



Australian Government
**Department of Industry,
Science and Resources**

Guideline: Transfers, dealings, change in control and other titleholder transactions

In relation to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*

Effective 2 March 2022

This document has been developed as a general guide only. It is subject to, and 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 this guideline.

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This document has been prepared by the [Department of Industry, Science and Resources](#). It will be reviewed and updated as required.

This document is available online at www.nopta.gov.au.

Contents

Guideline: Transfers, dealings, change in control and other titleholder transactions	1
Table of revisions	4
1. Introduction	5
2. Purpose	5
3. Overview of transaction types	6
4. General information about applications.....	7
Decision-maker	7
Procedural fairness	7
Submission requirements	8
Engagement with NOPTA.....	8
5. Information gathering powers.....	8
6. Transfer of title	9
General provisions and information	9
Time limit for lodging an application	10
Application requirements	10
Assessment timeframes.....	11
Assessment criteria and additional information requirements.....	11
Transfers following an application for a renewal of a title	12
Transfers following an application for a derived title	12
7. Dealings affecting an existing title	12
General provisions and information	12
Time limit for lodging an application	13
Application requirements	13
Assessment timeframes.....	14
Assessment criteria and additional information requirements.....	14
8. Dealings affecting a future title	15
9. Change in control of a registered titleholder.....	16
General provisions and information	16
Requirement for approval of change in control	16
Enforcement of penalty provisions.....	17
Timeframe for lodging an application.....	17
Application requirements	17
Separate applications per registered titleholder subject to a change in control	18
Assessment timeframes.....	18
Guideline: Transfers, dealings, change in control and other titleholder transactions	industry.gov.au 2

Assessment criteria and additional information requirements.....	19
Approval of change in control and the ‘approval period’	19
Notification of change in circumstances before or during approval period.....	20
Revocation of approval of change in control.....	20
Notification of change in control taking effect with Titles Administrator approval.....	21
Notification of change in control without Titles Administrator approval	21
Notification by registered titleholder of change in control without Titles Administrator approval	22
Change in control entered as a memorial on the Register	22
Tracing provisions	22
Anti-avoidance provisions.....	23
10. Devolution of title	23
Application	24
11. Change of company name	24
Application	24
Attachment 1: Effects of dealings.....	25

Table of revisions

Date	Version	Purpose	Jurisdiction
July 2022	8	Update department name.	Commonwealth
February 2022	7	Substantial rewrite to reflect amendments to Chapters 4 and 5 and the insertion of new Chapter 5A in the <i>Offshore Petroleum and Greenhouse Gas Storage Amendment (Titles Administration and Other Measures) Act 2021</i> . The revision includes updated application requirements and decision-making criteria for transfer and dealing applications and has been expanded to include both petroleum and greenhouse gas titles. The revision also covers new requirements for approvals of changes in control of registered titleholders. A new section on devolution of title applications has also been included. Guideline will come into effect 2 March 2022.	Commonwealth
February 2020	6	Update department name.	Commonwealth
April 2018	5	Substantial rewrite to improve clarity. The revision includes updated information to be provided in support of transfer and/or dealing applications, and general clarifications about assessment and decision making processes. A new section on change of company name applications has been included.	Commonwealth
July 2014	4	Updated to reflect the amendments made to s 474, s 489 and s 499 in the <i>Offshore Petroleum and Greenhouse Gas Storage Amendment (Regulatory Powers and Other Measures) Act 2014</i> .	Commonwealth
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.	Commonwealth
Nov 2011	2	Updated to reflect changes to OPGGS Act – transfer to NOPTA Clarification of technical and financial requirements.	Commonwealth
April 2011	1	Wholesale re-write to improve clarity of writing.	Registrars / Commonwealth

1. Introduction

- 1.1. Persons that wish to participate in Australia's offshore petroleum regime as a titleholder must satisfy certain suitability requirements. These requirements ensure that the Australian Government, on behalf of the Australian people, is entrusting Australia's petroleum resources to persons that are capable, competent and responsible in managing their activities and can meet all regulatory obligations. Suitability is tested on entry into the regime and at major decision-points.
- 1.2. In making a decision, the decision-maker will consider relevant matters from a range of factors including (but not limited to): financial capacity, technical capability, history of compliance, corporate governance arrangements and any previous liquidation or bankruptcy events. The decision-maker has the discretion to request additional information where needed to assist and inform its consideration of an application.

2. Purpose

- 2.1. This guideline provides information regarding the processes for preparing applications and ongoing requirements under Parts 4, 5 and 5A of the [Offshore Petroleum and Greenhouse Gas Storage Act 2006](#) (OPGGs Act) in relation to transfers, dealings, devolution of title and change of control of a registered titleholder (change in control). It relates to both petroleum and greenhouse gas storage (GHG) titles.
- 2.2. When preparing an application, the applicant should review the associated documents relevant to that application, including:
 - provisions within the OPGGS Act
 - [regulations](#)
 - subject matter [guidelines and factsheets](#), including:
 - the [Factsheet: Declaration of experience and disclosures](#)
 - the [Guideline: Applicant Suitability](#)
 - the [NOPTA Forms Guidance–Petroleum](#) and [NOPTA Forms Guidance–GHG](#). These consolidated application guidance documents cover: submission requirements and details, forms execution (signatures), notification requirements and other government considerations such as foreign investment and prior usage rights.
 - [application forms](#).

Decision-making

- 2.3. The OPGGS Act provides that the decision-maker must (or in some cases, may) have regard to certain matters when making decisions in respect of certain applications for or in respect of petroleum and GHG titles.

These include:

- a) the matters set out in s 695YB of the OPGGS Act;
- b) the technical advice and financial resources available to the applicant;
- c) any other matters prescribed by the regulations; and

- d) any other relevant matter.
- 2.4. The decision maker will take into account the nature of the title with an expectation that an applicant demonstrates a level of technical advice and financial resources that reflects the activities authorised by the title and the obligations imposed under the OPGGS Act and regulations in relation to the title.
- 2.5. Where the decision-maker is not satisfied that the applicant has access to sufficient technical advice and financial resources or does not meet the suitability criteria (where relevant), in some cases, the application must be refused, while in other circumstances, the application may be refused where the decision-maker retains the discretion to refuse or accept the application.
- 2.6. The purpose of this guideline is to provide an overview of the information required to support an assessment of the applicant against Parts 4, 5 and 5A of the OPGGS Act.

NOTE: All legislation references are from the OPGGS Act, unless stated otherwise.

3. Overview of transaction types

- 3.1. **Transfer of title (transfers):** results in a change to the registered holder(s) of a title. Registered holders of titles have certain rights, duties and obligations under the OPGGS Act. Duties and obligations apply to all holders of a title.¹
- For information about making an application for approval and registration of a transfer of title refer to section 6 below.
- 3.2. **Dealings:** commercial transactions or agreements (other than a transfer of title or change in control) that have one or more of the effects listed in the tables in s 486 and s 537 of the OPGGS Act. These effects can include the creation and/or assignment of rights, interests and options in a title.
- For information about making an application for approval and registration of a dealing refer to sections 7–8 below.
- 3.3. **Change in control:** where one or more persons either begin to control or cease to control the registered titleholder, such as through a corporate merger, acquisition or takeover. ‘Control’ and ‘change in control’ are defined in s 566B of the OPGGS Act.
- For information about making an application for approval of a change in control of the registered titleholder, refer to section 9 below.
- 3.4. **Devolution of title:** where the interest in a title transfers from one party to another by operation of law (for example, by court order).
- For more information about applying to have a company name entered on the titles Register as a result of a devolution of title refer to section 10 below.
- 3.5. **Change in company name:** a change in the name of a company that is a registered titleholder. A change in company name is separate to a change in control of a company that

¹ Although obligations are imposed on all titleholders within a title jointly, if there are multiple titleholders, any of these titleholders can discharge an obligation (s 775D).

is a registered titleholder (section 3.3 above) or a change in an interest in a title held by a company that is a registered holder (sections 3.1–3.2 above).

For more information about applying to have a new company name entered on the titles Register against a title(s) refer to section 11 below.

4. General information about applications

Decision-maker

- 4.1. The National Offshore Petroleum Titles Administrator (the Titles Administrator) is the decision-maker for applications for approval of transfers, dealings and changes in control.
- 4.2. The Titles Administrator must either approve or refuse to approve an application for approval of a transfer, dealing or change in control.
- 4.3. The applicant will be notified in writing of the Titles Administrator's decision (s 478, s 529, s 493, s 543, s 566D).

NOTE: if only one of the parties to the transaction is the applicant, it will be up to the applicant to notify the other parties to the transaction of the decision.

- 4.4. The Titles Administrator is also the decision-maker for devolution of title and change of company name applications. There is no approval of these applications, however the Titles Administrator must be satisfied that:
 - the rights of the titleholder have devolved on the applicant by operation of law (ss 483(2), ss 534(2)); or
 - the company has changed its name (ss 485(2), ss 536(2))before altering the titles Register.

Procedural fairness

- 4.5. Where the Titles Administrator proposes to:
 - refuse a transfer of title application (s 472; s 524)
 - refuse an application for approval of a dealing (s 493, s 543)
 - refuse an application for approval of a change in control of a registered titleholder (ss 566D(2)), or
 - revoke the approval of change in control of a registered titleholder (s 566J)

the applicant will be notified by the Title Administrator in writing, providing reasons for the intended refusal/revocation and a date by which the applicant may make a written submission on the matter.

NOTE: if only one of the parties to the transaction is the applicant, it will be up to the applicant to notify the other parties to the transaction of the intended decision.

- 4.6. Any written submissions received by the Titles Administrator on or before the specified date will be taken into account by the Title Administrator when making the final decision.
- 4.7. If the Titles Administrator decides to refuse the application or revoke the approval of a change in control the applicant will be advised in writing.

NOTE: if only one of the parties to the transaction is the applicant, it will be up to the applicant to notify the other parties to the transaction of the decision.

Submission requirements

- 4.8. To be validly made all applications must:
- be made in the approved manner;
 - be in the approved form; and
 - be accompanied by the application fee.
- 4.9. Where a transaction involves a combination of matters, such as agreement to:
- assign an interest in a title to a third party (that is, a dealing and title transfer) and
 - sell a controlling interest in a company who is a registered holder of a title to a third party (a change in control)
- separate applications are required to be submitted for each transaction type (that is, for each transfer, dealing or change in control).
- 4.10. Applicants should familiarise themselves with the [Factsheet: Declarations of experience and disclosures](#) and determine if a declaration or change of circumstances form is required to be submitted with an application.
- 4.11. For further information on submission requirements refer to the [NOPTA Forms Guidance – Petroleum](#) or the [NOPTA Forms Guidance – GHG](#).

Engagement with NOPTA

- 4.12. Prior to lodging a transfer, dealing or change in control application, applicants are encouraged to contact the Titles Administrator to discuss their application.
- 4.13. This is of particular importance in respect of transactions which may result in a change in control of a registered holder of a petroleum or GHG title and may also be subject to regulatory approvals or requirements under other Commonwealth or State or Territory laws, including (but not limited to) foreign investment approval, insolvency, or a transfer of a title or shares by will or by operation of law. Early engagement with NOPTA will assist in facilitating approval timeframes. See section 9 below for further information.
- 4.14. The Titles Administrator also suggests parties seek early engagement with the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) on the potential implications of the transaction on parties' capacity to demonstrate ongoing compliance with permissioning documents and relevant regulatory requirements such as financial assurance (see NOPSEMA's [Guidance Note: Change to the Titleholder with Operational Control of Activities](#) and NOPSEMA's [Guideline: Financial Assurance for Petroleum Titles](#)).

5. Information gathering powers

- 5.1. The Titles Administrator has powers to require applicants to provide such information about a transfer or dealing as is considered necessary or advisable (s 507, s 556); require a party to

an approved dealing to provide information (s 508, s 557); and to require production of documents relating to a transfer or dealing from a person (s 509, s 558).

- 5.2. The Titles Administrator also has powers to require a person to provide information, produce documents or give evidence in relation to matters concerning a change in control of a registered titleholder (s 566R) including:
- a) where the Titles Administrator believes on reasonable grounds that there has been or will be a change in control;
 - b) in relation to an application for approval of a change in control submitted under s 566; and
 - c) where the Titles Administrator believes on reasonable grounds that there has been or will be a change in circumstances of a person in respect to whom a change in control has been approved (such that the Titles Administrator may wish to review and potentially revoke, the approval—see section 9.42 below)9.43 below.

6. Transfer of title

General provisions and information

- 6.1. Parts 4.3 (petroleum) and 5.3 (GHG) of the OPGGS Act set out the legislative provisions relating to transfers of title.
- 6.2. A transfer of title has no force under the OPGGS Act until it has been approved and registered by the Titles Administrator.
- 6.3. The approval or refusal of a transfer of title is at the discretion of the Titles Administrator (ss 478(2), ss 529(2)). Where a decision is to refuse a transfer application, procedural fairness will be afforded to the applicant prior to that decision being made (see section 4.5 above).
- 6.4. The Titles Administrator may consult with the Joint Authority, NOPSEMA, Cross-boundary Authority and/or the responsible Commonwealth Minister before deciding whether to approve a transfer (ss 478(3), ss 529(2A)). This will enable the Titles Administrator to take into account relevant matters over which it may not have oversight. For example, matters could include compliance with safety, well integrity and environmental management obligations, policy or strategic matters within the Joint Authority's purview, matters of national interest (such as a resource security) or issues which may be contentious.
- 6.5. The transfer process involves two stages:
- a) the application is assessed and either approved or refused by the Titles Administrator. If approved, a memorandum of the approval is stamped on the transfer of title instrument; and
 - b) the approved transfer of title instrument is registered by the Titles Administrator. A copy of the approved instrument is also placed on the [National Electronic Approvals Tracking System](#) (NEATS).
- 6.6. There is no guarantee that an application for transfer of a title will be approved if a related dealing has been approved under s 493 or s 543 of the OPGGS Act. Transfer applications will be considered on their merits by the Titles Administrator against the legislative criteria.
- 6.7. When a transfer of a title is registered, nominations that specify:

- a) a person to whom documents may be given ([Form 4](#), r. 11A.04(2) of the [Offshore Petroleum and Greenhouse Gas Storage \(Resource Management and Administration\) Regulations 2011](#) (RMA Regulations); and
 - b) a person authorised to take eligible voluntary actions ([Form 6](#), ss 775B(2))
- may lapse if the nominated person ceases to be a registered titleholder (r. 11A.04(8) and ss 775B(7)) and new nominations may need to be made (see [NOPTA website](#)).
- 6.8. A new registered holder of a title must provide the information outlined in ss 286A(2) of the OPGGS Act to the Titles Administrator and NOPSEMA within 30 days of becoming a titleholder ([Form 2](#)) (see [NOPTA website](#)).
- 6.9. When there is a new petroleum production licensee following a transfer, a variation of a field development plan must be submitted to the Titles Administrator for assessment **as soon as is practicable to do so**. This is unless, the new licensee agrees in writing to continue operations in accordance with the current accepted field development plan (r 4.08(1)(b) of the RMA Regulations).

Time limit for lodging an application

- 6.10. Applications for approval of a transfer of title must be lodged **within 90 days** of the day on which the last party executed the instrument of transfer, unless a longer period is allowed by the Titles Administrator (ss 476(1), ss 527(1)).
- 6.11. The Titles Administrator may allow a longer period to lodge an application, if there are sufficient grounds to warrant a longer period (ss 476(2), ss 527(2)).
- a) A request to the Titles Administrator to allow late lodgement of a transfer should be made in writing, detailing grounds and accompanied by appropriate evidence/documents.
 - b) A request to allow late lodgement may be made at the time of submitting the application for the approval of a transfer or in advance of the lodgement.

Application requirements

- 6.12. An application for the approval of a transfer of a title must be made in the approved manner and using the approved form.
- 6.13. The application may be made by **any of the parties** to the transfer (ss 473(1), ss 525(1)). (It is sufficient for just one of the parties to the transfer to make the application, rather than each party.)
- 6.14. When preparing the application, applicants should also consider the following:
- a) a transfer of title must relate to the whole of the title area.²
 - b) all current titleholders must execute the transfer instrument as the ‘transferors’ (ss 474(1)(b)(i), 526(1)(b)(ii)).
 - c) all titleholders proposed to remain on the title and/or enter the title must execute the transfer instrument as the ‘transferees’ (ss 474(1)(b)(ii), ss 526(1)(b)(ii)).
- 6.15. The instrument of transfer, in the form approved by the Titles Administrator, available on NOPTA’s website and executed by all of the parties to the transfer, must be provided with

² Using the approved instrument of transfer on NOPTA’s website will ensure that this requirement is met.

the application (ss 474(1)(b) and (4), ss 526(1)(b) and (4)). It is not necessary to provide the original instrument of transfer. A copy will suffice, either in hardcopy or electronic format.

- 6.16. If the Titles Administrator approves the transfer, the instrument of transfer endorsed with a memorandum of approval will be returned to the applicant after registration (ss 479(5), ss 530(5)). The Titles Administrator will retain a copy of the endorsed instrument for its records.

Assessment timeframes

- 6.17. Applicants must ensure that the transfer application is submitted with enough time for the Titles Administrator's assessment processes. The time taken to assess and make decisions on applications will depend on:

- a) the quality of information provided in support of the application; and
- b) the level of complexity of the transaction.

NOTE: Delays in the assessment of transfer applications may occur if the Titles Administrator has not received sufficient financial and technical details (see sections 6.20–6.24 below).

- 6.18. Indicative assessment timeframes can be found on the NOPTA website – www.nopta.gov.au.
- 6.19. An application for approval of a transfer of title should highlight any time constraints that the transfer is subject to. Applicants should note that the Titles Administrator's assessment timeframe will not be determined by timeframes nominated by the applicant.

Assessment criteria and additional information requirements

- 6.20. In deciding whether to approve or refuse to approve a transfer, the Titles Administrator must have regard to (ss 478(3B), ss 529(2C)):
- a) whether the technical advice and financial resources available to the transferee(s) are sufficient to:
 - i. carry out the operations and works that will be or are authorised by the title; and
 - ii. discharge the obligations that will be imposed under the OPGGS Act, or a legislative instrument under the OPGGS Act, in relation to the title.
 - b) the matters specified in s 695YB as they apply to the transferee or transferees and, if the transferee(s) is a body corporate, the officer or officers of the body corporate.
- 6.21. When making a decision, the Titles Administrator may also have regard to:
- a) any matters raised in consultation with the Joint Authority, NOPSEMA, Cross-boundary Authority and/or the responsible Commonwealth Minister (ss 478(3A)(b), 529(2B)(b)); and
 - b) any other matters the Titles Administrator considers relevant (ss 478(3A)(c), ss 529(2B)(c)).
- 6.22. Therefore, in addition to the information required to be provided by the OPGGS Act and the application form (sections 6.12 and 6.15 above), applicants should consider including with their application any other relevant information to demonstrate that the transferee(s) meet the requirements set out in ss 478(3B) and ss 529(2C) of the OPGGS Act (see section 6.20 above).

- 6.23. Refer to the [Factsheet: Declarations of experience and disclosures](#) and the [Guideline: Applicant suitability](#) for further details on application submission requirements, assessments and decision-making against these criteria.
- 6.24. The applicant may provide any other relevant information in support of its application.

Transfers following an application for a renewal of a title

- 6.25. If an application for renewal of a title has been submitted and is under consideration by the Titles Administrator or Joint Authority, it is strongly encouraged that any subsequent transfer of title application not be submitted until after the renewal application process is finalised, including any offer and grant processes.
- 6.26. If the transfer of title has already been executed, late lodgement (if required) of the transfer application may be requested (see section 6.11 above).
- 6.27. If a transfer of title application is under assessment by the Titles Administrator at the time of a Joint Authority decision on a renewal application, the Titles Administrator's policy is that the transfer will not be determined until after the renewal process is finalised, including any offer and grant processes.

Transfers following an application for a derived title

- 6.28. If a derived title³ application has been submitted and a transfer of the underlying title is approved and registered before the Joint Authority makes a decision on the derived title application, the transferee becomes 'the applicant' with respect to the derived title application (s 146, s 152, s 177, s 329, s 329F, s 335, s 335F, s 341, s 342, s 342F-G, s 346, s 367, s 368, s 368G-H, s 373).
- 6.29. If a transfer of title application is under assessment by the Titles Administrator at the time of a Joint Authority decision on a derived title application, the Titles Administrator may defer making a decision on the transfer until any grant of the derived title has occurred. In this instance, a separate transfer application would then need to be submitted for the derived title.

7. Dealings affecting an existing title

General provisions and information

- 7.1. Parts 4.6 and 5.6 of the OPGGS Act set out the legislative provisions relating to petroleum and GHG title dealings.
- 7.2. A dealing in relation to a title is of no force under the OPGGS Act until it has been approved and registered by the Titles Administrator in relation to that particular title (s 487, s 538).
- 7.3. Prior to submitting an application, parties should review [NEATS](#) or the titles Register to make sure all relevant prior dealings have been registered against the particular title.

³ For example, if the holders of an exploration permit apply for a retention lease or a production licence.
Guideline: Transfers, dealings, industry.gov.au
change in control and other
titleholder transactions

- 7.4. A registerable dealing under Parts 4.6 and 5.6 of the OPGGS Act is a commercial transaction or agreement (other than a transfer of title or change in control) having one or more of the effects listed in the tables in s 486 or s 537 of the OPGGS Act. See [Attachment 1](#).
- 7.5. The approval or refusal of a dealing is at the discretion of the Titles Administrator (s 493, s 543). Where a decision is to refuse a dealing application, procedural fairness will be afforded to the applicant prior to that decision being made (see section 4.5 above).
- 7.6. The dealing process involves two stages:
- a) The application is assessed and either approved or refused by the Titles Administrator. If approved, a memorandum of the approval is stamped on the instrument evidencing the dealing and also the supplementary instrument, if provided (see sections 7.16–7.18 below); and
 - b) Approved dealings are registered by the Titles Administrator. A copy of the approved dealing (or if applicable a supplementary instrument) is placed on the titles Register.
- 7.7. If a dealing forms part of the issue 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; s 520).
- 7.8. Approval of a dealing under s 493 or s 543 of the OPGGS Act does not guarantee the approval of an application for transfer of title(s) under s 478 or s 529, a change in control under s 566D, or any other applications under the OPGGS Act that are referred to in the dealing. Any future applications will be considered on their merits against the legislative criteria and published guidance material.

Time limit for lodging an application

- 7.9. Applications for approval of dealings must be lodged **within 90 days** of the day on which the last party executed the dealing (ss 491(1), ss 541(1)).
- 7.10. The Titles Administrator may allow a longer period to lodge an application, if there are sufficient grounds to warrant a longer period (ss 491(2), ss (541(2)).
- a) A request to NOPTA to allow late lodgement of a dealing should be made in writing, detailing grounds and accompanied by appropriate evidence/documents.
 - b) A request to allow late lodgement may be made at the time of submitting the application for the approval of a dealing or in advance of the lodgement.

Application requirements

- 7.11. An application for the approval of a dealing must be made in the approved manner and using the approved form.
- 7.12. The application may be made by **any of the parties** to the transaction (ss 488(2), ss 539(2)). (It is sufficient for just one of the parties to the transaction to make the application, rather than each party.)
- 7.13. If a dealing relates to two or more titles (for example, a Joint Operating Agreement that applies to more than one petroleum production licence), separate applications are required if approval of the dealing is sought for each title (ss 488(3), ss 539(3)).
- 7.14. The following documents must be provided with the application (s 489, s 540):
- a) the instrument evidencing the dealing; and

- b) if applicable, a supplementary instrument in the form approved by the Titles Administrator.
- 7.15. An application is taken to be accompanied by the instrument evidencing the dealing (7.14(a)) where the instrument has already been provided to the Titles Administrator for the purposes of another application.
- NOTE:** it is not necessary to provide an original of the instrument evidencing the dealing or supplementary instruments. A copy will suffice, either in hardcopy or electronic format.
- 7.16. If the Titles Administrator approves the dealing, the instrument evidencing the dealing and any supplementary instrument, endorsed with a memorandum of approval, will be returned to the applicant after registration. The Titles Administrator will retain a copy of both endorsed instrument and supplementary instrument for its records.
- 7.17. If a supplementary instrument is lodged with the application for the approval of the dealing, the supplementary instrument will be made available for public viewing in place of the instrument evidencing the dealing (ss 495(2); ss 545(2)). If a supplementary instrument is not lodged with the application, the instrument evidencing the dealing will be made available for public viewing (ss 495(3); ss 545(3)).
- 7.18. For more information about supplementary instruments, including content requirements, refer to the [Petroleum Title Dealings – Supplementary Instruments factsheet](#) on NOPTA’s website.

Assessment timeframes

- 7.19. Applicants must ensure that the dealing application is submitted with enough time for the Titles Administrator’s assessment processes. The time taken to assess and make decisions on applications will depend on:
- a) the information provided in support of the application; and
 - b) the level of complexity of the transaction.
- 7.20. Indicative assessment timeframes can be found on the NOPTA website – www.nopta.gov.au.
- 7.21. The Titles Administrator’s assessment may take longer where multiple dealings applications are submitted concurrently, or a dealing(s) is submitted with a transfer of title application.
- 7.22. An application for approval of a dealing should highlight any time constraints that the dealing is subject to. Applicants should note that the Titles Administrator’s assessment timeframe will not be determined by timeframes nominated by the applicant.

Assessment criteria and additional information requirements

- 7.23. In making a decision to approve or refuse a dealing the Titles Administrator may have regard to any relevant matters (ss 493(3), ss 543(2A)).
- 7.24. If multiple dealings and any associated transfers need to be registered in a specific order, this information should be included in the application. If a specific order is not specified by the applicant, the dealings will be registered in order of the effective date (if specified in the dealings).

- 7.25. Where a dealing results in a significant realignment of titleholder interests, a change in who the 'lead' titleholder is (that is, the titleholder with 'operational control'), or a devolution of title (see section 10 below), the Titles Administrator may assess the titleholder's access to technical advice and financial resources. Refer to the [Guideline: Applicant suitability](#) and [Factsheet: Financial Resources](#) for further details.
- 7.26. The applicant may provide any other relevant information in support of its application.

8. Dealings affecting a future title

- 8.1. For dealings relating to a future title⁴ (Parts 4.7 and 5.7 of the OPGGS Act), applicants may either make:
- a) a provisional application for approval of a dealing (s 498, s 548); or
 - b) an application for approval of the dealing within 90 days (or such longer period as the Titles Administrator allows) from the date the title comes into existence (s 503, s 552).
- 8.2. An application for approval of a dealing for a future title is a 'provisional application', as approval is provisional on grant of the title. Such an application may be made by any of the parties to the dealing (ss 498(2)–(3), ss 548(2)–(3)).
- 8.3. A separate provisional application for approval of the dealing is required in respect of each future title affected by the dealing (ss 498(3), ss 548(3)).
- 8.4. The Titles Administrator requires the same documents as are required for approval of a dealing, described at sections 7.14 and 7.23–7.26 above, to be provided for a provisional application (s 499, s 549).
- 8.5. Provisional applications for approval of a dealing, lodged before grant of a title, will be dealt with following the grant of the title (s 502, s 551).
- 8.6. Provisional applications for approval of a dealing for an exploration permit, retention lease, production licence, infrastructure licence, pipeline licence, GHG assessment permit, GHG holding lease or GHG injection licence that may come into existence must be lodged between the day on which an offer document is given to the applicant for the title, and the day the title comes into existence (s 501, Item 1, s 550, Item 1).
- 8.7. Provisional applications for approval of a dealing for an access authority or a GHG special authority that may come into existence must be lodged between the day on which the application for the grant of an access authority is made and the day the authority comes into existence (s 501, Item 2, s 550, Item 2).
- 8.8. 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 s 488 or s 539 (s 502; s 551).

⁴ For example, a proponent may seek to lodge a provisional [dealing] application relating to a title that is in an active transition phase (for example, an exploration permit to retention lease), the outcome of which is unknown until the associated assessment is finalised by the Joint Authority.

9. Change in control of a registered titleholder

General provisions and information

- 9.1. Part 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 GHG assessment permit; holding lease or injection licence.
- 9.2. For definitions of ‘Control’ and ‘change in control’ refer to the [Factsheet: Change in Control of a Registered Titleholder](#).
- 9.3. A change in control under Part 5A of the OPGGS Act is a commercial transaction or agreement that is not captured by the dealing provisions in Parts 4.6 and 5.6 of the OPGGS Act.
- 9.4. The approval or refusal of a change in control is at the discretion of the Titles Administrator (ss 566D(2)). Where a decision is to refuse a change in control application, procedural fairness will be afforded to the applicant prior to that decision being made (see section 4.5 above).
- 9.5. The Titles Administrator may consult with the Joint Authority, NOPSEMA, the Cross-boundary Authority and/or the responsible Commonwealth Minister before deciding whether to approve a change in control (ss 566D(3)). This means the Titles Administrator may consider relevant matters raised in consultations over which it may not have oversight. For example, this could include compliance with safety, well integrity and environmental management obligations, policy or strategic matters within the Joint Authority’s purview (such as resource management or resource security), or issues which may be contentious.
- 9.6. The change in control process involves three stages:
 - a) the application is assessed and either approved or refused by the Titles Administrator (s 566D);
 - b) if approved, the applicant has a maximum of nine months (the **approval period**—see section 9.33 below to obtain any 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; and to obtain any regulatory approvals and complete any contractual arrangements necessary to give effect to the transaction; and
 - c) 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).

Requirement for approval of change in control

- 9.7. It is an offence to begin or cease to control a registered holder either (s 566N):
 - a) without the Titles Administrator’s prior approval, or
 - b) where approval has been given, when the change of control occurs after the end of the approval period (see section 9.33 below).

- 9.8. The offence is subject to both criminal and civil penalties and could include a maximum of five years imprisonment for individuals. It is also a ground for cancellation of a title (ss 274(e), ss 446(da)). See sections 9.9–9.10 below. However, it may not impact the legal effect of the transaction.
- 9.9. Subsection 566N(4) provides a defence for the civil penalty where 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. That is, where it can be shown that it is reasonable that the person may have been ignorant of the fact that, as a result of a commercial transaction, they began or ceased to control a registered holder of a petroleum or GHG title for the purposes of the OPGGS Act.
- 9.10. A person seeking to rely on the defence in ss 566N(4) in civil proceedings bears the evidential burden and should seek independent legal advice.

Enforcement of penalty provisions

- 9.11. It is the relevant entity's responsibility to seek the Titles Administrator's approval of any proposed change in control in sufficient time to ensure that the change in control is approved before it takes effect (see section 9.15 below).
- 9.12. Failure to do so may result in the entity contravening the penalty provisions of s 566N and a criminal or civil penalty being enforced.
- 9.13. However, where circumstances reasonably prevent an entity from applying for approval in advance of a change in control taking effect (for example by operation of law), these circumstances would be considered in any compliance action to investigate non-compliance provided the entity notifies NOPTA of the change in control as soon as reasonably practicable after the change in control takes effect.
- 9.14. If a change in control takes effect without approval, the person beginning or ceasing to control the titleholder must notify NOPTA of the change within 30 days of the change taking effect, otherwise the person may be liable to a civil penalty that continues for each day that the contravention occurs. Therefore, it is advised that the relevant entity should notify NOPTA of the change in control as soon as possible after it occurs to avoid or minimise a potentially significant pecuniary penalty.

Timeframe for lodging an application

- 9.15. To allow the Titles Administrator sufficient time to assess an application, applicants are encouraged to engage with NOPTA, and where possible submit applications, at least **six months** before the change in control is intended to take effect.

Application requirements

- 9.16. An application for the approval of a change in control must be made in the approved manner and using the approved form.
- 9.17. 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.
- 9.18. 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 where 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 control of 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).

- 9.19. Any information or documents required by the approved application form, including proof of payment of the application fee, must be provided with the application form (ss 566C(2), s 566M).
- 9.20. Please note, it is not necessary to provide the original instrument/document evidencing the proposed change in control. A copy will suffice, either in hardcopy or electronic format.
- 9.21. If the Titles Administrator approves the change in control, the original instrument/document evidencing the proposed change in control (if provided) will be returned to the applicant. The Titles Administrator will retain a copy for its records.

Separate applications per registered titleholder subject to a change in control

- 9.22. 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. Therefore:
 - a) if a company is the registered holder of more than one title, only one application is required to be made for approval of the change in control in respect of the registered titleholder company.
 - b) If a single transaction involves a change in control of more than one company who is a registered titleholder, separate applications for approval of change in control must be made in respect of each registered titleholder company.
- 9.23. Refer to the [Factsheet: Change in Control of a Registered Titleholder](#) for examples of where multiple applications will be required for given scenarios.

Assessment timeframes

- 9.24. Applicants must ensure that the change in control application is submitted with enough time for the Titles Administrator's assessment processes. The time taken to assess and make decisions on applications will depend on:
 - a) the information provided in support of the application; and
 - b) the level of complexity of the transaction.

NOTE: Delays in the assessment of change in control applications may occur if the Titles Administrator has not received sufficient financial and technical details (see sections 6.20–6.24 above).
- 9.25. Indicative assessment timeframes can be found on the [NOPTA website](#).
- 9.26. An application for approval of a change in control should highlight any time constraints that the change in control transaction is subject to. Applicants should note that the Titles Administrator's assessment timeframe will not be determined by timeframes nominated by the applicant.

Assessment criteria and additional information requirements

- 9.27. A decision to approve or refuse a change in control must have regard to (ss 566D(5)):
- a) whether the technical advice and financial resources available to the registered holder after the change in control takes effect are sufficient to:
 - i. carry out the operations and works that will be or are authorised by the permit; and
 - ii. discharge the obligations that will be imposed under the OPGGS Act, or a legislative instrument under the OPGGS Act, in relation to the permit.
 - b) the matters specified in (s 695YB of the OPGGS Act).
- 9.28. When making a decision the Titles Administrator may also have regard to:
- a) any matters raised in consultation with the Joint Authority, NOPSEMA, Cross-boundary Authority and/or the responsible Commonwealth Minister; and
 - b) any other matters the Titles Administrator considers relevant.
- 9.29. Therefore, in addition to the information required to be provided by the OPGGS Act and the application form (section 9.19 above), applicants are encouraged to include with their application any other relevant information to demonstrate that the requirements set out in ss 566D(5) of the OPGGS Act will be met (section 9.27 above).
- 9.30. Refer to the [Factsheet: Declarations of experience and disclosures](#) and the [Guideline: Applicant suitability](#) and for further details on application submission requirements, assessments and decision-making against these criteria
- 9.31. The applicant may provide any other relevant information in support of its application.
- 9.32. If the Titles Administrator is not satisfied regarding the currency of the information, the Titles Administrator may require further information be provided (see section 5 above).

Approval of change in control and the ‘approval period’

- 9.33. The **approval period** commences on the day the Titles Administrator notifies the person 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):
- a) the change in control has taken effect—in which case the approval period ends immediately after it takes effect (see sections 9.44–9.45 below); or
 - b) 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 applicant (see sections 9.42–9.43 below).
- 9.34. The approval period provides the parties to the proposed change in control with a reasonable time within which to obtain any other regulatory approvals (for example, the Foreign Investment Review Board) or to finalise any conditions precedent or commercial transactions necessary to complete the change in control.

- 9.35. If the approval period expires, the parties may make another application for the approval of the change in control if they wish to proceed with the transaction (the approval period cannot be extended), without penalty. This will be a new application and will have to meet the application requirements set out in sections 9.19 and 9.29–9.30 above, including submission of relevant information and documents, and payment of an application fee.

Notification of change in circumstances before or during approval period

- 9.36. The applicant must notify the Titles Administrator where there is a material 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) – see sections 2.3, 9.27 and 9.29–9.32 above (s 566H).
- 9.37. Notice must 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, during the approval period for the change in control.
- 9.38. For example, notice must be given if:
- there is a change to the financial resources or technical advice available to the person which may materially affect the titleholder’s ability to comply with its obligations under the OPGGS Act; or
 - the person becomes insolvent under administration, or an officer of the body corporate contravenes a directors’ duty or is found guilty of an offence or liable to a civil penalty for fraud or dishonesty (please refer to the [Guideline: Applicant suitability](#) and the [Factsheet: Declaration of experience and disclosures](#)).
- 9.39. 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. 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 (see section 9.42 below).
- 9.40. Notice must be given as soon as practicable after the change in circumstances occurs (ss 566H(1)(e)).
- 9.41. Failure to provide notice of a material change in circumstance is a contravention of the OPGGS Act and is subject to a civil penalty (ss 566H(2)). It is also a ground for cancellation of a title under ss 274(e) and ss 446(da) of the OPGGS Act.

Revocation of approval of change in control

- 9.42. The Titles Administrator may, during the approval period and if it considers it appropriate to do so, revoke the approval where there has been a change in the circumstances of a person who is approved to begin or cease controlling a titleholder (s 566J). This may include, for example, where the change in circumstances may materially affect the titleholder’s ability to carry out operations and works under the title or comply with its obligations under the OPGGS Act.

9.43. Where the Titles Administrator intends to revoke the approval, procedural fairness will be afforded to the applicant prior to that decision being made (see section 4.5 above).

NOTE: if only one of the parties to the proposed change in control transaction is the applicant, it will be up to that party to notify the other parties to the transaction of the revocation.

Notification of change in control taking effect with Titles Administrator approval

9.44. Where the Titles Administrator approves the change in control, and the change in control takes effect within the approval period, the person who was notified of that approval must notify the Titles Administrator **within 10 days** after the end of the approval period that the change in control has taken effect (s 566K).

9.45. It is important to remember that the approval period ends immediately after the change in control takes effect, and therefore the approval period may not be the maximum 9 month period—s 566A. For example, if the change in control takes effect 1 month into the approval period the applicant must notify the Titles Administrator within 10 days from that date. (In this example, the approval period ends 1 month after the approval is given.)

9.46. Failure to notify the Titles Administrator within the requisite timeframe of the change of control taking effect is a contravention of the OPGGS Act and subject to a civil penalty (ss 566K(2)-(3)).

Notification of change in control without Titles Administrator approval

9.47. Where a person begins or ceases to control a registered titleholder and the Titles Administrator (s 566P):

- a) has not approved the change in control, or
- b) approved the change in control, but the change in control took effect after the end of the approval period

the person must notify the Titles Administrator of the change in control within **30 days** of the change in control taking effect.

NOTE: the requirement to notify the Titles Administrator of the change in control continues after the 30-day notification period expires.

9.48. Failure by the person to notify the Titles Administrator within the requisite timeframe (and anytime thereafter) of an unauthorised change in control taking effect is a contravention of the Act and subject to a continuing civil penalty (ss 566P(2)-(3)).

9.49. It is also a ground for cancellation of a title under ss 274(e) and ss 446(da) of the OPGGS Act.

9.50. 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. A person seeking to rely on the defence in ss 566P(4) in civil proceedings bears the evidential burden and should seek independent legal advice.

Notification by registered titleholder of change in control without Titles Administrator approval

9.51. Where there is a change in control of the registered titleholder and the Titles Administrator (s 566Q):

- a) either has not approved the change in control, or has approved the change in control, but the change in control took effect after the end of the approval period; and
- b) the registered titleholder knows or ought reasonably to know that a change in control of the registered titleholder has taken effect

the registered titleholder must notify the Titles Administrator of the change in control within **30 days** of the change in control taking effect.

9.52. Failure by the registered titleholder to notify the Titles Administrator within the requisite timeframe of an unauthorised change in control taking effect is a contravention of the OPGGS Act and subject to a civil penalty (ss 566Q(2)).

NOTE: the requirement to notify the Titles Administrator of the change in control continues after the 30-day notification period expires, however in this circumstance the civil penalty is not a continuing penalty.

9.53. The civil penalty also does not apply where the registered titleholder may be reasonably ignorant of the fact that it was subject to an unauthorised change in control.

Change in control entered as a memorial on the Register

9.54. Where the Titles Administrator is notified that a change in control has taken effect, with or without the Titles Administrator's approval, a memorial will be entered on the titles Register against each title in respect of which the company is a registered titleholder (s 566L).

9.55. The memorial will specify:

- the date of any application for approval of a change in control made under s 566C (if any);
- the date of any decision made under s 566D in respect of a change in control application (if any) and whether the change in control was approved or refused; and
- the date the change in control took effect (when an application for approval of the change in control was not made, this may include a notation that the change of control took effect without Titles Administrator approval).

Tracing provisions

9.56. Section 566Z enables a change in control of a registered holder of a title to be traced to a change in control of the companies, trusts or partnerships that control the titleholder. This could include, for example, companies or other entities that are not an immediate holder of the titleholder (such as an intermediate or ultimate holding company).

- 9.57. The tracing provisions operate to extend the group of persons who control a registered holder of a title so that a person that controls an entity (higher entity) is deemed to hold the same interest of that higher entity in a lower entity. This means that a person can be traced all the way through the chain of ownership. Refer to the [Factsheet: Change in Control of a Registered Titleholder](#) for an example of how the tracing provisions work.
- 9.58. The tracing provision may be applied multiple times so that a change in control of a registered titleholder may be traced to a change in control of a higher entity, regardless of how 'high up' in the corporate group the higher entity is.
- 9.59. It is the responsibility of the parties to determine whether application of the tracing provisions results in their proposed transaction being a 'change in control' of a registered holder and therefore whether an application for approval of a change in control is required.
- 9.60. Parties should seek their own legal advice if they have any questions about whether a proposed transaction may be captured by the change in control provisions of the OPGGS Act, including by application of the tracing provisions.
- 9.61. Where the Titles Administrator believes on reasonable grounds that there has been or will be a change in control captured by s 566Z, the Titles Administrator may require a person to provide information in relation to that matter (see section 5 above).

Anti-avoidance provisions

- 9.62. A person, acting alone or with one or more other persons, may commit an offence or be liable for a civil penalty if the person enters into or carries out a scheme for the sole or dominant purpose of avoiding the requirement to seek approval of a change of control of a registered titleholder (s 566ZA).
- 9.63. Contravention of s 566ZA is also a ground for cancellation of a title under ss 274(e) and ss 446(da) of the OPGGS Act.
- 9.64. Parties should seek their own legal advice if they have any concerns about the application of the anti-avoidance provisions.

10. Devolution of title

- 10.1. If the rights of the registered holder of a particular title have devolved on a person by operation of law, the person may apply in writing to the Titles Administrator to have their name entered in the relevant register as the holder of that title (s 482, s 533).
- 10.2. If the Titles Administrator is satisfied that the rights of the titleholder have devolved on the applicant, the Titles Administrator must enter the applicant's name on the relevant register as the titleholder.
- 10.3. The date on which the applicant's name is entered on the titles Register is the effective date of the person becoming the registered titleholder.
- 10.4. A copy of the Court order evidencing the devolution of title will also be placed on the titles Register.

Application

- 10.5. The following documents should be provided with the applicant's written application:
- a) A completed application form (see [NOPTA website](#)).
 - b) A copy of the Court order evidencing that the rights of the registered holder have devolved on the person by operation of law.

11. Change of company name

- 11.1. If a company is a titleholder and has changed its name, the company may apply in writing to the Titles Administrator to have its new name substituted for its previous name in the relevant register for that title (s 484, s 536).
- 11.2. If the Titles Administrator is satisfied that the company has changed its name, the Titles Administrator will alter the company's name on the relevant register.
- 11.3. A copy of the Australian Securities and Investments Commission (ASIC) certificate evidencing the change of name will also be placed on the register.

Application

- 11.4. The following documents should be provided with the applicant's written application:
- a) A completed application form (see [NOPTA website](#)).
 - b) A copy of the ASIC certificate.

NOTE: For applications from foreign companies not registered in Australia, the applicant must provide sufficient information (comparable to that of an ASIC certificate) to satisfy the Titles Administrator that the name of the company has changed.

Attachment 1: Effects of dealings

Item	Effect	Example (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	The determination of the manner in which persons may: <ul style="list-style-type: none"> a) exercise the rights conferred by an existing title; or b) comply with the obligations imposed by an existing title; or c) comply with the conditions of an existing title; (including the exercise of those rights, or the compliance with those obligations or conditions, under cooperative arrangements to recover petroleum).	Joint operating agreement, joint venture operating agreements, and unit development agreements
4	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: <ul style="list-style-type: none"> a) an overriding royalty interest; or b) a production payment; or c) a net profits interest; or d) a carried interest. 	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	The creation or assignment of an interest that is similar to an interest covered by item 4, where the interest relates to: <ul style="list-style-type: none"> a) petroleum produced from operations authorised by an existing petroleum exploration permit, petroleum retention lease or petroleum production licence; or 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. 	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
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

