



Background to the *Offshore Petroleum Guideline: Prior Usage Rights*

In early 2016 the Government corrected an administrative oversight that had caused certain titles granted under the [Offshore Petroleum and Greenhouse Gas Storage Act 2006](#) (OPGGS Act) that are also 'prior usage rights' for the purposes of the [Environment Protection and Biodiversity Conservation Act 1999](#) (EPBC Act) to be extended or renewed without the consent of the Environment Minister as required by subsection 359(3) of the EPBC Act. 'Prior usage rights' are petroleum titles that overlap Commonwealth marine reserves, but were granted prior to establishment of the reserve.

A new Part of the OPGGS Act – (entitled Part 9.10C – Commonwealth reserves) commenced on 1 March 2016. This Part validates any Joint Authority decisions made before 1 January 2016 to renew or extend the term of prior usage right titles without the consent of the Environment Minister.

This amendment does not remove the need to seek consent of the Environment Minister in future.

To ensure that future renewal and extension decisions are not made without the necessary consent, a formal process has been established for seeking the consent of the Environment Minister under subsection 359(3) of the EPBC Act. The [Offshore Petroleum Guideline: Prior Usage Rights](#) outlines this process.

It is important to note that the prior usage provisions of the EPBC Act are not new. Failure to obtain the consent of the Environment Minister when required under these provisions may lead to invalidation of Joint Authority renewal and extension decisions and un-planned expiry of petroleum titles.

Rationale for the process outlined in the Guideline

In future, consent under subsection 359(3) of the EPBC Act must be obtained prior to the Joint Authority making a decision to renew or extend the term of the title.

The legislation does not stipulate a process for seeking this consent. The Department of the Environment and the Department of Industry, Innovation and Science have worked together with the National Offshore Petroleum Titles Administrator (NOPTA) to develop a process that will ensure the EPBC Act requirements are met. Objectives considered in developing this process have included:

- Efficiency and effectiveness - obtaining the consent in the most efficient manner
- Transparency and engagement – ensuring that the process is conducted openly and that titleholders are active participants
- Natural Justice – ensuring that titleholders are given the opportunity to respond to proposed decisions where necessary
- Confidentiality – maintaining the confidentiality of information provided by titleholders to NOPTA

To meet these objectives, it is considered that a process led by the titleholder is the best option.

* This document is designed to be an explanatory supplement to *the Offshore Petroleum Guideline: Prior Usage Rights*. This document and the guideline are subject to, and do not replace or amend, the requirements of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* and the *Environment Protection and Biodiversity Conservation Act 1999* and relevant legislative instruments made under them, which should be read in conjunction with this document and the guideline.