



Compliance and enforcement

Relevant Legislation

- *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the **OPGGS Act**)
- *Offshore Petroleum Greenhouse Gas Storage (Resources Management and Administration) Regulations 2011* (the **RMA Regulations**)
- *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003*
- *Offshore Petroleum and Greenhouse Gas storage (Regulatory Levies) Regulations 2004*

Background

NOPTA was established under section 695A of the OPGGS Act and commenced on 1 January 2012. For further information about NOPTA, see www.nopta.gov.au/about.

Role of NOPTA, Joint Authorities (JA) and the Commonwealth Minister

NOPTA's legislative functions are defined by the OPGGS Act and a summary of NOPTA's key functions can be found www.nopta.gov.au/about.

The JA, for each respective offshore petroleum title, are a decision maker under the OPGGS Act, the RMA Regulations and associated legislation (as amended from time to time).

In the case of greenhouse gas titles, the decision maker under the OPGGS Act is the responsible Commonwealth Minister or the Cross Boundary Authority.

Principles of compliance

In undertaking its compliance and enforcement functions, the following principles are applied, including:

1. Risk based

- Compliance monitoring will be targeted to the OPGGS Act, RMA Regulations, and associated legislation activities that represent, or are at, the greatest level of risk.

- Enforcement action will be taken proportionate to the magnitude or seriousness of the alleged offence and based on the level of risk.
- Furthermore, a breach whether resolved or not may still be recorded.

2. Evidence based

- Evidence will be collected and used to guide decision making on enforcement responses including when and when not to take action.

3. Transparent

- Compliance obligations will be clearly communicated.
- The principles of procedural fairness will be applied during compliance monitoring and in the application of enforcement responses.

4. Effective regulation

- Regulatory measures/advice will contain compliance strategies to ensure the greatest degree of compliance to the statutory obligations under the OPGGS Act, RMA Regulations, and associated legislation.

5. Consistent

- Compliance monitoring and enforcement action will be applied consistently under the OPGGS Act, RMA Regulations, and associated legislation.

6. Responsive

- Decisions on enforcement action will be made in a timely manner.

By embracing these principles NOPTA is creating a culture where titleholders and other persons understand their obligations and how to comply with them, including an understanding of the options available to avoid non-compliance. This assists titleholders and other persons to meet their legislative obligations, without increasing regulatory burden.



Record of Non-Compliance

It should be noted, where the relevant decision makers under the OPGGS Act decide not to proceed with any formal enforcement response (such as penalties) the breach will still remain on the titleholders record for consideration on future applications.

Compliance and enforcement strategy

The compliance and enforcement strategies available to the NOPTA can be broadly categorised into four areas:



The bottom two tiers include informal options such as education and awareness, monitoring titleholders' progress through reporting requests or including expectations on approvals.

The OPGGS Act, RMA Regulations and associated legislation provide for formal enforcement options such as directions, title conditions, civil penalties, cancellation of titles and prosecution, which is illustrated in the compliance pyramid. All breaches of the OPGGS Act, RMA Regulations and associated legislation are recorded by NOPTA.

The graduated nature of the compliance and enforcement strategy means an issue does not have to pass through all stages to be resolved. It is possible for an issue to 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, a range of factors will be considered including (not exclusive):

- risk to the objectives of the OPGGS Act, RMA Regulations, and associated legislation.
- previous instances of non-compliance recorded against the titleholder or parent company.
- titleholder's compliance stance

- risk of the behaviour
- risk to future exploration, Greenhouse Gas storage (GHG) and resource recovery activities.

Education and awareness

A number of communication mediums are used to make sure that titleholders and other persons are aware of their obligations.

These include:

- publishing information on 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.
- public information sessions.
- individual communications with titleholders, potential titleholders, and other persons.

Early engagement

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

When NOPTA identify possible non-compliance or minor issues of concern, it may alert those involved and encourage them to address the issue. If an informal resolution is unsuccessful or inappropriate in the circumstances due to the seriousness of the matter, more formal action may be considered.

It is noted that NOPTA works closely with the JA (delegates of the JA) and the responsible Commonwealth Minister to provide a clear and consistent message. However, where the JA is the decision maker or the responsible Commonwealth Minister, NOPTA can only present options to the titleholder, not offer opinions on possible outcomes.



Administrative Action

Title conditions

It is possible to include conditions on all title types.

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 additional conditions will be applied if deemed necessary.

Title conditions, included on the titles instrument, are statutory conditions and full compliance with these is required. If they are not complied with, compliance and enforcement action may be triggered.

Directions

The OPGGS Act allows for the responsible Commonwealth Minister or NOPTA 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.

Cancellation

Breaches of the OPGGS Act and the RMA Regulations will always be assessed on a case-by-case basis to determine whether the seriousness of the breach warrants cancellation. The final decision is at the discretion of the decision maker.

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 of the title conditions may be considered as grounds for cancellation of the title.

Civil/Criminal Action

The fourth tier of compliance action may be considered where it is proportionate to the seriousness of the breach.

As discussed above, it 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.

Civil Penalty

The decision to seek a civil penalty, through the courts, for breaches of the OPGGS Act or the RMA Regulations is at the discretion of the decision maker.

Prosecution

If prosecution is deemed necessary, the initial decision will, in the majority of cases, be made by the JA or the responsible Commonwealth Minister (depending on the title type).

Further information

Further information and assistance with the legislative requirements can be found at www.nopta.gov.au

This Policy is an administrative document intended to provide an overview of compliance and enforcement options and information as to when use of each option is appropriate. It does not reduce, extend, or modify legislative obligations contained in the OPGGS Act. This Policy is expressed in general terms. Titleholders and operators should not assume that it deals with all operating conditions and circumstances. This will be determined on a case-by-case basis. Whilst this Policy assists, it does not control compliance and enforcement related decisions. Each decision will take into account all matters relevant to the particular circumstances. In the event of any inconsistency between this Policy and the legislation under which NOPTA or a relevant decision maker exercises a statutory function, power or discretion, the legislation will prevail. This Policy will be reviewed and amended from time to time to take into account amendments to legislation, feedback from industry as to its usefulness, and changes NOPTA considers desirable.

Version History

Version	Date	Comment
6.0	2/2022	Updated principles and enforcement