

# OFFSHORE PETROLEUM GUIDELINE: TRANSFER AND DEALINGS RELATING TO PETROLEUM TITLES

## A guideline in relation to the *Offshore Petroleum Greenhouse Gas Storage Act 2006*

Prepared by the Commonwealth Department of Industry, Innovation and Science

*Effective as at 1 November 2013*

This document has been developed as a general guide only. It does not replace or amend the requirements of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* and associated Regulations, which should be read in conjunction with the guide.

It is made available on the understanding that the Commonwealth is not giving legal or other professional advice. Before relying on this material in any important matter, users should carefully evaluate its accuracy, currency, completeness and relevance for their purposes, and obtain appropriate legal or other professional advice relevant to their particular circumstances.

It is anticipated the guideline will be amended from time to time. This guideline is available online at [www.nopta.gov.au](http://www.nopta.gov.au).

## 1. PURPOSE

This guideline aims to assist titleholders in lodging documents for approval and registration of transfers and dealings under Parts 4.3, 4.6 and 4.7 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGSA).

## 2. OVERVIEW

- 2.1. A transfer or dealing relating to a petroleum title(s) is of no force until approved and registered in accordance with the OPGGSA: s 472 and s 487.
- 2.2. This is a two stage process completed by NOPTA.
  - 2.2.1. Firstly, the application, accompanied by the prescribed fee, see Schedule of Fees, found at <http://www.nopta.gov.au/cost.html>, is approved or refused by NOPTA (memorial of the approval is stamped on the instruments and any related supplementary instruments).
  - 2.2.2. Secondly, on approval, the documents are registered. Copies of the public registered documents are placed on the National Electronic Approvals Tracking System <http://neats.nopta.gov.au/>.
- 2.3. There is no statutory requirement for NOPTA to approve and register an application for approval of a transfer or dealing within a set time. The time taken to assess and make decisions on applications will depend on:
  - 2.3.1. the extent and quality of the information provided in support of the application
  - 2.3.2. the level of complexity of the transaction
  - 2.3.3. available NOPTA resources.
- 2.4. Any time constraints (e.g. for approvals or for performance of work) written into the instrument evidencing the dealing should be highlighted in the application for approval of the dealing. Realistic time constraints should be used to allow time for consideration by NOPTA.

### 3. TIME LIMIT FOR LODGING AN APPLICATION

- 3.1. Applications to approve transfer(s) and/or dealing(s) must be lodged **within 90 days** after the day on which the last party executed the instrument of transfer, s 476(1), or dealing, s 491(1).
- 3.2. NOPTA may allow a longer period to lodge an application, if there are sufficient grounds to warrant a longer period: s 476(2), s 491(2).
  - 3.2.1. A request to NOPTA to allow late lodgement should be made in writing, detailing grounds and accompanied by appropriate evidence/documentation.
  - 3.2.2. A request to allow late lodgement may be made at the time of submitting the application for the approval of a transfer or dealing or in advance of the lodgement.

### 4. TRANSFER OF TITLE

- 4.1. An application for approval of a transfer of a title may be made by any of the parties to the transfer: s 473(1).

#### Application

- 4.2. The following documentation must be provided:
  - 4.2.1. A completed application form (<http://www.nopta.gov.au/forms/forms.html>): s 473(2), and the supporting information asked for in the checklist attached to the form.
  - 4.2.2. The instrument of transfer in the prescribed form, from Schedule 7 of the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* (the RMA Regulations), executed by all parties to the transfer: s 474(a)(i) and (ii). The original plus one copy of each instrument is required: s 474(d). The original instrument will be returned to the applicant after registration.
  - 4.2.3. If any of the transferees are not already a party to the title, even if a related corporation, they must (if not already provided with any prior dealings which are relevant to the approval of the transfer) also provide details of the following:
    - (a) technical qualifications of that transferee or those transferees: s 474(b)(i)
    - (b) details of the technical advice that is or will be available to that transferee or those transferees: s 474(b)(ii):

<p>NOTE: Transferees should provide NOPTA with sufficient information to satisfy the decision maker of their technical capability to meet the title obligations including any work program commitments. They may include, but are not limited to, the technical capacity and experience of key personnel and/or details of sub-contractors and particulars of other current and previous involvements in petroleum exploration and development.</p>
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- 4.2.4. Financial resources that are or will be available to that transferee or those transferees(s): s 474(b)(iii):
  - (a) This should include but is not limited to the most recent:
    - Statement of Comprehensive Income
    - Statement of Financial Position
    - Statement of Cash Flows.

- (b) Details of work program commitments associated with the title should be provided, specifically any commitments that are in excess of the proportion implied by the percentage interest in the title.
  - (c) NOPTA will look for evidence of the capability of the transferee(s) to meet their financial commitments for the work program, for example evidence that the transferee(s) have sufficient internal financial resources to meet the requirements of the work program or evidence of the likelihood that the transferee(s) will continue to have the ability to attract outside funding. Given the range of ways in which a company may secure funding, examples of funding evidence are listed at *Attachment 1* but the list is not exhaustive.
- 4.3. NOPTA has powers to require applicants to provide such information about the transfer as is considered necessary or advisable: s 507; and to require production of documents relating to a transfer from a person: s 509.
- 4.4. Applications for transfer of a title must be accompanied by the fee prescribed by the RMA Regulations, if any: s 516A. For more information, refer to the [Schedule of Fees](#).

#### General Provisions and Information

- 4.5. Titleholders preparing an application for approval of a transfer should take into account the following general provisions and information:
- 4.5.1. A transfer must be of the whole of the title area.<sup>1</sup>
  - 4.5.2. All titleholders must execute the transfer instrument – even if a titleholder’s interest is not affected.<sup>2</sup>
  - 4.5.3. If there were two (2) or more titleholders before the transfer and a single address had been nominated for the service of documents under subregulation 11A.04(2) of the RMA Regulations, the nomination will lapse when a transfer of title is registered. If there are two (2) or more titleholders after the transfer, a new nomination under subregulation 11A.04(2) (Form 4 <http://www.nopta.gov.au/forms/forms.html>) may be made between the titleholders and lodged with NOPTA and NOPSEMA.

If there were two (2) or more titleholders before the transfer and a titleholder had been nominated as being the person who is authorised to take ‘eligible voluntary action’ on behalf of the registered holders under section 775B(2) of the OPGGSA, the nomination will lapse when a transfer of title is registered. If the transfer is more than one title holder, a new nomination under section 775B(2) (Form 6 <http://www.nopta.gov.au/forms/forms.html>) is to be made between the title holders and lodged with NOPTA.

## **5. DEALINGS AFFECTING AN EXISTING TITLE**

- 5.1. An application for approval of a dealing affecting an existing title may be made by any of the parties to the dealing: s 488.
- 5.2. A dealing is a transaction (other than a transfer of title) having one or more of the effects listed in s 486, *see Attachment 2*.
- 5.3. If a dealing relates to two (2) or more titles, separate applications are required if approval of the dealing is sought in relation to each title: s 488(3).

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<sup>1</sup> This arises as a result of using the instrument of transfer in the prescribed form in Schedule 7 of the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011*

<sup>2</sup> *ibid*

- 5.4. If a dealing forms part of a series of debentures, all of the dealings constituting the issue of that series of debentures are taken to be one dealing: s 468.

#### Application

- 5.5. If a commercial transaction involves a dealing affecting more than one title, a separate application must be lodged for approval of the dealing in respect of each title affected by that dealing: s 488(3).

- 5.6. The following documentation must be provided:

- 5.6.1. A completed application form (<http://www.nopta.gov.au/forms/forms.htm>): s 488(4), and the supporting information asked for in the checklist attached to the form.

NOTE: If the dealings, and any associated transfers, need to be registered in a specific order this information should be included the application, otherwise dealings will be registered by in order of the effective date (if specified in the dealings)

- 5.6.2. The instrument evidencing the dealing: s 489(1).

- 5.6.3. A supplementary instrument (if applicable): s 489(2).

NOTE: Applicants may lodge a supplementary instrument: s 489(2). The content of a supplementary instrument under s 489(2) is prescribed in regulation 12.02 of the RMA Regulations. Where a supplementary instrument is lodged, that document is available for public viewing in place of the original instrument: s 495(2)(a)(ii) and s 495(2)(c)

- 5.6.4. A copy of the instrument evidencing the dealing and any supplementary instrument: s 489(4A).

- 5.7. If NOPTA approves the dealing, the original instrument evidencing the dealing and any supplementary instrument will be returned to the applicant after registration: s 495(2)(b) and (d); and s 495(3)(b).

- 5.8. NOPTA has powers to require applicants to provide such information about the dealing as is considered necessary or advisable: s 507; to obtain information from a party to an approved dealing: s 508; and to require production of documents relating to a dealing from a person: s 509.

- 5.9. Applications for the approval and registration of dealings affecting titles under the OPGGSA must be accompanied by the fee prescribed by the RMA Regulations: s 516A. For more information, refer to the [Schedule of Fees](#).

## 6. DEALINGS AFFECTING FUTURE TITLES

- 6.1. For dealings affecting future titles, persons may either make a provisional application for approval of a dealing: s 498, or make an application for approval of the dealing within 90 days (or such longer period as NOPTA allows) from the date the title comes into existence: s 503.
- 6.2. An application for approval of a dealing in relation to a title that may come into existence in the future is described as a “provisional application”, as approval is provisional on grant of the title. Such application may be made by any of the parties to the dealing: s 498(1) and s 498(2).
- 6.3. A separate provisional application for approval of the dealing is required in respect of each future title affected by the dealing: s 498(3).
- 6.4. NOPTA requires the same documents as are required for approval a dealing, described at 5.6, to be provided for a provisional application: s 499 and such applications must also be accompanied by an application fee: s 498, s 516A.
- 6.5. Provisional applications for approval of a dealing lodged prior to grant of a title will be dealt with following the grant of the title: s 502.
- 6.6. Provisional applications for approval of a dealing in an exploration permit, retention lease, production licence, infrastructure licence or pipeline licence cannot be lodged before the day on which an offer document is given to the applicant for the title; or after a title is granted: s 501, Item 1.
- 6.7. Provisional applications for approval of a dealing in an access authority may be made during the period from the day on which the application for the grant of an access authority is made, until the day on which the authority is granted: s 501, Item 2.
- 6.8. Once a title comes into existence, a provisional application is treated as if it is an application lodged for approval and registration of a dealing under section 488: s 502.

### TABLE OF REVISIONS

<b>Date</b>	<b>Version</b>	<b>Purpose</b>	<b>Jurisdiction</b>
July 2014	4	Updated to reflect the amendments made to section 474, 489 and 499 in the <i>Offshore Petroleum and Greenhouse Gas Storage Amendment (Regulatory Powers and Other Measures) Act 2014</i> .	Cth
Nov 2013	3	Updated to reflect the abolition of Registration Fees under the <i>Offshore Petroleum and Greenhouse Gas Storage (Registration Fees) Act 2006</i> effective 1 November 2013	Cth
Nov 2011	2	Updated to reflect changes to OPGGSA – transfer to NOPTA Clarification of technical and financial requirements.	Cth
April 2011	1	Wholesale re-write to improve clarity of writing	Registrars / Cth

Examples of evidence in support of funding sources may include:

- bank deposits held
- operating cash flows
- loan facilities – for example loan agreements signed by all parties or loan agreements conditional on the award of a title are acceptable not letters of intent from a loan institution
- parent company guarantee: e.g. a deed of cross guarantee or a guarantee provided by the parent company on corporate stationery is also sufficient
- other guarantee: e.g. a bank guarantee, or guarantee from an accountant's of a certified statement of an individual's capacity to fund (high net worth individuals)
- forecast cash flows - where an applicant has existing assets and those assets have proven reserves and are in production, or production is imminent (speculative cash flows, where the assets are not in production and production is not imminent, are not acceptable)
- track record of successful funding of exploration projects
- proven ability to attract farm-in partners
- proven ability to raise capital by public or private means
- letter of guarantee from capital raising entity (although arrangements with financial institutions or brokerage firms where they undertake to raise equity on a best efforts basis are not adequate evidence of funding)
- evidence that a satisfactory Joint Venture Operating Agreement has been or can be reached.

**Effects of dealings**

<b>Item</b>	<b>Effect</b>	<b>Example</b> (include but are not limited to)
1	The creation or assignment of an interest in an existing title.	Sale and Purchase Agreements, Deeds of Assignment and Assumption, unconditional “farm-in and farm-out agreements”, and charges over an interest
2	The creation or assignment of a right (conditional or otherwise) to the assignment of an interest in an existing title.	Trustee arrangements, Deeds of Assignment and Assumption and conditional “farm-in and farm-out agreements”
3	<p>The determination of the manner in which persons may:</p> <ul style="list-style-type: none"> <li>a) exercise the rights conferred by an existing title; or</li> <li>b) comply with the obligations imposed by an existing title; or</li> <li>c) comply with the conditions of an existing title;</li> </ul> <p>(including the exercise of those rights, or the compliance with those obligations or conditions, under cooperative arrangements to recover petroleum).</p>	Joint operating agreement, joint venture operating agreements, and unit development agreements
4	<p>The creation or assignment of an interest in relation to an existing petroleum exploration permit, petroleum retention lease or petroleum production licence, where the interest is known as:</p> <ul style="list-style-type: none"> <li>a) an overriding royalty interest; or</li> <li>b) a production payment; or</li> <li>c) a net profits interest; or</li> <li>d) a carried interest.</li> </ul>	Overriding royalty agreements; production bonus deeds relating to an entitlement of a person to an interest in a title by way of a share of the production of petroleum or revenue derived from production of petroleum from a current or future discovery
5	<p>The creation or assignment of an interest that is similar to an interest covered by item 4, where the interest relates to:</p> <ul style="list-style-type: none"> <li>a) petroleum produced from operations authorised by an existing petroleum exploration permit, petroleum retention lease or petroleum production licence; or</li> <li>b) revenue derived as a result of the carrying out of operations authorised by an existing petroleum exploration permit, petroleum retention lease or petroleum production licence.</li> </ul>	Overriding royalty agreements; production bonus deeds relating to a specific well or future production from a specified part of, or the whole of, a title area

<b>Item</b>	<b>Effect</b>	<b>Example</b> (include but are not limited to)
6	The creation or assignment of an option (conditional or otherwise) to enter into a dealing, where the dealing would have one or more of the effects referred to in items 1, 2, 3, 4 and 5.	Option agreements, conditional “farm-in and farm-out agreements” with option to earn additional interest
7	The creation or assignment of a right (conditional or otherwise) to enter into a dealing, where the dealing would have one or more of the effects referred to in items 1, 2, 3, 4 and 5.	Heads of agreements, deeds of covenant
8	The alteration or termination of a dealing, where the dealing would have one or more of the effects referred to in items 1, 2, 3, 4, 5, 6 and 7.	Deeds of release, termination agreements