

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Resources, Energy and Tourism Portfolio

Supplementary Budget Estimates

18 October 2012

Question: SR16

Topic: Consulting assistant access when investigating facilities

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Senator Cameron asked:

Senator CAMERON: There must be some issues there. In terms of a union accessing one of these sites, if the health and safety representative nominates the health and safety officer from a union to come on board, does that then require the operator of the site to provide access through helicopters or however access is gained to the site?

Ms Cutler: The operator may do that. I do not believe there are any coercive powers in the legislation to require the operator to give access to the site at a particular time.

Senator CAMERON: There is another weakness in the act. If there is only one access to the site and that is a helicopter and the operator says no, because helicopters cannot just be chartered and land on an offshore processing facility, can they-

Ms Cutler: Unless you are the police.

Senator CAMERON: So if an operator says: "No, I don't want the union representative here, so you are not getting access to the helicopter that flies people out here," how do we overcome that?

Ms Cutler: To date, there has only been one request for consulting assistance. I am not familiar with what other access arrangements-

Senator CAMERON: I am asking you a practical question about the operation of the act: how a consultant can actually get from the shore to an offshore-processing facility. And, say, Stena Clyde or any other operator says, "You are not accessing the company transport," how do you do it?

Ms Cutler: The best of my knowledge is that there is no compulsion, as I said, on the company so we cannot-

Senator CAMERON: Yes, you said that. How then does the act operate for a consultant to be there for the health and safety representative if the company says "no"?

Mr Clarke: I understand, again, the terms of your question. As officers have advised, it has not happened but respect that it could. Therefore, we will have to take on notice what would be the policy or regulatory response in such a case.

Senator CAMERON: Have you never considered this issue?

Ms Cutler: On the question of a consultant, there has been one request made to NOPSEMA for appointment of a consultant under clause 35. We are not aware-it does not mean it does not exist; there may have been a multiplicity of arrangements that have taken place between HSRs, their facility operator and a whole range of consultants. To date we have had only one request in 7 years since 1 January 2005 under clause 35--

Senator CAMERON: Sure, but when-

Ms Cutler: and in that case there was no problem because the operator of the facility had provided-

Senator CAMERON: Yes, Ms Cutler, but I am not interested in that really because you have said that two or three times now. You should not keep repeating the same answer, please. I have limited time. So, do you concede that the operator can actually impede the proper operation of the act if they do not allow a union access to their transport?

Mr Clarke: I think what the officer has acknowledged is that the people at the table right now have not experienced or contemplated that scenario. We recognise the validity of the question. We will take it on notice.

Answer:

The *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGSA) imposes a duty on employers of persons offshore to protect the health and safety of their employees (Clause 11 of Schedule 3). To meet this obligation, employers are required to provide a workplace that is safe for employees and without risk to their health. Both to meet this obligation and also as a consequence of the remoteness of the majority of Australia's offshore facilities, access is provided and controlled by the operator of the facility. The operator of a facility would be in breach of their obligations to provide a safe workplace if they provided access to a facility to any individual which resulted in adverse consequences for the health and safety of workers on a facility, for example, the person seeking access to a facility did not have sufficient skills, experience or training to access the facility safely.

The OPGGSA and associated Regulations do not make any explicit provisions that place an obligation on the operator of a facility to provide a workforce representative (union health and safety people/union official), or any other party (other than the Regulator) with the means to access a facility.

Since the question was asked, the Minister for Resources and Energy has requested the December tripartite meeting comprising representatives of the ACTU and affiliates active in the offshore industry, industry and NOPSEMA/Australian Government to consider NOPSEMA's policy for the administration of Clause 35 of Schedule 3 to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*. The Minister has also requested the tripartite meeting to develop a protocol to provide access to facilities by consultants in a range of circumstances.