



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

Guideline: Applicant suitability

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.

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July 2022	2	Update department name.	Commonwealth
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1. Introduction

- 1.1. Persons that wish to participate in Australia's offshore petroleum and greenhouse gas (GHG) storage 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 and GHG storage permits 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.
- 1.3. Where NOPTA makes an assessment of the technical advice and financial resources available to, and the compliance history and relevant experience (including corporate governance) of, an applicant, this is done specifically for the administration of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGGS Act). Third parties should satisfy themselves as to the adequacy of an applicant or registered holder.

2. Purpose

- 2.1. This guideline is designed to provide an overview of relevant matters relating to the suitability assessment of an applicant associated with decisions in respect of applications made under Parts 2.2–2.6, 2.11, 3.2–3.4, 3.9, 4.3, 4.6–4.7, 5.3, 5.6–5.7 and Chapter 5A of the [OPGGGS Act](#).
- 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](#)
 - the [Factsheet: Declarations of experience and disclosures](#)
 - the [Factsheet: Financial resources](#)
 - the [NOPTA Forms Guidance–Petroleum](#) and [NOPTA Forms Guidance–GHG](#)
 - [application forms](#)

Note: All legislation references are to the OPGGS Act, unless stated otherwise.

3. Overview

- 3.1. For the purposes of this guideline, the term ‘suitability’ or ‘suitability assessment criteria’ is used as a collective term to refer to the matters that may be considered by decision-makers to assess whether applicants are capable, competent and responsible in managing offshore projects as relevant to the specific decision, these matters include:
- technical advice;
 - financial resources;
 - compliance history;
 - relevant experience; and
 - other matters as relevant.

- 3.2. The OPGGS Act lists a number of matters that will be relevant to a decision. These matters must be taken into account by the decision-maker, along with any other matters the decision-maker considers relevant to that decision. These matters will vary depending on the application and title type and include some or all of the following:
- the matters set out in s 695YB;
 - the technical advice and financial resources available to the applicant to:
 - carry out the operations and works that will be or are authorised by the permit, lease, or licence; and
 - discharge the obligations that will be imposed under the OPGGS Act, or a legislative instrument under the OPGGS Act, in relation to the permit, lease or licence (including decommissioning);
 - any other matters prescribed by the regulations (if any).

Table 1 provides an overview of the relevance of various suitability criteria to different types of applications. This table should not be relied upon alone without consideration of the OPGGS Act and regulations.

- 3.3. 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.
- 3.4. In specified provisions, the decision-maker may also take into account any other relevant matters.
- 3.5. Where the decision-maker is not satisfied that the applicant has access to sufficient technical advice and financial resources, or the applicant does not meet the suitability criteria (where relevant), the decision-maker may refuse the application.
- Applicants should be aware that for certain applications, such as an application to renew an exploration permit or for the grant or renewal of a retention lease, the decision-maker must refuse the application if not satisfied that the applicant has access to sufficient technical advice and financial resources.

Table 1. Suitability assessment criteria by application type

Application Type	Title Type	Applicant Suitability Assessment Criteria				Other matters considered relevant
		695YB	Technical Advice	Financial Resources	Other matters prescribed by regulations	
Dealings	All titles	✘	Discretionary	Discretionary	✓	Discretionary
Transfer	All titles	✓	✓	✓	✓	Discretionary
Change of company control	All titles (s 566A)	✓	✓	✓	✓	Discretionary
Initial Grant	Exploration Permit and Cash Bid Exploration Permit	✓	✓	✓	✓	Discretionary
	GHG Assessment Permit	✓	✓	✓	✓	Discretionary
	Pipeline Licence where the applicant is not the Production Licensee or GHG Injection Licensee	✓	✓	✓	✓	Discretionary
	Infrastructure Licence	✓	✓	✓	✓	Discretionary
	Cash Bid Production Licence	✓	✓	✓	✓	Discretionary
	GHG Consolidated Work-Bid Permit, GHG Cross-Boundary Permit	✘	✓	✓	✓	Discretionary
	Retention Lease	✘	✓	✓	✓	✘
	Production Licence	✘	✓	✓	✓	✘
	GHG Holding Lease (including Cross Boundary Licences)	✘	✓	✓	✓	✘
	Pipeline Licence where the applicant is the Production Licensee or GHG Injection Licensee	✘	✓	✓	✓	✘
	GHG Injection Licence (including Cross Boundary Licences)	✘	✓	✓	✓	✘

Application Type	Title Type	Applicant Suitability Assessment Criteria				Other matters considered relevant
		695YB	Technical Advice	Financial Resources	Other matters prescribed by regulations	
Renewal	All titles	✘	✓	✓	✓	✘
Variation S 204, s 374, s 374A	Infrastructure Licence	✘	✓	✓	✓	Discretionary
	GHG Injection Licence (including Cross Boundary Licences)	✘	✓	✓	✓	Discretionary
Suspension, Exemption, Variation - conditions of title S 226, s 264, s 436, s 439A	Exploration Permit	✘	Discretionary	Discretionary	Discretionary	Discretionary
	Retention Lease	✘	Discretionary	Discretionary	Discretionary	Discretionary
	Production Licence	✘	Discretionary	Discretionary	Discretionary	Discretionary
	Pipeline Licence	✘	Discretionary	Discretionary	Discretionary	Discretionary
	Infrastructure Licence	✘	Discretionary	Discretionary	Discretionary	Discretionary
	GHG assessment permit, holding lease & injection licence (including cross-boundary titles)	✘	Discretionary	Discretionary	Discretionary	Discretionary

Decision-makers

- 3.7. The Joint Authority is the decision-maker for the grant, renewal, suspension, extension and variation of petroleum exploration permits, retention leases, production licences, pipeline licences and infrastructure licences.
- 3.8. The responsible Commonwealth Minister is the decision-maker for the grant, renewal, suspension, extension, and variation of GHG assessment permits, holding leases and injection licences.
- 3.9. The Cross-boundary Authority (comprised of the responsible State/Northern Territory Minister and the responsible Commonwealth Minister) is the decision-maker for the grant, renewal, suspension, extension and variation of cross-boundary GHG assessment permits, holding leases and injection licences.
- 3.10. The Titles Administrator is the decision-maker for applications for approval of transfers of title, dealings and change in control of registered titleholders.

Information gathering powers

3.11. The Titles Administrator and responsible Commonwealth Minister have powers to require applicants for:

- the initial grant or renewal of petroleum exploration permits and retention leases
- the initial grant, renewal or variation of production licences
- the grant or variation of infrastructure or pipeline licences
- the initial grant or renewal of a GHG assessment permit or holding lease
- the grant of a GHG injection licence
- the initial grant or renewal of a cross-boundary GHG assessment permit or holding lease
- the grant of a cross-boundary GHG injection licence
- the variation or suspension of, or exemption from compliance with, the conditions of a petroleum or GHG title

to provide further information in respect of the application. Failure to provide the information may result in the Joint Authority, responsible Commonwealth Minister or Cross-boundary Authority refusing to consider the application or take any further action in relation to the application (ss 258(3), ss 429(3), ss 429A(3)).

3.12. 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).

3.13. The Titles Administrator also has powers to obtain information, documents or evidence from a person, including in relation to compliance with the OPGGS Act and whether a person has sufficient technical advice and financial resources to discharge their obligations under the OPGGS Act or under a legislative instrument made under the OPGGS Act (s 699, s 725).

4. Entry Stage - Assessment

4.1. Section 695YB of the OPGGS Act sets out the matters the decision-maker must consider for the:

- grant of certain titles¹ (namely petroleum exploration permits, infrastructure licences, pipeline licences², and GHG assessment permits³),
- transfer of titles (s 478 and 529), and
- approval of a change of company control of a registered titleholder (s 566D).

¹ See section 105, 111, 116, 117, 179, 180, 199, 221, 222, 298, 305, 306.

² Section 695YB only applies if the applicant is not the petroleum production licence holder or the GHG injection licence holder.

³ With the exception of consolidated work-bid GHG assessment permits and cross-boundary GHG assessment permits.

- 4.2. These matters include:
- whether the person (either an individual or a body corporate) has been found guilty of certain offences such as those against the OPGGS Act or involving fraud or dishonesty, has been ordered to pay a pecuniary penalty for a contravention of such laws, had a title cancelled or partly cancelled under the OPGGS Act, or has become insolvent and is under administration (ss 695YB (2)(c)-(n)); and
 - the person's experience (or, where the person is a body corporate, the experience of the officers of the body corporate), in petroleum exploration or recovery, or the injection or storage of GHG substances (s 695YB (2)(a)-(b)).
- 4.3. The decision-maker may also take into account any other relevant matters, for example corporate governance.

Application requirements

- 4.4. Disclosures relating to the past conduct of the applicant as set out in s 695YB, are to be provided in the declaration template found on NOPTA's website.
- 4.5. The persons who are required to make a declaration include:
- the person who proposes to begin controlling a registered holder of a title;
 - the applicant in relation to the grant, etc., of certain titles; and
 - if the applicant is a body corporate, the officer or officers of the applicant (within the meaning of the *Corporations Act 2001*).
- 4.6. A separate declaration will be needed from each of the applicants/persons, for example each joint venture partner and the officers of each company.
- 4.7. A person who makes a false statement to a Commonwealth entity may be guilty of one or more offences under Chapter 7 of the *Criminal Code Act 1995*.
- 4.8. A disclosure that may be perceived as negatively reflecting on the applicant/person will not necessarily lead the relevant decision-maker to consider that the applicant is not a suitable person to hold a title. The decision-maker will have regard to the disclosures in the context of the application in its entirety to determine what relevance they bear to the matter of the suitability of the applicant to the particular title for which they have applied.
- 4.9. Each declaration also requires an attachment to be included which outlines the applicant's experience in:
- petroleum exploration or recovery; and
 - the injection or storage of GHG substances.
- to enable the decision-maker to consider whether the applicant has the appropriate experience to carry out offshore petroleum or GHG operations.
- 4.10. For bodies corporate, this attachment should also include details of its project management experience and its corporate governance arrangements. Relevant information expected to be contained in the attachment includes:
- Details of the board members' and senior managements' level of knowledge and project management experience in offshore petroleum and/or GHG operations.

- The corporate governance and assurance framework for the body corporate, including identifying if a recognised corporate governance code is observed and indicate the level of implementation.
 - The relevant board's size and collective skills, commitment and knowledge of the entity.
- 4.11. The relevant board is the board of directors or equivalent with effective control over the body corporate's offshore petroleum and GHG titles. If this is related body corporate (e.g. a parent company), this should be outlined in the attachment to the declaration.

5. Change of circumstances

- 5.1. The Titles Administrator and NOPSEMA must be notified in writing of changes of circumstances that relate to the ongoing suitability of persons to hold a title (ss 695YC(2)).
- 5.2. It is the responsibility of an applicant for the grant, renewal or transfer of a title, or a registered holder of a title, to inform the Titles Administrator and NOPSEMA of a change of circumstances under s 695YC of the OPGGS Act.
- 5.3. Written notification must be given to the Titles Administrator and NOPSEMA as soon as practicable after the event occurring.
- 5.4. A person is liable to a civil penalty for failure to inform the Titles Administrator and NOPSEMA of a change of circumstance (ss 695YC(4)).
- 5.5. The Titles Administrator or NOPSEMA may share information relating to change of circumstances, and any associated disclosures, with the Joint Authority or responsible Commonwealth Minister for use in relation to their functions and obligations under the OPGGS Act.
- 5.6. Disclosures relating to a change of circumstances are to be provided in the declaration template found in the [Factsheet: Declarations of experience and disclosures](#).

6. Standard Criteria - technical advice and financial resources

- 6.1. When making a decision whether to:
- grant or renew a petroleum exploration permit, retention lease or production licence
 - grant or vary an infrastructure licence
 - grant a pipeline licence
 - grant or renew a GHG assessment permit, holding lease or injection licence
 - vary a matter specified in a GHG injection licence
 - approve a transfer of title
 - approve a change of company control of a registered titleholder

the decision-maker must take into account whether the technical advice and financial resources available to the applicant are sufficient to:

- carry out the operations and works that will be or are authorised by the permit, lease, or licence; and
- discharge the obligations that will be imposed under the OPGGS Act, or a legislative instrument under the OPGGS Act, in relation to the permit, lease or licence (including decommissioning).

6.2. The OPGGS Act provides that the decision-maker may take into account the technical advice and financial resources available to the titleholder when considering an application to vary, suspend or exempt the titleholder from compliance with title conditions (s 264(2AA), s 436(2A), s 439A(3A)) or to vary a pipeline licence (s 226). Applicants may include with their application any relevant information to demonstrate sufficient technical advice and financial resources available.

6.3. Where a dealing results in a significant realignment of titleholder interests, a change in joint venture operator within the title or a devolution of title the applicant may also be required to demonstrate that the titleholder has or retains access to sufficient technical advice and financial resources.

Assessment of technical advice

6.4. An assessment of the technical advice available to the applicant will vary depending on the nature of the title, however in general the decision-maker will need to be satisfied that the applicant has sufficient technical capacity to meet the obligations associated with the title. These may include:

- work program commitments; and
- capacity to explore and to progress the development of known resources; and
- ability to meet the requirements of an accepted field development plan; and
- capacity to safely decommission infrastructure at the end of a development project.

6.5. To address the criteria, applications should provide:

- a summary of the staffing and technical expertise available to the applicant;
- where relevant, information relating to agreements in place between related entities around sharing of technical expertise (NOPTA may request evidence of agreements on a case by case basis); and
- where relevant, evidence of agreements in place with third party consultants/contractors.

Assessment of financial resources

6.6. In assessing an applicant's financial resources consideration will be given to:

- the current and future funds available to the applicant
- the magnitude and timing of all financial obligations including:

- the specific application(s), and any other application(s), under assessment by the decision-maker
- all other Australian offshore petroleum or GHG titles
- the applicant's financial commitments in other jurisdictions including onshore and overseas
- the nature of the activities to be authorised by and the obligations to be complied with under the title subject to the application.

6.7. Financial obligations in offshore titles include, but are not limited to:

- work program obligations.
- obligations relating to restoration of the environment provisions. Note that s 572 of the OPGGS Act requires full removal of all structures, equipment and other property, unless otherwise accepted by the responsible regulatory authority. If restoration provisions are estimated on a different basis to full removal provide the assumptions used.
- obligations associated with existing financial assurance duties under the OPGGS Act at the time of the application.
- obligations associated with financial assurance duties under the OPGGS Act that are conditional on approval of the application or other applications under assessment.

6.8. A number of financial indicators have been defined to assess the financial resources available to an applicant(s). These fall under two broad categories, defined as 'financial viability', and 'financial capacity'.

6.9. Financial viability indicators are designed to determine the applicant's level of solvency. An assessment may include review of the following indicators:

- going concern
- net assets
- current ratio.

6.10. Financial capacity indicators are designed to assess the sufficiency of an applicant's financial resources to meet all of its known and anticipated commitments associated with applications under assessment, to carry out the operations and works that will be or are authorised by the title and discharge the obligations that will be imposed under the OPGGS Act, or a legislative instrument under the OPGGS Act, in relation to the title (including decommissioning). An assessment may include review of the following indicators:

- commitment cover
- OPGGS Act work program cash cover
- gearing ratio
- restoration cover.

6.11. The [Factsheet: Financial resources](#) contains:

- Detail on the types of information that could be expected to support the financial assessment.

- Further information on the financial viability and financial capacity indicators to assist an applicant considering the types and level of information to evidence its financial resources.
 - Some general guidance on the characteristics of additional evidence which could be provided. The list is not exhaustive, and other forms of credible evidence may be considered suitable.
- 6.12. Applicants may be requested to provide additional information to the Titles Administrator to allow an assessment of financial resources to be completed.
- 6.13. Where an applicant is reliant on another entity to provide financial resources, the information requirements apply to the entity providing the resources as well as the applicant. In these circumstances the assessment that is applied to the applicant will also be applied to that entity.
- 6.14. Where an application relates to a title where interests are, or would be, held by more than one entity as part of a joint venture, the required information should be provided for each entity. The assessment will consider the financial resources available to each entity, as well as the financial resources available to the group as a whole.
- 6.15. Where information is not provided, this may result in refusal of an application on the basis that the decision-maker is unable to satisfy itself of the financial resources of the applicants.
- 6.16. Where an applicant is a newly established entity the relevant information detailed in the factsheet should still be provided, however the standard method for analysing financial resources as set out above may not be appropriate. In this circumstance particular attention will be paid to the identity and track record of the directors and executive management as well as any other information evidencing the applicant's ability to meet its commitments.