



## Petroleum Title Dealings – Supplementary Instruments

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

The [Guideline: Transfers, dealings, change in control and other titleholder transactions \(the Guideline\)](#) provides an overview of the requirements and processes involved with an application for approval and registration of a dealing.

This fact sheet provides guidance on completing supplementary instruments.

### Supplementary instruments

The Act provides that an application for approval of a dealing may be accompanied by a supplementary instrument (s 489(2)).

Where the Titles Administrator (TA) approves a dealing, and a supplementary instrument has been provided, a copy of the supplementary instrument will be placed on the Titles Register and made available for public inspection in place of the full dealing (s 495(2)).

### Purpose

A supplementary instrument is used where the original instrument evidencing the dealing contains information that the parties want kept confidential, such as commercially sensitive information.

Its purpose is to clearly describe the effect(s) of the dealing or transaction while preserving confidentiality.

As the supplementary instrument replaces the full dealing instrument on the Titles Register, it should enable a person inspecting the Titles Register to understand what the effect of the dealing is.

### Integrity of the Titles Register

One of the TA's legislative functions is to keep a register of offshore titles and petroleum special prospecting authorities (the Titles Register – s 469).

The Titles Register is a public record of matters relating to offshore petroleum titles, including commercial transactions such as dealings. It:

- must be open for inspection by any person (s 515); and
- is to be received in all courts and legal proceedings as prima facie evidence of all matters required or authorised to be entered in it (s 516).

The TA considers the integrity and accuracy of the Titles Register to be of significant importance.

### Content

#### Information that **must** be included

Regulation 12.02(1) of the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* (the **Regulations**) sets out the information that must be included in a supplementary instrument.

In summary, this includes:

- a description of the dealing and its date of execution;
- details of the petroleum title to which the dealing relates;
- the name and business address of the parties to the dealing;
- details of the effect(s) of the dealing upon registration;
- details of the parties' interests in the title before and after approval and registration of the dealing; and
- details of any related dealings (regulation 12.02(2) defines a 'related dealing').



## Level of detail

A supplementary instrument should contain, in plain English, as much information as possible about the legal effect(s) of the dealing.

Where the TA is not satisfied that sufficient detail has been provided the applicant may be requested to amend the supplementary instrument.

To assist applicants, a sample supplementary instrument, with guidance notes on addressing the required details (as prescribed by the Regulations), is appended to this fact sheet (**Appendix A**).

## More information

If you have any specific questions, please contact NOPTA via [titles@nopta.gov.au](mailto:titles@nopta.gov.au).

*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.*

## Version History

Version	Date	Comment
1.0	18/11/2020	



## Appendix A

### Supplementary Instrument Prescribed Details

Regulation 12.02

*Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011*

#### **12.02(1) Prescribed details for a supplementary instrument for approval of a dealing under subsection 489(2) of the Act**

(a) description and date of execution of the instrument evidencing the dealing mentioned in subsection 489(1) of the Act;

**Guidance note:**

- The description of the instrument should, at a minimum, include the name of the dealing exactly as stated on the dealing instrument, e.g. *“Joint Operating Agreement – Exploration Permit WA-XXX-P.”*
- Other relevant information to help describe the nature of the instrument should also be provided.
- The date of execution of the instrument is the date described as being the execution date in the instrument or, where this is not specified, the date on which the last signatory to the agreement executed the instrument.

(b) details of the title (including the type and number of the title) to which the dealing relates;

**Guidance note:**

- This must specify a single offshore petroleum title only (not a list of titles).
- Where a dealing relates to more than one title, separate supplementary instruments must be submitted for each title, providing details in respect of that individual title only.

(c) full name and business address of each party to the dealing;

**Guidance note:**

- Each party to the dealing must be listed.
- The full company name should include the identification number of the company, i.e. for Australian Companies the ACN or ABN.
- Where the company name has changed since the dealing was entered into, this should be specified, e.g. *“ABC Pty Ltd (previously XYZ Pty Ltd) (ABN 01 234 567 890)”*.



- (d) details of the effect or effects, upon registration, of the dealing specified in terms of the relevant item in section 486 of the Act;

**Guidance note:**

- Attachment 2 of the Guideline provides some examples of possible dealings in relation to petroleum titles for each item number under s486 of the Act. This is not an exhaustive list, and it is noted that the relevant item(s) should always be considered against the particulars of the dealing.
- Regulation 12.02 sets out the minimum requirements for inclusion on a supplementary instrument. As the supplementary instrument takes the place of the full confidential dealing instrument on the public Titles Register, the TA considers that it is insufficient to merely refer to relevant item(s)/effect(s) in s 486 of the Act.
- The supplementary instrument should contain sufficient detail (in plain English) to enable a person examining the Titles Register to determine what the dealing is about. For example - the 'Recitals', 'Whereas' or similar clauses in the dealing instrument often provide a useful level of summary information that may be suitable for this purpose.

- (e) details of the interest or interests in the title of all parties to the dealing:
- i. before the registration of the dealing;
  - ii. in the event of approval of the dealing, after the registration of the dealing.

**Guidance note:**

- When completing this section, applicants should be mindful that not all dealings will directly result in a change in title interests. For example, a Sale and Purchase Agreement may ultimately lead to a change in title interests (on completion of any conditions precedent and execution of other relevant agreements), but the change of interests will not occur until such time as a Transfer of Title is approved and registered.
- In such cases, the applicant may in this section of the supplementary instrument:
  - show the title interests as remaining unchanged in the event of approval and registration of the dealing; or
  - set out the change in title interests that will eventuate, and include a statement indicating that those changes in title interests are conditional upon the future approval and registration of a Transfer of Title under part 4.3 of the Act.
- Where the dealing does result in a change in title interest without requiring a Transfer of Title to effect that change - for example an assignment of title interests between existing titleholders – this should be indicated on the supplementary instrument.



- (i) in respect of any related dealing\* for which an entry has been made in the Register or an application, in writing, for approval has been lodged:
- i. a description of the instrument evidencing the dealing and the date of execution; and
  - ii. the date of approval; and
  - iii. the registration number (if any).

\***related dealing** means a dealing executed, before the execution of the instrument evidencing the dealing mentioned in paragraph (1)(a), by some or all of the parties to that instrument:

- a) that affects the title which is the subject of the dealing to which the instrument referred to in paragraph (1)(a) relates; and
- b) that:
  - i. creates or assigns an option to enter into the dealing mentioned in paragraph (1)(a); or
  - ii. creates or assigns a right to enter into the dealing mentioned in paragraph (1)(a); or
  - iii. is altered or terminated by the dealing mentioned in paragraph (1)(a);

and includes any transaction in respect of which an instrument was registered under section 81 of the *Petroleum (Submerged Lands) Act 1967* before 22 July 1985.

**Guidance note:**

- For any related dealing listed under this section please include a statement explaining why it is listed as a related dealing (for example, “Sale and Purchase Agreement - Exploration Permit WA-XXX-P, dated 01/01/2020, which creates the right to enter into this Deed of Assignment and Assumption.”)
- Relating dealings are those which are registered on the same title.