



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

Offshore Petroleum Guideline: Transfers and Dealings Relating to Petroleum Titles

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

Effective May 2018

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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1. Purpose

The purpose of this guideline is to provide an overview of the requirements and processes for an application to approve and register transfers and/or dealings in petroleum titles under parts 4.3, 4.6 and 4.7 of the [Offshore Petroleum and Greenhouse Gas Storage Act 2006](#) (OPGGSA). A number of matters relating to transfers and dealings in the [Offshore Petroleum and Greenhouse Gas Storage \(Resource Management and Administration\) Regulations 2011](#) (RMA Regulations) are also referred to in this guideline.

The guideline also explains how to make a change of company name application to update the titles register, under Part 4.5 of the OPGGSA.

Note: All legislation references are from the OPGGSA, unless stated otherwise.

2. Overview

- 2.1. The National Offshore Petroleum Titles Administrator (NOPTA) is the decision maker for transfer and dealing applications for titles. NOPTA can either approve or refuse to approve a transfer and/or dealing and will notify the applicant of the decision by written notice (s 478 and s 493).
- 2.2. A transfer or dealing relating to a title is of no force until approved and registered, in relation to a particular title (s 472 and s 487).
- 2.3. Transfer of a title results in change(s) to the registered holders of a title. Registered holders of titles have certain rights, duties and obligations under the OPGGSA. Duties and obligations apply to all holders of a title.¹
- 2.4. Dealings are commercial transactions or agreements (other than a transfer of title) that have one or more of the effects listed in the table in s 486. These effects can include the creation and/or assignment of rights, interests and options in the title.
- 2.5. The transfer and dealing process involves two stages:
 - a) The application, accompanied by the prescribed fee (see [Schedule of Fees](#)), is assessed and either approved or refused by NOPTA. If approved, a memorandum of the approval is stamped on the instruments and any related supplementary instruments; and
 - b) Approved instruments are registered by NOPTA. Copies of either the approved instrument (or if applicable a supplementary instrument) are placed on the [National Electronic Approvals Tracking System](#), which is a public register.

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).

3. Assessment timeframes

3.1. Applicants must ensure that transfer and dealing applications are submitted with enough time for NOPTA's assessment processes. The time taken to assess and make decisions on applications will depend on:

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

Note: Delays in the assessment of transfer and dealing applications may occur if NOPTA has not received sufficient financial and technical details.

3.2. NOPTA's assessment of a transfer or dealing application will generally be finalised within four to six weeks of receiving all information that is relevant for the assessment.

3.3. An application for approval of a transfer or a dealing should highlight any time constraints that the transfer or dealing is subject to. Applicants should note that NOPTA's assessment timeframe will not be determined by timeframes nominated by the applicant.

3.4. Applicants are responsible for obtaining Foreign Investment Review Board (FIRB) approval, if applicable. Evidence of FIRB approval should be provided to NOPTA with submission of an applicable transfer or dealing application. If it is not available at the time of submission, it may be provided separately before NOPTA makes a decision on the application.

3.5. Before lodging a transfer and/or dealing application, NOPTA 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 (see [NOPSEMA's Guidance Note - Change to the titleholder with operational control of activities](#)).

4. Time limit for lodging an application

4.1. Applications for approval of transfer(s) and/or dealing(s) must be lodged **within 90 days** of the day on which the last party executed the instrument of transfer, s 476(1), or dealing, s 491(1).

4.2. NOPTA may allow a longer period to lodge an application, if there are sufficient grounds to warrant a longer period: s 476(2), s 491(2).

- a) A request to NOPTA to allow late lodgement 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 dealing or in advance of the lodgement.

5. Transfer of title

- 5.1. Part 4.3 of the OPGGSA sets out the legislative provisions relating to a transfer.
- 5.2. An application for approval and registration of a transfer of a title may be made by any of the parties to the transfer (s 473(1)).

Application

- 5.3. For a complete application, the following must be provided:
- a) A completed application form, executed in the correct manner (see [NOPTA website](#)) (s 473(2)).
 - b) The instrument of transfer (prescribed form at Schedule 7 of the RMA Regulations), executed by all parties to the transfer (s 474(a)(i) and (ii)).²
 - c) The original plus one copy of the instrument (s 474(d)). The original instrument will be returned to the applicant after registration.
 - d) Payment of the prescribed application fee (see [Schedule of Fees](#)) (s 516A, Schedule 6 of the RMA Regulations).
- 5.4. Transferees who are not already a registered holder of the title (even if a related corporation) must provide details of the following:
- a) technical qualifications of that transferee or those transferees (s 474(b)(i)); and
 - b) technical advice that is or will be available to that transferee or those transferees (s 474(b)(ii)); and

Note: In relation to 5.4 (a) and (b) above, transferees should provide NOPTA with sufficient information to demonstrate its technical capacity to meet the title related requirements and obligations.

See assessment items 5.9 – 5.12.

- c) the financial resources that are or will be available to that transferee or those transferees (s 474(b)(iii)).

Information required to support financial assessment

- 5.5. For NOPTA to undertake an assessment of the financial capacity of a transferee, details of the current financial resources available and the future financial commitments of the transferee should be provided as follows:
- a) The most recent audited consolidated financial statements (balance sheet dated not more than twelve months from the date the application is submitted to NOPTA) including:
 - i. Balance Sheet;
 - ii. Income Statement;
 - iii. Cash Flow Statement;
 - iv. Notes to the accounts in sufficient detail and in a format consistent with generally accepted accounting principles; and
 - v. Prior year comparable financial statements.

OR

² NOPTA has published the *Fact Sheet - Signatures: Transfers and Dealings Documents* to provide guidance to applicants on the execution of instruments of transfer and forms relating to transfers and dealings. See [NOPTA's website](#).

- b) If audited consolidated financial statements are not available, unaudited consolidated financial statements can be provided. These must be accompanied by a declaration by the directors stating that the financial statements have been prepared in accordance with International Financial Reporting Standards and that the transferee has the ability to continue as a going concern as at the balance sheet date.

Note: If a transferee relies on a parent entity's accounts to demonstrate financial capacity, details of funding methods and any guarantees between the entities should also be provided. In these circumstances, the assessment that would have applied to the applicant will apply to the parent entity to determine financial capability.

- c) A non-exhaustive list of additional examples of possible funding sources that may be provided, or that may be requested, in support of an application is at **Attachment 1**.

- 5.6. If a transfer would result in a sole titleholder or change to the majority titleholder(s), NOPTA may also require the information outlined in item 5.5 above, even where the party is an existing titleholder.
- 5.7. NOPTA can, by notice in writing, require applicants to provide such information about the transfer as is considered necessary or advisable: s 507; and require production of documents relating to a transfer from a person: s 509.

Assessment

- 5.8. The approval or refusal of a transfer of a title is at the discretion of NOPTA.
- 5.9. In making a decision on a transfer of title application, NOPTA will consider:
- a) the technical qualifications of the transferee(s);
 - b) the technical advice that is or will be available to the transferee(s);
 - c) the financial resources that are or will be available to the transferee(s); and
 - d) any other matter that NOPTA considers to be relevant.

Technical Qualifications and Advice

- 5.10. NOPTA needs to be satisfied that the transferee(s) has sufficient technical capacity to meet the obligations associated with the title. These may include:
- a) work program commitments;
 - b) capacity to explore and to progress the development of known resources; and
 - c) ability to meet the requirements of an accepted field development plan.
- 5.11. Considerations will include, but not be limited to, the technical capacity and experience of key personnel and/or details of sub-contractors, and particulars of other current and previous involvement in petroleum exploration and development.
- 5.12. The required technical capacity may vary depending on the nature of the title.

Financial Resources

- 5.13. NOPTA needs to be satisfied that the transferee(s) has the necessary financial capacity to:
- a) continue as a going concern; and
 - b) meet its existing title related commitments and those relating to the title(s) for which a transfer application has been submitted, including work programs, development and decommissioning obligations.

5.14. The assessment of financial capacity will test a transferee(s) ability to meet the commitments associated with the title(s) in which it is seeking to take an interest, in addition to its existing commitments. When considering an applicant's financial capacity NOPTA will give consideration to the current and future funds available to the applicant and the magnitude and timing of obligations associated with the specific title(s), all other Australian offshore petroleum titles and titles in other jurisdictions (both onshore and overseas).

General Provisions and Information

5.15. Titleholders preparing an application for approval of a transfer should take into account the following general provisions and information:

- a) A transfer of title must relate to the whole of the title area.³
- b) All current titleholders must execute the transfer instrument as the 'transferors'. All titleholders proposed to remain on the title and/ or enter the title must execute the transfer instrument as the 'transferees' (s 474(a)).
- c) There is no guarantee that an application for transfer of a title(s) will be approved if a related dealing has been approved under s 493. Transfer applications will be considered on their merits against the legislative criteria.
- d) When a transfer of a title is registered, nominations that specify:
 - i. a person to whom documents may be given (Form 4, reg. 11A.04(2) of the RMA Regulations); and
 - ii. a person authorised to take eligible voluntary actions (Form 6, s775B(2))may lapse if the nominated person ceases to be a registered titleholder (Reg 11A.04(8) and 775B(7)) and new nominations may need to be made (see [NOPTA website](#)).
- e) A new registered holder of a title must provide the information outlined in section 286A(2) to NOPTA and NOPSEMA within 30 days of becoming a titleholder (Form 2) (see [NOPTA website](#)).

5.16. When there is a new petroleum production licensee following a transfer, a variation of a field development plan must be submitted to NOPTA for assessment – unless the new licensee agrees in writing to continue operations in accordance with the current accepted field development plan (reg.4.08(1)(b) of the RMA Regulations).

Transfers following an application for a renewal of a title

- 5.17. If a renewal application has been submitted, NOPTA's preference is that a transfer of title application is not submitted until after the renewal application process is finalised, including any offer and grant processes.
- 5.18. If the transfer of title has already been executed, late lodgement (if required) of the transfer application may be requested – see item 4.2 above.
- 5.19. If a transfer of title application is under assessment by NOPTA at the time of a Joint Authority decision on a renewal application, NOPTA's policy is that the transfer will not be determined until after the renewal process is finalised, including any offer and grant processes.

³ Using the instrument of transfer in the prescribed form in Schedule 7 of the RMA Regulations will ensure that this requirement is met.

Transfers following an application for a derived title

- 5.20. If a derived title⁴ 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 and s 177).
- 5.21. If a transfer of title application is under assessment by NOPTA at the time of a Joint Authority decision on a derived title application, NOPTA will not make 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.

6. Dealings affecting an existing title

- 6.1. Part 4.6 of the OPGGSA sets out the legislative provisions relating to dealings in titles.
- 6.2. A registerable dealing under Part 4.6 is a commercial transaction or agreement (other than a transfer of title) having one or more of the effects listed in s 486, see **Attachment 2**.
- 6.3. An application for approval of a dealing affecting an existing title may be made by any of the parties to the dealing (s 488(2)).

Application

- 6.4. If a dealing relates to two (2) or more titles, separate applications are required if approval of the dealing is sought for each title: s 488(3).

Note: If the 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).

- 6.5. For a complete application, the following must be provided:
- a) A completed application form, executed in the correct manner (see [NOPTA website](#)): s 488(4).⁵
 - b) The instrument evidencing the dealing (s 489(1)).
 - c) A supplementary instrument (if applicable) (s 489(2)).
 - d) A copy of the instrument evidencing the dealing and any supplementary instrument: s 489(4A).
 - e) Payment of the prescribed application fee (see [Schedule of Fees](#)) (s 516A, Schedule 6 of the RMA Regulations).

Note: Applicants may lodge a supplementary instrument: s 489(2). The content of a supplementary instrument under s 489(2) is prescribed in regulation 12.02 of the RMA Regulations. If a supplementary instrument is lodged, that document is available for public viewing in place of the original instrument: s 495(2)(a)(ii) and s 495(2)(c).

NOPTA may request amendments to the supplementary instrument if insufficient detail or inaccurate information has been included.

- 6.6. If NOPTA approves the dealing, the original instrument evidencing the dealing and any original supplementary instrument will be returned to the applicant after registration (s 495(2)(b) and (d); and s 495(3)(b)).

⁴ For example, if the holders of an exploration permit apply for a retention lease or a production licence.

⁵ NOPTA has published the 'Fact Sheet - Signatures: Transfers and Dealings Documents' to provide guidance to applicants on the execution of instruments of transfer and forms relating to transfers and dealings. See [NOPTA's website](#).

- 6.7. NOPTA has powers to require applicants to provide such information about the dealing as is considered necessary or advisable (s 507); require a party to an approved dealing to provide information (s 508); and to require production of documents relating to a dealing from a person (s 509).

Note: If a dealing results in or refers to:

- a significant realignment of titleholder interests or change of operatorship within the title; or
- a change in the ownership of a titleholder (as opposed to a change in titleholder)

NOPTA may require information regarding the technical and financial capacity of the entity to which the above relates. The information requirements in such circumstances will be similar to that required for a transfer of title.

General Provisions and Information

- 6.8. A dealing in a title is of no force under the OPGGSA until it has been approved and registered by NOPTA in relation to that particular title (s 487).
- 6.9. 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).
- 6.10. Approval of a dealing under s 493 does not guarantee the approval of an application for transfer of the title/s, under s 478(2)(a), or any other applications under the OPGGSA that are referred to in the dealing. Any future applications will be considered on their merits against the legislative criteria and published guidance material.

7. Dealings affecting a future title

- 7.1. For dealings relating to a future title⁶ (Part 4.7), applicants may either make:
- a) a provisional application for approval of a dealing (s 498); or
 - b) an application for approval of the dealing within 90 days (or such longer period as NOPTA allows) from the date the title comes into existence (s 503).
- 7.2. 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 (s 498(1) and (2)).
- 7.3. A separate provisional application for approval of the dealing is required in respect of each future title affected by the dealing (s 498(3)).
- 7.4. NOPTA requires the same documents as are required for approval of a dealing, described at item 6.5, to be provided for a provisional application (s 499).
- 7.5. 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).
- 7.6. Provisional applications for approval of a dealing for an exploration permit, retention lease, production licence, infrastructure licence or pipeline 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).
- 7.7. Provisional applications for approval of a dealing for an access 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).
- 7.8. 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 (s 502).

⁶ For example, a proponent may seek to lodge a provisional [dealing] application relating to a title that is in an active transition phase (e.g. exploration permit to retention lease), the outcome of which is unknown until the associated assessment is finalised by the Joint Authority.

8. Change of company name applications

8.1. If a company is a titleholder and has changed its name, the company may apply to NOPTA to have its new name substituted for its previous name in the relevant register for that title (s 484).

Application

8.2. The following documents must be provided:

- a) A completed application form ([see NOPTA website](#)) (s 484(2)).
- b) A copy of the Australian Securities and Investments Commission (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 NOPTA that the name of the company has changed.

Table of revisions

Date	Version	Purpose	Jurisdiction
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.	Cth
July 2014	4	Updated to reflect the amendments made to section 474, 489 and 499 in the <i>Offshore Petroleum and Greenhouse Gas Storage Amendment (Regulatory Powers and Other Measures) Act 2014</i> .	Cth
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	Cth
Nov 2011	2	Updated to reflect changes to OPGGSA – transfer to NOPTA Clarification of technical and financial requirements.	Cth
April 2011	1	Wholesale re-write to improve clarity of writing	Registrars / Cth

Attachment 1 – Additional examples of possible funding sources

- bank deposits held
- loan facilities – for example, loan agreements signed by all parties or loan agreements conditional on the award of a title are acceptable, not letters of intent from a loan institution
- other guarantee: e.g. a bank guarantee, or guarantee from an accountant of a certified statement of an individual's capacity to fund (high net worth individuals)
- forecast cash flows - if an applicant has existing assets and those assets have proven reserves and are in production, or production is imminent (speculative cash flows, if the assets are not in production and production is not imminent, are not acceptable)
- track record of successful funding of exploration projects
- proven ability to attract farm-in partners
- proven ability to raise capital by public or private means
- letter of guarantee from capital raising entity (although arrangements with financial institutions or brokerage firms that undertake to raise equity on a best efforts basis are not adequate evidence of funding)
- evidence that a satisfactory Joint Venture Operating Agreement has been or can be reached.

Attachment 2 – 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	<p>The determination of the manner in which persons may:</p> <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; <p>(including the exercise of those rights, or the compliance with those obligations or conditions, under cooperative arrangements to recover petroleum).</p>	Joint operating agreement, joint venture operating agreements, and unit development agreements
4	<p>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:</p> <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	<p>The creation or assignment of an interest that is similar to an interest covered by item 4, where the interest relates to:</p> <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