



Change in control of a registered titleholder

All information should be read in conjunction with the [Offshore Petroleum and Greenhouse Gas Storage Act 2006](#) (the OPGGS Act), associated regulations, relevant guidelines, fact sheets and policies (available on [NOPTA's website](#)).

The purpose of this document is to provide a set of frequently asked questions (FAQs) in relation to Chapter 5A of the OPGGS Act. These FAQs should be read in conjunction with the [Guideline: Transfers, Dealings, Change in Control and Other Titleholder Transactions](#) and the [Fact Sheet: Change in Control of a Registered Titleholder](#).

Please note: *this document is intended as a guide only and should not be relied on as legal advice or regarded as a substitute for legal advice in individual cases. Legislative references in this fact sheet relate to the OPGGS Act unless stated otherwise.*

Overview

Chapter 5A of the OPGGS Act sets out the legislative provisions relating to a change in control of a registered holder of a petroleum exploration permit, retention lease or production licence; a pipeline or infrastructure licence; or a greenhouse gas (GHG) assessment permit, holding lease or injection licence.

The approval or refusal of a change in control is at the discretion of the Titles Administrator (ss 566D(2)).

Questions

Is a change in control the same as a transfer?

The change in control provisions relate to a change in the companies who own or control companies that hold one or more titles under the OPGGS Act (e.g. through a company sale or acquisition of shares). This is distinct from the existing transfer processes under Part 4.3 and 5.3 of the OPGGS Act which results in a change to the identity of the registered holder or holders of a title.

Given there may be short timeframes for the completion of a change in control transaction, will NOPTA provide pre-approvals?

NOPTA recommends proponents engage with NOPTA as soon as they are aware of a potential transaction that may trigger the change in control requirements. This will allow for discussion on what needs to be submitted and potentially clear up any questions prior to the application assessment process. NOPTA cannot provide 'pre-approval' as the change in control must be approved by the Titles Administrator before the change in control takes effect. The currency of the information provided for NOPTA's approval is important.

What are the key application stages?

1. The application is assessed and either approved or refused by the Titles Administrator (s 566D);
2. If approved, the applicant has a maximum of nine months to obtain any other regulatory approvals and complete any contractual arrangements necessary to give effect to the transaction. The applicant must notify the Titles Administrator when the change in control has taken effect (s 566K); and
3. When the Titles Administrator is notified that a change in control has taken effect a memorandum of approval will be published on the Titles Register (s 566L).

What is the timeframe for assessing an application?

The Titles Administrator's assessment of a change in control application will generally be finalised within six to ten weeks of receiving all information that is relevant for the assessment.

Who can make a change in control application?

The application may be made by a person who proposes to begin to control, or cease to control, a registered holder (s 566C). Parties to the transaction (if any) who are not proposing to begin or cease to control a titleholder are not eligible to apply.

It is sufficient for just one eligible person to make the application, rather than each person who proposes to begin or cease to control the titleholder.

For example Company A proposes to sell its 100 per cent controlling interest in Company C, which is a registered titleholder, to Company B. Both Companies A and B are proposing to begin or cease to control Company C. Therefore, either Company A or Company B may make the application. Company C is not eligible to make the application because it is neither beginning nor ceasing to control a registered titleholder (it is the registered titleholder).

Is a change in control application made on a 'per title' basis or per registered titleholder?

Separate applications must be made with respect to each registered titleholder company that will be subject to a change in control, rather than with respect to each title.



Frequently Asked Questions

What interaction will NOPTA have with NOPSEMA in relation to change in control applications?

When making a decision, the Titles Administrator may consult with NOPSEMA and have regard to any matters raised in that consultation.

Titleholders will need to ensure they remain compliant with all regulatory requirements, including permissioning documents, following a change in control.

How long is the approval period?

The approval period commences on the day the Titles Administrator notifies the applicant that the change in control has been approved (s 566E) and ends nine months after that day, unless it ends earlier because either (s 566A):

- the change in control has taken effect—in which case the approval period ends immediately after it takes effect; or
- the Titles Administrator revokes its approval under s 566J—in which case the approval period ends when the notice of revocation is given to the person who was given notice of the initial approval.

If the change in control does not take effect before the end of the approval period, and the change in control transaction is still proposed to proceed, a person proposing to begin or cease to control the registered titleholder must again obtain approval from the Titles Administrator before completing the transaction.

In what circumstances can the Titles Administrator revoke an approval of a change in control?

The Titles Administrator may revoke an approval of a change in control of a registered titleholder at any time during the approval period if there is a change in circumstances of the person who has been approved to begin or cease to control the titleholder, and the Titles Administrator considers it appropriate to revoke the approval (s 566J).

Generally, the Titles Administrator would consider revoking an approval if a change in circumstances would or may affect the ability of the titleholder to remain capable and suitable to hold the title if the proposed change in control were to take effect.

Procedural fairness processes would apply for the person(s) proposing to begin or cease to control the titleholder before a decision is made to revoke the approval.

What is a change in circumstances?

The applicant must notify the Titles Administrator where there is a change in circumstances of a person proposing to begin or cease to control a titleholder that materially affects any of the matters that the Titles Administrator must have regard to in ss 566D(5).

Notification is required to ensure that the Titles Administrator is made aware of any matters that may affect the ability of the titleholder to remain capable and suitable to hold the title if the proposed change in control were to take effect. It enables the Title Administrator to take appropriate action before the change in control takes effect. For example, the Titles Administrator could request further information from the person, refuse to approve the change in control or, where approval has already been given, revoke that approval.

When does a change in circumstances notification need to be given?

Notice must be given as soon as practicable after the change in circumstances occurs. The notice will be given either:

- before the Titles Administrator has decided whether to approve or refuse the change in control, or
- if the change in control has been approved before the change in control takes effect.

How do I notify the Titles Administrator of a change in circumstances?

A s 566H change in circumstances form is available on the NOPTA website.

What happens if a person fails to notify NOPTA of a change in circumstances?

Notice must be given as soon as practicable after the change in circumstances occurs (s 566H(1)(e)). Failure to provide notice of a material change in circumstance is a contravention of the OPGGS Act and is subject to a civil penalty (s 566H(2)). It is also a ground for cancellation of a title under s 274(e) and s 446(da) of the OPGGS Act.

What happens if a person fails to notify NOPTA of a change in control taking effect after the Titles Administrator's approval and within the approval period?

Failure to notify the Titles Administrator within 10 days of the change of control taking effect is a contravention of the OPGGS Act and subject to a continuing civil penalty for each day that a contravention continues (s 566K(2)-(3)).



Frequently Asked Questions

What happens if a person begins or ceases to control a registered titleholder and the Titles Administrator has not approved the change in control, or has approved the change in control but the approval took effect after the approval period?

Failure by the person to notify the Titles Administrator within 30 days (or anytime thereafter if not done within 30 days) of an unauthorised change in control taking effect is a contravention of the OPGGS Act and subject to a continuing civil penalty for each day that a contravention continues (s 566P(2)-(3)). It is also a ground for cancellation of a title under ss 274(e) and ss 446(da) of the OPGGS Act.

Subsection 566P(4) provides a defence for the civil penalty if the person did not know, and could not reasonably be expected to have known, that the person began to control or ceased to control the titleholder.

I am a titleholder that has been subject to a change in control. Do I have to notify the Titles Administrator?

A registered titleholder does not need to notify the Titles Administrator of an approved change in control that has taken effect within the approval period.

If a person begins or ceases to control the titleholder and the change in control was not approved by the Titles Administrator, or the change in control was approved but took effect after the end of the approval period, failure by the titleholder to notify the Titles Administrator within 30 days of the unauthorised change in control taking effect is a contravention of the OPGGS Act and subject to a civil penalty (s 566Q(2)).

The titleholder does not contravene the OPGGS Act if the titleholder did not know, and ought not reasonably to have known, that the unauthorised change in control has taken effect (s 566Q(1)(c)).

Questions

If you have any further questions, please contact NOPTA via titles@nopta.gov.au.

Version history

Version	Date	Comment
1.0	February 2022	Creation of the FAQs