

**Senate Standing Committee on Economics**

**ANSWERS TO QUESTIONS ON NOTICE**

Resources, Energy and Tourism Portfolio

Supplementary Budget Estimates

18 October 2012

**Question:** SR18

**Topic:** Health and Safety Representatives (HSR)

**Proof Hansard Page:** Written

**Senator Cameron asked:**

1. Health and safety Representatives play a vital role in promoting and improving safety in the offshore petroleum and gas industry, just as they do in every other industry in Australia. Section 35 of the OPGGS Act provides HSRs with the "entitlement" to access support and advice in their workplace from a consultant, which may include an officer or officers of a trade union.

Under what conditions does NOPSEMA believe HSRs can access support and advice in their workplace?

What are the provisions of s.35 that authorise NOPSEMA to require detailed written advice as to the qualifications, expertise and experience of the parties proposed as consultants and insist on a written explanation from HSRs of the proposed scope of the assistance to be provided by the consultant?

2. Why has NOPSEMA imposed conditions on HSR's access to the advice and support of consultants that on their face, exceed the statute?
3. Is there a formal process that NOSPEMA must follow when it is engaging with stakeholders?
4. How often is stakeholder engagement undertaken?
5. Is there a mechanism for feedback from external parties on the effectiveness of stakeholder engagement? If so, how are these dealt with internally as part of improving stakeholder engagement? If not, why not?
6. In respect to stakeholder engagement does NOPSEMA consider unions to be relevant stakeholders that should be engaged for consultations? If not, why?
7. Can NOPSEMA provide a list of the unions that have been consulted by NOPSEMA for the purposes of stakeholder consultations, including the number of times that each union has been contacted?
8. In relation to the Montara incident investigation, how many HSRs were interviewed during this investigation? How many HSRs were available to be interviewed? How many were present on the day of the incident?
9. In relation to the Varanus Island explosion, how many HSRs were interviewed during the investigation? How many HSRs were available to be interviewed? How many were present on the day of the incident?
10. Given that many of the offshore facility operators in the Australian offshore oil and gas industry have their origins in the Americas, in Asia and Europe, where quite different safety and labour relations cultures exist, what steps has NOPSEMA taken to ensure that HSRs, members of health and safety committees and indeed any worker on a facility under NOPSEMA's jurisdiction can have confidence, in keeping with Australian culture and practice, that they can raise OHS issues without any threat to their employment, to their

promotion or to fair shift options, in circumstances where there is ample evidence that workers in the offshore oil and gas industry have been and are discriminated against for raising OHS issues?

11. What data has NOPSEMA made available to the industry - that is, to operators, employers and trade unions - about conformity in Safety Cases with Australian OHS standards in key areas such as accommodation, union and workforce consultation, as included in harmonised OHS law, and if such an audit that would deliver such information has not been undertaken, will NOPSEMA undertake to complete such an audit and make that information available to all stakeholders?
12. What training packages and skills sets are accepted by NOPSEMA auditors to satisfy themselves that workers on offshore facilities have the appropriate skill levels to perform at a technical and safety standard of work that ensures that the operator is complying with its OHS duty of care?
13. Why has NOPSEMA advised that it does not intend to license occupations that are required by the model OHS law and regulations to be licensed. If NOPSEMA does not intend to be an occupational license issuing agency, where should workers who work in occupations required by the model regulations to be licensed obtain such a license?
14. What steps does NOPSEMA take to ensure that not only is it an "independent" regulator, but that it demonstrates that independence, and in particular to the trade unions who have coverage of workers on facilities?
15. NOPSEMA advised stakeholders at a meeting on 10th September that no union consultation had occurred in the development of the NOPSEMA HSR Handbook.
  - What is NOPSEMA's position regarding the general recognition to consult with all stakeholders including unions on matters pertaining to HSR's and safety generally?
  - Will NOPSEMA consult with unions stakeholders in the development of the next iteration of the HSR Handbook? If so, when will this consultation commence?
  - Did NOPSEMA agree at the 10 September meeting that it would provide written advice to unions on how NOPSEMA applies s.35.
    - If so, what is NOPSEMA's timeframe to provide stakeholders with this information?
  - Have NOPSEMA representatives reported that there is a requirement to consult HSR's on the development of Safety Cases (Safety Management Plans) on offshore facilities.
    - If so, what are the checks that are applied that satisfy NOPSEMA that appropriate consultation has occurred before Safety Cases are approved?
16. I understand that the NOPSEMA Board established by the statute has no union representation. I am also aware that a dialogue group on which the ACTU and unions, APPEA, NOPSEMA, and Department of Resources, Energy and Tourism have representation was established last year.
  - a) Does NOPSEMA view relevant unions and/or their peak councils as industry stakeholders?
  - b) Beyond attendance at the dialogue group meetings, please provide examples on how NOPSEMA engages in a meaningful way with unions representing workers in the industry?
17. In 2009, Parliament created Safe Work Australia to develop national policy relating to occupational health and safety. It's often remarked that NOPSEMA sits outside the OH&S mainstream.

- a) Please provide examples on the types of interaction between the two agencies.
- b) Is NOPSEMA opposed to strengthening its ties with Safe Work Australia?
- c) Many national agencies develop agreements which articulate how they will work together to achieve their particular objectives. Do you believe the performance of NOPSEMA could be improved by the two agencies entering into a Memorandum of Agreement?

18. The National Review into Model Occupational Health and Safety Laws - Second Report to the Workplace Relations Ministerial Council January 2009 stated at page 111:

"There is considerable evidence that the effective participation of workers and the representation of their interests in OHS are crucial elements in improving health and safety performance at the workplace. This representation occurs through the use of health and safety representatives (HSRs), elected by workers to represent them in relation to OHS."

- a) Other than the production of a HSR Handbook, what actions does NOPSEMA undertake to support the role of HSRs?
- b) Does NOPSEMA have a formal HSR engagement policy?
- c) If not, why not?
- d) Is NOPSEMA willing to develop a HSR engagement policy?
- e) If so, is NOPSEMA prepared to develop such a policy in conjunction with union stakeholders?
- f) In some jurisdictions, the Regulators organise an annual HSR conference. Why doesn't NOPSEMA do this?
- g) Is NOPSEMA prepared to organise an annual HSR conference?

**Answer:**

1. The powers and role of health and safety representatives (HSRs) are defined in Schedule 3 to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGSA). The OPGGSA refers, in part, to circumstances under which an HSR for a designated work group is entitled, in the exercise of their powers, to be assisted by a consultant. The National Offshore Petroleum Safety and Environmental Management Authority's (NOPSEMA's) inspection policy states that occupational health and safety (OHS) inspectors will communicate with all levels of the workforce on a facility, including HSRs. As reflected in the authority's regulatory management system, the OHS inspector meets separately with the HSRs as a standard inspection scope item. OHS inspectors provide an opportunity for HSRs and all other workers on a facility to raise OHS matters in private and face to face. In addition, any offshore worker can use the NOPSEMA dedicated incident reporting line and menu options to make a complaint about OHS matters affecting a facility.

The OPGGSA stipulates that requests from HSRs for assistance by a consultant must be agreed in writing by the operator or NOPSEMA. The need for written agreement is the basis for NOPSEMA requiring that the application for such an agreement also be in writing. NOPSEMA seeks relevant information in order to determine that the request from an HSR and any assistance is related to the exercise of an HSR's powers and related to a health and safety matter. The provisions for assistance to a HSR in the OPGGSA are addressed in NOPSEMA's draft policy on the matter. The purpose of this policy is to provide a documented, systematic and consistent approach to assessing applications for NOPSEMA agreement to HSR assistance by a consultant.

2. NOPSEMA seeks relevant information in order to determine that a request and assistance is related to both the exercise of an HSR's powers and a health and safety matter, as provided for under the OPGGSA. See also response to question 1.
3. NOPSEMA engages with a variety of stakeholders through a variety of mechanisms, both formal and ad hoc. Policies and forms covering stakeholder engagement as part of NOPSEMA's legislated functions are published on NOPSEMA's website. These include operator liaison, assessment, inspections and promotional visits, enforcement and incident reporting (including complaints). Additional mechanisms for stakeholder engagement cover both regulatory and non-regulatory channels, and are covered by policies and procedures relating to, for example, publications and freedom of information.
4. NOPSEMA engages with several of its various stakeholders daily, apart from some weekends and public holidays.
- 5a) NOPSEMA continues to implement recommendations of the second independent operational effectiveness review, including development of a stakeholder engagement program 'with appropriate preliminary scoping of stakeholder needs and issues and the outcomes of such engagement analysed'. The development of a stakeholder engagement program has been informed by a report and associated survey on stakeholder engagement. NOPSEMA publishes on its website multiple contact points to facilitate feedback from stakeholders. These processes are addressed in the NOPSEMA corporate plan and annual operating plan for the communications function and authority as a whole, as well as documented in the NOPSEMA annual report.
- b) N/A.
6. All stakeholders are welcome to provide feedback on matters of relevance to NOPSEMA's legislated functions, such as improving offshore health and safety, and participate in consultation processes, such as the safety case guidance note project.
7. A forum for consultation exists through the approximately quarterly consultation meetings NOPSEMA attends with the Australian Council of Trade Unions (ACTU) and relevant affiliates and the Australian Petroleum Production and Exploration Association (APPEA). For example, since February 2005, representatives the National Offshore Petroleum Safety Authority (NOPSA)/NOPSEMA has attended more than 25 meetings with union representatives, either separately or as part of the quarterly consultation mechanism. NOPSEMA representatives, including OHS inspectors, have provided both dedicated briefings direct to ACTU affiliates, including the Maritime Union of Australia (MUA), and at the annual HSR forum.

The CEO addresses correspondence relating to consultations to the ACTU, to be distributed to affiliates at the ACTU's discretion. For example, the Chief Executive Officer (CEO) recently sent correspondence regarding the safety case guidance note project and the draft guidance note on involving the workforce. In addition, the NOPSEMA CEO and senior management regularly respond to correspondence from offshore union representatives, including the ACTU, MUA, Australian Workers Union (AWU) and the Australian Institute of Marine and Power Engineers (AIMPE), on a range of matters.

The ACTU submitted a response to the Second Triennial Review of Operational Effectiveness of the NOPSA in September 2011. NOPSEMA notes that one union representative accepted an invitation to provide feedback to a stakeholder relations survey in late 2011.

8. Interviews are conducted as part of a formal incident investigation. As the regulator, NOPSEMA necessarily focuses on interviewing those persons who are in the best position to provide detailed information about the incident and its cause and those persons who are understood to have the legal responsibility in that operational area to ensure the risk to

persons at or near the facility is as low as reasonably practicable. In the case of Montara, the incident related to the loss of containment from a well. The operator of the Montara well head facility (who was also the titleholder for the well) had the primary duty to maintain the integrity of the well. It was this party who was ultimately prosecuted.

9. At the time of the investigation, NOPSA did not have any inspection or regulatory powers on Varanus Island. NOPSA was contracted to support the investigation by the Western Australian Department of Industry and Resources under the provisions of the WA Petroleum Pipelines Act (PPA) 1969. The PPA 1969 makes no provision to allow investigators to interview persons and require them to answer questions. The terms of reference of the investigation is published in the report *Offshore Petroleum Safety Regulation: Varanus Island incident investigation*, which was released publicly in May 2012.
10. The powers and role of HSRs are defined in Schedule 3 of the OPGGSA. OHS inspectors provide an opportunity for HSRs, as a priority, and all other workers on a facility to raise OHS matters in private direct to the authority. In addition, any offshore worker can use the NOPSEMA dedicated incident reporting line and menu options to make an anonymous complaint about OHS matters. NOPSEMA's Offshore Health and Safety Performance Report, published in May 2012, shows members of the workforce make use of the complaint mechanism provided by NOPSEMA to raise with the authority concerns about multiple and diverse issues to be addressed by the authority, as appropriate. As reported, the most common complaints received involved issues related to safety culture and management. NOPSEMA continues to encourage stakeholders, including the offshore workforce and union representatives, to report to the authority any instances of discrimination as a result of raising OHS issues.
11. NOPSEMA's assessment, inspection and enforcement activities are carried out as provided by the OPGGSA and subsidiary legislation. The OPGGSA stipulates the provision and distribution of inspection reports (which assess compliance against documents, such as the facility safety case), including a requirement that the operator of a facility must give a copy of the report to the health and safety committees and health and safety representatives, as applicable. NOPSEMA publishes on its website quarterly safety performance charts, the Offshore Health and Safety Performance Report and a bi-monthly newsletter covering OHS data including inspection activity, scopes and recommendations, in support of the objective of improved OHS outcomes and the prevention of major accident events.
12. NOPSEMA conducts its OHS assessment, inspection and enforcement activities as provided by the OPGGSA, Schedule 3 and Safety Regulations. This requires dutyholders to provide of information, instruction, training and supervision necessary for the workforce to carry out activities in a manner that does not adversely affect the health and safety of persons at the facility and to address in a facility safety case the means by which they will ensure the workforce is competent (for example, has the necessary skills, training and ability) to undertake routine and non-routine tasks and respond appropriately in the event of an emergency .
13. The OPGGSA is an objective-based regime (not prescriptive) and there are therefore no stipulated licensing requirements under the OPGGSA. Workforce competency is listed as a duty under the OPGGSA Safety Regulations (Reg 2.9, Part 2, Division 1). The OPGGSA further imposes a duty on operators to take all reasonably practicable steps to provide all members of the workforce with information, instruction, training and supervision necessary for them to carry out activities in a manner that does not adversely affect the health and safety of persons at the facility (Clause 9 of Schedule 3 to the Act). This reflects the duty on operators to ensure workforce competency under the objective-based regulatory regime. NOPSEMA inspections periodically cover competency as a scope item, to check for compliance against these duties.

14. NOPSEMA is defined by law as a Commonwealth independent statutory agency that performs its legislated functions under clear governance arrangements. Potential threats to NOPSEMA's ability to fulfil its legislated functions in an independent, professional and consistent manner and with respect for due process, are identified in the authority's internal risk register. NOPSEMA demonstrates its accountability to all stakeholders by performing its legislated functions in a consistent manner and publishing data relating to the authority's activity at least quarterly. NOPSEMA's governance arrangements and activity are also published in the authority's annual report. Further, NOPSEMA is subject to a triennial review of operations by an independent panel. The last review in 2011 noted, "NOPSA has established itself as a respected and competent safety regulator among stakeholders and peers..."

15 a) NOPSEMA's Statement of Intent specifies a commitment to fulfil its legislated functions in accordance with the guiding principles and specific expectations of the Commonwealth Minister for Resources and Energy including, but not limited to, to promote and secure compliance by dutyholders with the regulatory regime through monitoring, enforcement and proactive engagement with stakeholders to reduce the risk to human health and the safety of persons engaged in offshore activities to as low as reasonably practicable. The safety case guidance note project is an example of how the authority is fulfilling this commitment.

NOPSEMA discusses matters relating to safety and HSRs in the approximately quarterly tripartite forum meetings the authority attends with the Australian Council of Trade Unions (ACTU) and relevant affiliates and the Australian Petroleum Production and Exploration Association (APPEA). Since the question was asked, the Minister for Resources and Energy has requested the December tripartite meeting to consider NOPSEMA's policy for the administration of Clause 35 of Schedule 3 to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* covering requests by HSRs for assistance by a consultant. NOPSEMA representatives, including OHS inspectors, have provided both dedicated briefings direct to ACTU affiliates, including the Maritime Union of Australia (MUA), and at the annual HSR forum.

- b) Feedback from HSRs and union representatives was incorporated in the production of the first edition of the HSR Handbook in 2008. The 2012 edition of the HSR Handbook reflects legislative amendments and NOPSEMA's establishment and is not a newly-developed resource.
- c) Yes. This was further to NOPSEMA informing the ACTU in writing on 31 August 2012 about the authority's approach regarding requests made under Clause 35 of Schedule 3 to the OPGGSA.
- NOPSEMA has developed a draft policy and associated form on requests from HSRs for assistance under Clause 35. All stakeholders are able to subscribe to NOPSEMA updates, information and developments on a range of topics, including HSR news, via the NOPSEMA website.
  - NOPSEMA's policy is due to be considered by the tripartite meeting in December attended by representatives of the ACTU and relevant affiliates, NOPSEMA and APPEA. The policy will also be posted on the NOPSEMA website for access by all stakeholders.
- d) Yes. The authority notes that the legislation specifies the requirement for dutyholders to consult the workforce, not only health and safety representatives, on the development of facility safety cases.
- The requirement for dutyholders to consult the workforce on the development of facility safety cases is specified in the legislation, the HSR Handbook, the "What is a Safety Case?" document and Issue 5 of the NOPSEMA newsletter, to coincide

with the release of the draft safety case guidance note on involving the workforce. These are all available on the NOPSEMA website. As required under the legislation, in order to have a safety case accepted by NOPSEMA, a dutyholder must demonstrate consultation with the workforce in the development of the safety case. The demonstration is required by the regulations to be supported by documentation. This documentation is considered as part of NOPSEMA's safety case assessment process. The operator's risk management arrangements are critically examined by NOPSEMA during safety case assessment. The commitments made in the safety case are then verified by NOPSEMA during inspections at facilities. Inspection reports are sent to the operator, who must give copies of the report to the health and safety committee and to the health and safety representatives. HSRs, along with all members of the offshore workforce are able to provide feedback to the authority via a range of mechanisms, to raise any concerns or complaints related to OHS matters on a facility. See also responses to questions 3, 5, and 10.

16. a) All stakeholders are welcome to provide feedback on matters of relevance to NOPSEMA's legislated functions, such as improving offshore health and safety, and participate in consultation processes, such as the safety case guidance note project.
- b) A forum for consultation exists through the approximately quarterly consultation meetings NOPSEMA attends with the ACTU and relevant affiliates, and APPEA. For example, since February 2005, the NOPSA/NOPSEMA has attended more than 25 meetings with union representatives, either separately or as part of the quarterly consultation mechanism. NOPSEMA representatives, including OHS inspectors, have provided both dedicated briefings direct to ACTU affiliates, including the MUA, and at the annual HSR forum.

The CEO addresses correspondence relating to consultations to the ACTU, to be distributed to affiliates at the ACTU's discretion. For example, the CEO recently sent correspondence regarding the safety case guidance note project and the draft guidance note on involving the workforce. In addition, the NOPSEMA CEO and senior management regularly respond to correspondence from offshore union representatives, including the ACTU, MUA, AWU and AIMPE, on a range of matters.

The ACTU submitted a response to the Second Triennial Review of Operational Effectiveness of NOPSA in September 2011. NOPSEMA notes that one union representative accepted an invitation to provide feedback to a stakeholder relations survey in late 2011.

17. a) NOPSEMA has participated in the development of the National Work Health and Safety Strategy and consulted with Safe Work Australia on a range of matters relating to occupational health and safety.
- b) No.
- c) NOPSEMA has entered into a range of agreements with other agencies that have an interest in the offshore petroleum sector. Further, NOPSEMA is involved in the development of a framework for cooperation involving Commonwealth, State and Territory upstream petroleum regulators. NOPSEMA has memorandums of understanding (MOUs) with other regulatory agencies involved in the offshore petroleum sector. Safe Work Australia is a policy agency and, therefore, the Department of Resources, Energy and Tourism would be the primary point of contact on matters pertaining to policy.

18. a) The powers, role and entitlement of HSRs are defined in Schedule 3 of the OPGGSA. NOPSEMA's inspection policy states that OHS inspectors will communicate with all levels of the workforce on a facility, including HSRs. As reflected in the authority's regulatory management system, the OHS inspector meets separately with the HSRs as a standard inspection scope item. Under the OPGGSA, the operator must give a copy of the NOPSEMA inspection report to the HSRs or health and safety committee. If an enforcement notice is issued, the operator must give the HSRs a copy of the notice. NOPSEMA has co-hosted and provided presentations at the annual HSR Forum. The NOPSEMA website has a dedicated HSR webpage providing information about training, events and resources explaining the powers and entitlements of HSRs and the offshore workforce regarding OHS matters. Provisions for assistance from a consultant as requested by an HSR in the Act are addressed in NOPSEMA's draft policy on the matter. The purpose of this policy is to provide a documented, systematic and consistent approach assessing applications for NOPSEMA agreement to HSR requests for assistance by a consultant. HSRs are encouraged to subscribe to HSR-related material, or other NOPSEMA information, through the NOPSEMA website. In addition, NOPSEMA publishes on its website multiple contact points to facilitate feedback from stakeholders on matters relevant to all of the authority's legislated functions. These processes are captured and addressed in the NOPSEMA corporate plan and annual operating plan for the communications function and authority as a whole, as well as documented in the NOPSEMA annual report. See also the response to question 5a.
- b) See response to part a.
- c) N/A.
- d) See response to part a.
- e) N/A.
- f) NOPSEMA continues to develop initiatives that are appropriate and relevant for HSRs to supplement the authority's policy and established standard inspection scope item prioritising a meeting with an HSR after an OHS inspector's arrival at a facility to conduct an inspection. Since 2005, NOPSEMA (formerly NOPSA) has co-hosted and provided presentations at the annual HSR workshop/forum and accredited training courses.
- g) Yes. From 2005-11, NOPSA/NOPSEMA has co-hosted and co-chaired the organising committee for the annual APPEA HSR Forum. In 2012, NOPSEMA was on the organising committee and supported the forum by providing two presentations covering how HSRs could prepare for an offshore inspection and how HSRs are covered by the OPGGSA. NOPSEMA has requested that the 2013 APPEA HSR Forum be considered as an agenda item at the December tripartite meeting between NOPSEMA, the ACTU and relevant offshore affiliates and APPEA. The NOPSEMA CEO advised ACTU and relevant offshore affiliates at a meeting on 13 November, that the authority had sought support from operators for HSR attendance at regional workshops.