



Compliance and enforcement

1. Purpose

The purpose of this document is to outline the National Offshore Petroleum Titles Administrator's (NOPTA) compliance and enforcement policy and to make titleholders and other persons aware of the approach taken by NOPTA with regards to non-compliance.

1.1 Relevant legislation

- [Offshore Petroleum and Greenhouse Gas Storage Act 2006 \(OPGGSA\)](#)
- [Offshore Petroleum Greenhouse Gas Storage \(Resources Management and Administration\) Regulations 2011 \(RMA Regulations\)](#)

2. Background

NOPTA is established under section 695A of the OPGGSA and is part of the Commonwealth Department of Industry and Science

The policy considers the principles of best practice regulatory administration, as described in [the Australia National Audit Office Better Practice Guide, Administering Regulation](#) and the [National Legislative Compliance Framework](#)¹ (NCLF).

Through the identification of good regulatory practice these frameworks assist in the development of a consistent approach by regulators of Australia's offshore petroleum industry.

The functions of the Joint Authority and NOPTA, as well as their interactions with each other are discussed below.

2.1 Role of NOPTA²

NOPTA's principal functions are to provide information, assessments, analysis, reports, advice and recommendations to members of the Joint Authorities and the responsible Commonwealth

Minister in relation to the performance of those functions and the exercise of their powers.

NOPTA also:

- is the decision-maker in respect to the granting of petroleum special prospecting authorities and petroleum access authorities;
- provides approval and registration for all transfers and dealings against petroleum titles;
- keeps the petroleum titles register; and
- manages the collection, storage and release authorisation of data.

The titles administration function means that NOPTA is the public face of titles administration and all communications, including applications, requiring the Joint Authority's attention are received and processed by NOPTA.

2.2 Role of the Joint Authority

The Joint Authority for the offshore area of each state and territory is constituted by the responsible Commonwealth Minister and the relevant State or Territory Minister (except for Tasmania).

The Joint Authority for the Eastern Greater Sunrise offshore area, the external territories and Tasmania consists solely of the responsible Commonwealth Minister.

The Joint Authority, for each respective offshore area, makes decisions under the OPGGSA, the RMA Regulations and associated legislation (as amended from time to time) concerning the granting of petroleum titles, the imposition of title conditions and the cancelling of titles.

As the primary decision maker on the majority of titles matters the Joint Authority plays a fundamental role in any compliance action taken under the OPGGSA or the RMA Regulations.

¹ Developed by Noetic Solutions Pty Limited ABN 87 098 132 024, July 2011.

² Please note that NOPTA currently does not have a role in titles which fall within the Joint Petroleum Development Area.



2.3 Decision making and communication

Where formal action is required titleholders and other persons must be aware of the decision making requirements set out in the OPGGSA and the RMA Regulations. As the majority of titles decisions are made by the Joint Authority, on advice from NOPTA, so are the final compliance and enforcement decisions.

The structure of the OPGGSA means that all communications by titleholders or other persons with the Joint Authority are made through NOPTA (see section 63 of the OPGGSA).

3. Compliance and enforcement

3.1 Principles of compliance

NOPTA's compliance and enforcement approach is underpinned by five principles³ which were identified in the NCLF.

The principles are:

- helpfulness
- accountability
- transparency
- consistency
- efficiency.

In adopting these principles NOPTA is creating a culture where titleholders understand their obligations and how to comply with them, including an understanding of the options available to avoid becoming non-compliant. This assists titleholders to meet their legislative obligations, without increasing the administrative burden associated with undertaking petroleum exploration and recovery in the Commonwealth offshore areas.

3.2 Compliance and enforcement strategy

NOPTA's compliance and enforcement strategy is to encourage compliance and provide assurance, to all stakeholders, that the agreed title conditions are being met within the agreed timeframes. It is implemented using a graduated, risk based approach which recognises the finite amount of resources available. The compliance and

enforcement strategy supports the objectives of the OPGGSA and the RMA Regulations.

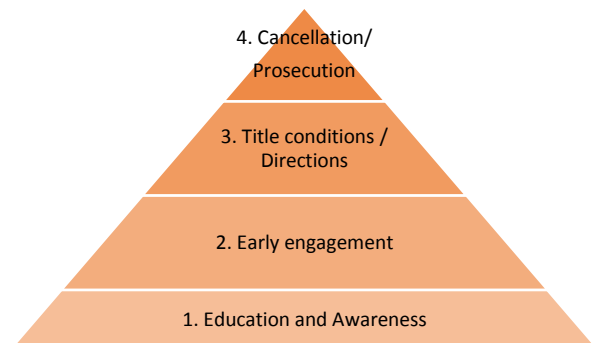
Central to NOPTA's compliance and enforcement strategy is communication. The structure of the legislation means that once non-compliance is identified the options available to the Joint Authority and NOPTA are limited. As such titleholders are encouraged to openly engage with NOPTA particularly where they recognise at an early stage that there is a potential for them to become non-compliant with their obligations.

3.3 Annual compliance program

As part of the compliance and enforcement strategy NOPTA has implemented an [Annual compliance program](#). This assists NOPTA to fulfil its principal functions and provide the Joint Authorities and the responsible Commonwealth Minister with accurate assessments and advice. It also provides a communication avenue between NOPTA and titleholders on compliance issues. This program involves themed reviews of titles and titleholders to encourage compliance with their obligations. A consistent annual focus is on reviewing the timeliness of information provided in reports given to NOPTA.

3.4 Compliance and enforcement options

NOPTA and the Joint Authority have a number of compliance and enforcement options available to them. These can be broadly categorised into four areas:



The bottom two tiers include mostly informal compliance options such as education and awareness, monitoring titleholders' progress

³ Developed by Noetic solutions Pty Limited ABN 87 098 132 024, July 2011.



through reporting requests and conducting audits. The legislation also provides a number of formal enforcement options such as directions, additional title conditions, cancellation of titles and prosecution, which is illustrated by the top two tiers.

The pyramid demonstrates where the majority of compliance activity will occur, i.e. in the bottom tiers. However, while four tiers exist, the graduated nature of the compliance and enforcement strategy means an issue can be resolved at any level and means that it does not have to pass through all the stages. It is possible for an issue to be addressed at any level of the compliance pyramid and be escalated or de-escalated at any time depending on the nature and seriousness of the breach.

In deciding where an issue falls within the compliance pyramid NOPTA will consider a range of factors including (not exclusive):

- risk to the objectives of the legislation
- instances of non-compliance recorded against the titleholder
- titleholder's compliance stance
- risk of the behaviour
- risk to future exploration and resource recovery activities.

1. Education and awareness

NOPTA will use a number of communication mediums to make sure that titleholders are aware of their obligations. This will include publishing information on the NOPTA website (www.nopta.gov.au) to complement the existing legislation and guidelines. This may be in the form of quick tips, fact sheets or other general information.

NOPTA staff will also take every opportunity to consistently and transparently convey the expectations of the Joint Authority and NOPTA to titleholders and other persons. This may also include individual communications with titleholders, potential titleholders and other persons.

2. Early engagement

Titleholders are encouraged to continuously interact with NOPTA in relation to their progress.

The nature of compliance and enforcement issues means that they are usually of a complex nature and in order to allow a titleholder or person the best chance at returning to compliance (in cases where this is deemed possible) early engagement is desirable. This may involve titleholders being asked to regularly report to NOPTA in order to monitor their progress.

It is noted that where the Joint Authority is the decision maker NOPTA can only present options to the titleholder it cannot advise whether an application would be considered favourably.

3. Titles conditions/directions

The Joint Authority and NOPTA (in the case of access authorities and special prospecting authorities) have the ability to impose particular title conditions on titleholders. In relation to some titles i.e. work-bid exploration permits and production licences, there are standard title conditions which will always be applied. However, all titles will be considered in relation to their unique circumstances and conditions will be applied if deemed necessary.

Once title conditions are written on the titles instrument they become statutory conditions and full compliance with these is required. If they are not complied with further compliance and enforcement action may be triggered.

The legislation also allows for the Responsible Commonwealth Minister⁴ to give statutory directions to titleholders in certain circumstances. Statutory directions are enforceable under the legislation. Areas where statutory directions may be given include resource management and data issues.

4. Cancellation/prosecution

The fourth tier of compliance action will only be considered where it is proportionate to the seriousness of the breach. As discussed above, it

⁴ See section 574A of the OPGGSA.



NOPTA policy

is not necessary for all other compliance options to be exhausted prior to choosing this option as the approach will be determined by the nature of the breach.

The decision to cancel a title, excluding access authorities and special prospecting authorities, is made at the discretion of the Joint Authority. Decisions in relation to revoking access authorities or cancelling special prospecting authorities are made by NOPTA. Breaches of the legislation will always be assessed on a case by case basis and the Joint Authority, on advice from NOPTA, or NOPTA (depending on the title type) will determine whether the seriousness of the breach warrants cancellation.

For example, under the current methodology, exploration permits are offered and granted based on the work-bid system. The allocation of a permit is based, amongst other things, on the applicant's superior work program therefore if this program is not complied with, the seriousness of the breach may be considered as grounds for cancellation of the title.

If prosecution is deemed necessary the initial decision will, in the majority of cases, be made by the Joint Authority, on advice from NOPTA. Amongst other things, this decision will be made in accordance with the [Prosecution Policy of the Commonwealth](#). The ultimate decision to prosecute an offence is made by the Commonwealth Director of Public Prosecution.

4. Further information

Further information and assistance with the legislative requirements can be found on the NOPTA website (www.nopta.gov.au)

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