



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 (Greenhouse Gas Injection and Storage) Regulations 2023* (the GHG Regulations)
- *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004*

Background

NOPTA, established under section 695A of the OPGGS Act, serves to provide advice to the government and decision-makers regarding the granting and administration of titles and licenses. It also oversees compliance with title conditions, manages data, and promotes resource stewardship. For further information about NOPTA, see www.nopta.gov.au/about.

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

- NOPTA's legislative functions are defined by the OPGGS Act.
- 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).
- For greenhouse gas titles, the responsible Commonwealth Minister or Cross Boundary Authority is the decision-maker.

Principles of compliance

NOPTA applies the following principles in undertaking its compliance and enforcement functions:

1. Risk based

- Compliance monitoring focuses on activities with the highest risk.
- Enforcement action is proportionate to the magnitude and risk level of the alleged offense.
- All breaches, whether resolved or not, are recorded.

2. Evidence based

- Evidence is systematically collected and used to guide decisions on enforcement responses.

3. Transparent

- Compliance obligations are clearly communicated.
- Procedural fairness principles are applied during compliance monitoring and enforcement.

4. Effective regulation

- Regulatory measures/advice aim to maximise compliance with statutory obligations.

5. Consistent

- Consistent application of monitoring and enforcement practices under the relevant legislation.

6. Responsive

- Timely decisions on enforcement actions.

By adopting these principles, NOPTA fosters a culture where titleholders and other persons understand their obligations and how to comply with them, aiding them in meeting legislative requirements without escalating regulatory burdens.

Record of Non-Compliance

If the relevant decision-makers under the OPGGS Act choose not to pursue formal enforcement actions (like penalties), the breach remains on the titleholder's record for consideration in future applications.

Compliance and enforcement strategy

NOPTA's compliance and enforcement strategies are categorised into four areas (Compliance Pyramid):





Tiers 1 and 2 include informal options such as: education, awareness, progress monitoring, and setting expectations on approvals.

Tiers 3 and 4 include formal enforcement options such as: directions, title conditions, civil penalties, cancellation of titles, and prosecution.

The graduated strategy allows issues to be resolved without passing through all stages, enabling escalation or de-escalation based on breach nature and severity.

In determining where an issue falls within the compliance pyramid, a range of factors will be considered, including risk to legislative objectives, past non-compliance, the titleholder's compliance stance, risk posed by the behaviour, and the impact on future activities.

Education and awareness

NOPTA uses a number of communication mediums to ensure titleholders and other persons are aware of their obligations.

These include:

- Publishing information on www.nopta.gov.au to complement existing legislation, guidelines, fact sheets or general information.
- Conducting public information sessions.
- Engaging in individual communications with titleholders, potential titleholders, and other persons.

Early engagement

Titleholders are encouraged to engage early and maintain regular interaction with NOPTA in relation to their progress.

When NOPTA identifies possible non-compliance or minor issues of concern, it may notify the involved parties so that they can address the issue. If informal resolution is unsuccessful or inappropriate due to the seriousness of the matter, formal action may be considered.

NOPTA collaborates closely with the JA (or delegates of the JA) and the responsible Commonwealth Minister to ensure a clear and consistent message. However, when the JA or the responsible Commonwealth Minister holds decision-making authority, NOPTA can only present options to the titleholder and cannot offer opinions on outcomes.

Administrative Action

Title conditions

Conditions can be applied to all types of titles. For certain titles such as work-bid exploration permits and production licenses, standard conditions are consistently applied. However, each title is assessed based on its unique circumstances, and additional conditions may be imposed if necessary.

Title conditions, specified in the title instrument, are statutory conditions and must be fully complied with. Failure to comply may result in compliance and enforcement actions being initiated.

Directions

Under the OPGGS Act, the responsible Commonwealth Minister or NOPTA has the authority to issue statutory directions to titleholders in specific circumstances. Statutory directions are legally enforceable under the legislation, and they may be issued in areas such as resource management and data-related issues.

Cancellation

Breaches of the OPGGS Act and the RMA Regulations are evaluated 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 if it is proportionate to the seriousness of the breach.

As discussed above, it is not necessary to exhaust all other compliance options before selecting this option; the approach is determined by the nature of the breach.

Civil Penalty

The decision to pursue a civil penalty through the courts for breaches of the OPGGS Act or the RMA Regulations rests with 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
7.0	3/2024	Refresh of wording
6.0	2/2022	Updated principles and enforcement