



Government of **Western Australia**
Department of **Mines, Industry Regulation and Safety**



GUIDE

Nomination of an operator

Work Health and Safety (Petroleum and Geothermal Energy Operations)
Regulations 2022



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Reference

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This publication was produced by WorkSafe Western Australia using information contained within the National Offshore Petroleum Safety and Environmental Management Authority's (NOPSEMA) suite of guidance notes on nomination of operators.

Purpose of this Guide

A guide is an explanatory document that provides information on the requirements of legislation, details good practice and explains a means of compliance with standards prescribed in the legislation.

Compliance with guides is not mandatory. However, a guide could have legal standing if it were demonstrated that the guide is the industry norm.

This Guide has an operations focus and is set out in the context of risk assessment and legislative requirements of all responsible persons. Consequently, each operation needs to understand its limitations and skills base.

Who should use this Guide?

You should use this Guide if:

- you are the operator of onshore or offshore petroleum, pipeline or geothermal energy operation under the *Work Health and Safety Act 2020*, and
- you are required to develop and maintain a safety case under the Work Health and Safety (Petroleum and Geothermal Energy Operations) Regulations 2022.



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1 Introduction

WHS Act Part 2

Health and safety duties

WHS PAGEO Regulations Part 2, Division 1

Operators

WHS PAGEO Regulations r. 24

Operator's representative

The purpose of this Guide is to provide advice to licensees and operators of all onshore and offshore petroleum, pipeline and geothermal energy facilities for nomination and registration of an operator for a facility in accordance with the requirements of the:

- *Work Health and Safety Act 2020* (the WHS Act)
- *Work Health and Safety (Petroleum and Geothermal Energy Operations) Regulations 2022* (the WHS PAGEO Regulations).

Under the WHS PAGEO Regulations, no work is permitted on a petroleum or geothermal energy facility or operation unless the nomination of an operator has been accepted by the regulator and the nominated operator has been added to the register being maintained by the regulator.

It should be noted that this requirement overrides any previous registration of operators that may have taken place when applying for pipeline licences etc.

1.1 Scope and objective of this Guide

This Guide has been set out to reflect the steps necessary to have a nominated operator accepted by the regulator, added to the register of operators and change nominated operators if required.

2 Transitional period

WHS PAGEO Regulations r. 21

Nomination of operator

WHS PAGEO Regulations r. 22

Acceptance or rejection of person as operator

WHS PAGEO Regulations r. 185

Persons engaging in operations before commencement day

The WHS PAGEO Regulations cover a transitional period for persons engaging in operations before commencement day.

A **person engaging in operations** means any of the following:

- an operator as defined in the PSLA Offshore Safety Regulations regulation 3
- an operator as defined in the PSLA Pipelines Regulations regulation 3(1)
- a person lawfully engaging in an operation as defined in the PGERA Regulations regulation 3
- a person lawfully engaging in a pipeline operation as defined in the PPA Regulations regulation 4.

The **transitional period** means the period of 3 months beginning on commencement day.

A person operating a facility immediately before commencement day is taken to be an operator in relation to the facility under the WHS PAGEO Regulations until:

- the end of the transitional period, or
- if, during the transitional period, the person engaging in operations is nominated to be the operator of the facility:
 - the regulator accepts the nomination of the person
 - the regulator rejects the nomination of the person.

3 Nomination of an operator

WHS PAGEO Regulations r. 21
Nomination of operator

Nomination of an operator of a facility under the WHS PAGEO Regulations can be done by:

- the owner, charterer or lessee of a facility
- the holder of a petroleum title or a geothermal title (including a pipeline licence)
- a person approved by the BI Act Minister under the *Barrow Island Act 2003* section 13(1).

3.1 Duties of an operator

WHS Act Part 2
Health and safety duties

WHS PAGEO Regulations r. 8
Reference to person conducting a business or undertaking includes reference to operator of a facility

Before completing the nomination, the nominator must ensure that the nominee accepts the nomination and that they do, or will have, day-to-day control of the facility for which they are being nominated.

When considering the application, the nominator and the nominated operator must take into consideration that the duties of the nominated operator also cover the requirements that reference to a person conducting a business or undertaking includes the operator of a facility.

The operator is also considered to be a person conducting a business or undertaking (PCBU) as detailed in the WHS Act and that these requirements form part of the day-to-day control and management of the facility.

Part 2 of the WHS Act provides details of:

- what is reasonably practicable in ensuring health and safety
- primary duty of care
- duties of persons conducting businesses or undertakings involving management or control of workplaces.

The registered operator will also be responsible for submission of safety cases, diving safety management systems and any other relevant safety documentation to the regulator under the PAGEO legislation. It should therefore be noted that whilst there may be a number of facilities covered by a safety case, all of these facilities must have the same registered operator.

It will no longer be possible to submit safety documentation to the regulator covering multiple facilities with different registered operators.

3.2 Submission of the nomination

WHS PAGEO Regulations r. 21 Nomination of operator

The nomination must be given to the regulator in writing. The petroleum and geothermal energy operations – [Application for facility operator registration – form](#) is available from the DMIRS website.

Before the regulator will consider the application, the following details are required to be included in the written nomination:

- the nominee's name and contact details, including
 - business address
 - telephone number during business hours
 - telephone number outside business hours
- the nominee's ABN (or if the nominee does not have an ABN include ACN) if applicable
- the nominee's written consent to the nomination
- the name of the facility the subject of the nomination
- a short description of the facility the subject of the nomination
- the name and position of an officer of the nominee with sufficient authority to warrant, on behalf of the nominee, that the nominee has day-to-day management and control at the facility.

Once the application is complete and signed by both the nominee and nominator, the form should be submitted to the regulator via email to petreps@dmirs.wa.gov.au. No hard copy of the application is required to be submitted to the regulator.

Where there are multiple facilities that will have the same nominated operator, the submission may be made with an attached list of the details of each facility covered by the application. However, care must be taken if making an application for multiple facilities as this will only be appropriate where the facility owner, charterer, lessee, permittee or licensee is the same for each facility being listed.

If the application relates to the same nominated operator but the owner, charterer, lessee, permittee or licensee is not the same for each of the facilities, then a separate application must be made for each.

Upon acceptance by the regulator, the registered operator will be listed against each individual facility.

3.3 Acceptance or rejection of a nominated operator

WHS PAGEO Regulations r. 22

Acceptance or rejection of person as operator

Upon receipt of the application for operator registration, the regulator must review the application and make a decision as to the acceptance or rejection of that application.

In order to accept the application, the regulator must be satisfied that the nominated operator of a facility will have the required level of day-to-day management and control of operations at the facility. If the regulator accepts the nomination of the operator of a facility, the regulator must register the nominee as the operator of the facility and notify both the nominator and the nominee of the decision to accept the nomination. A decision will be made on each application as soon as possible after receipt of the application by the regulator.

If the regulator decides to reject the application because there are reasonable grounds to believe that the nominated operator will not have the required level of day-to-day management and control of operations at the facility, the regulator must:

- notify both the nominator and the nominee in writing that the application is rejected, and
- include details of the reasons for the rejection.

4 Replacement of a registered operator

WHS PAGEO Regulations r. 23
Register of operators

The regulator must maintain a current register of operators, ensuring that any change to a nominated operator is updated in the register upon receipt and acceptance of the notification.

The notification of change may be made either by the nominee or the existing operator. There may be a change of registered operator for a facility for the following reasons):

- the current registered operator of a facility has ceased to have the required level of day-to-day management and control of the facility
- there is a change in the operations of a facility that requires a change in nominated operator (for example, from construction to operations or from operations to decommissioning)
- there is a change in the owner, title holder, lessee or licence holder that necessitates the change of nominated operator
- the regulator believes there are reasonable grounds that the registered operator may no longer have the required level of day-to-day management and control of the facility.

It should be noted that there must always be a registered operator in day-to-day management and control of a facility for any operations to take place on that facility. This should be taken into consideration when there is a need to change the registered operator so that a transition plan can be agreed between incoming and outgoing operators to meet this requirement.

See section 4.2 for further details on transitioning to a new operator.

4.1 Registered operator – ceases to have day-to-day management

WHS PAGEO Regulations r. 20
Facility must have operator

WHS PAGEO Regulations r. 23
Register of operators

If a registered operator has ceased to be the person who has or will have the day-to-day management and control of the operations of a facility, notification in writing must be sent to the regulator either by the nominator or the registered operator. This notification can be done by way of a letter to the regulator and be accompanied by a nomination of operator form for the proposed new registered operator.

The notification must include details of:

- the person submitting the notification
- the operator who will cease to have day-to-day management and control
- the proposed new operator.

Upon receipt of the written notice, the regulator must remove the operator from the register. However if the facility is still operating there must be an accepted nominated operator to replace the operator being removed from the register.

Similarly, the above will apply if the operations of a facility are changing so that the current registered operator will no longer have the required level of expertise to maintain day-to-day level of management and control of the facility.

4.2 Replacement of registered operator for an operating facility

When replacing a registered operator, the following must be taken into account:

- there can only be 1 registered operator for a facility at any point in time
- a new safety case will generally be required if there is a replacement operator due to the contents of the safety case being operator specific.

In view of the above when a change of operator for a facility is identified it is important that there is consultation with the regulator regarding the proposed change. A transition agreement should be established between the new operator and the outgoing operator to identify an agreed date for the removal of the current operator and the registration of the new operator so that there is no period where a registered operator is not in place.

Allowance will need to be made for the submission and acceptance of the proposed safety case for the facility affected by the change of operator. This may be achieved by the proposed new operator being accepted by the regulator and their safety case being informally reviewed and brought to a level where it can be accepted formally by the regulator. This needs to be done before the proposed change date so that on the agreed date the new accepted operator is added as the registered operator, the old operator is removed and the new safety case is formally accepted by the regulator.

When going through this transition phase it will also be necessary to take into account the requirement for validation. If the new operator has identified that there is no change to the facility, including controls for reducing risk associated with safety critical elements and major accident events, then the scope of the validation may be shown as 'nil – no changes to facility or operations'.

4.3 Removal of registered operator by the regulator

WHS PAGEO Regulations r. 23
Register of operators

The regulator may remove an operator's name from the register if he believes, on reasonable grounds, that the operator no longer has day-to-day control of the operations at a facility.

A notice of intention to remove an operator from the register must be given in writing to the person who nominated the operator and to the operator setting out the reasons for the decision and giving 30 days after receipt of the notice to respond to the decision.

If, after reviewing any written submissions received from the nominator or the operator, the regulator continues to believe on reasonable grounds, that the operator does not, and will not have day-to-day management and control of the operations at the facility, the regulator will remove the name of the operator from the register.

In the event that the name of a registered operator is removed from the register, the operator ceases to be registered as an operator under the WHS PAGEO Regulations. The operations at the facility must cease until such time as a new operator is nominated and the nomination is accepted by the regulator.

5 Operator's representative

WHS PAGEO Regulations r. 24

Operator must ensure presence of operator's representative

An operator of a facility must have in place within the organisation suitable personnel who, as part of their duties are also the operator's representative.

Where 1 or more natural persons are engaged in an operation on the facility, a natural person (the operator's representative) who has day-to-day management and control of that operation must be in attendance. This person may, for example, be the permit holder as an individual working alone or with a small team of workers completing operations under a single permit to work, or the operation shift manager for onshore petroleum or drilling facilities, or the offshore installation manager for offshore facilities.

In relation to this requirement, if the nominated operator is a natural person, the operator's representative may from time to time also be the operator.

Appendix 1 Other guides available

- *Audits, review and continual improvement*
- *Bridging documents and simultaneous operations (SIMOPS)*
- *Decommissioning*
- *Diving safety management system*
- *Diving start-up notices*
- *Duties of validator*
- *Emergency planning*
- *Facility design case*
- *Health and Safety Performance Lead and Lag Indicators*
- *Hazard identification*
- *Human factors fundamentals for petroleum and major hazard facility operators*
- *Human factors self-assessment guide and tool for safety management systems at petroleum and major hazard facility operations*
- *Interpretive guideline: Discriminatory, coercive and misleading conduct*
- *Interpretive guideline: How to determine what is reasonably practicable to meet a health and safety duty*
- *Interpretive guideline: The meaning of 'person conducting a business or undertaking' (PCBU)*
- *Involvement of members of the workforce*
- *Major accident events, control measures and performance standards*
- *Management of change*
- *Nomination of operator*
- *Onshore facility safety case – drilling rigs*
- *Overview of Western Australia's Work Health and Safety Act 2020*
- *Records management including document control*
- *Reporting of petroleum notifiable incidents and occurrences*
- *Risk assessment and management including operational risk assessment*
- *SFARP demonstration*



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