opportunities for the reuse of property are described and accepted in the EP.

5. Compliance and enforcement

5.1. Compliance monitoring

NOPSEMA has legislated functions to develop and implement strategies to effectively monitor and enforce compliance with the requirements of the OPGGS Act. NOPSEMA will ensure that the relevant permissioning documents demonstrate compliance with the section 572 obligations of the OPGGS Act and will verify through inspections that titleholders continue to meet their obligations.

NOPSEMA expects that environmental performance reports submitted under Regulation 26C of the Environment Regulations will include a description of how the section 572 requirements for property maintenance and removal are being met for the operations.

NOPSEMA expects that the end of operation of an EP notification under regulation 25A of the Environment Regulations must include a declaration from the titleholder that property brought into the title area for the operations has been removed or that alternative arrangements have been made in accordance with the accepted EP.

5.2. Section 572(6)

A titleholder who has not brought in or authorised the bringing of property into the title area, may not have a duty to remove it (section 572(6)).

However, where the title has been sold or transferred but has not been revoked, cancelled, terminated or expired, NOPSEMA considers that the duty to remove property will apply to the current titleholder, whether the property is operational or not.

NOPSEMA considers that the duty also applies to a titleholder who contracts for the property to be brought into the title area.

5.3. Transitional provisions – removal obligations

If all property that is neither used nor to be used in connection with the operations has not been removed and alternative arrangements to removal are not provided for in an accepted EP, NOPSEMA will request the titleholder to submit an EP to demonstrate how the removal obligations under section 572 of the OPGGS Act will be met.



After providing an opportunity to submit an EP to address this, NOPSEMA may escalate to enforcement action for continuing breaches, whether in relation to failure to maintain property or failure to remove property.

5.4. Enforcement

Failure to maintain property in the title area in good condition and repair, or failure to remove property from the title area when it is neither used or to be used in connection with current or future operations, is a breach of section 572 and an offence of strict liability. The offence provision relating to removal does not apply where a titleholder has an accepted EP providing for alternative arrangements to removal.

In the event that a titleholder fails to comply with its obligations under section 572, NOPSEMA will take graduated enforcement action(s) in line with NOPSEMA's enforcement policy (N-05000-PL0067 Enforcement Policy).

Enforcement action could include directing a titleholder, or former titleholder to comply with the OPGGS Act and remove property brought into a title area in connection with the operations or make arrangements satisfactory to NOPSEMA in relation to that property. NOPSEMA may also seek to prosecute titleholders and to have either civil or criminal penalties applied. Details on NOPSEMA's approach to enforcement are provided in the NOPSEMA enforcement policy (PL0067).

5.5. Title transactions

NOPTA is the responsible entity for administration of title transactions. The National Offshore Petroleum Titles Administrator (NOPTA) and NOPSEMA have published a policy² that clarifies how the organisations interact in the sharing of title-related compliance information. Compliance with section 572 may be relevant for a range of title related transactions.

For example, for title surrender, NOPSEMA advises NOPTA on titleholders' compliance with the section 572 property removal obligations against section 270 of the Act.

NOPSEMA expects that a titleholder will have removed all property brought into the title area by any person engaged or concerned in the operations authorised by the title, to the satisfaction of NOPSEMA³. NOPSEMA will provide title related compliance advice to NOPTA⁴. Where NOPSEMA identifies outstanding obligations in relation to section 572, NOPSEMA will advise NOPTA accordingly, and NOPSEMA will escalate compliance action with the titleholder through enforcement.

² N-20200-PL1020 Provision of title related compliance information and advice to NOPTA

³ Section 270 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

⁴ NOPSEMA Policy *Provision of title related compliance information and advice to NOPTA*, N202200-PL1020

6. Relevant legislation and documents

Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPGGGS Act)

OPGGGS (Environment) Regulations 2009

OPGGGS (Safety) Regulations 2009

OPGGGS (Resource Management and Administration) Regulations 2011

PL0067 – Enforcement policy

PL1020 – Provision of title related compliance information and advice to NOPTA

PL1780 – Financial assurance requirements for petroleum titles policy

PL1020 – Provision of title related compliance information and advice to NOPTA policy

GL0225 - Guideline Making Submissions to NOPSEMA

GL1721 – Environment plan decision making guidelines

GN1602 – Well operations management plan content and level of detail

Australian Government *Offshore Petroleum Decommissioning Guideline*

Former Minister's Statement of Expectations, October 2019

NOPSEMA's Statement of Intent, November 2019

How NOPSEMA makes a decision in relation to duty

Attachment 1 – How NOPSEMA makes a decision in relation to duty

