Australian Government
Department of Industry, Science, Energy and Resources

Offshore Petroleum and Greenhouse Gas Storage Amendment (Titles Administration and Other Measures) Bill 2021

Background

Australia's offshore oil and gas industry has supported Australia's energy security and economic activity for over 50 years. As Australia's offshore petroleum industry continues to mature, there will be an increased focus on the management of mid-to-late-life assets. This includes managing declining production while preparing to decommission offshore facilities, wells and pipelines.

There are particular points in the lifecycle of an industry when policies and regulatory practices need to adapt to changing circumstances. For Australia, that time is now.

Decommissioning is a normal, planned activity for the petroleum industry. It includes:

- Maintaining and removing property, equipment, infrastructure, such as a facility or a pipeline and plugging/closing-off of wells associated with a petroleum activity, and
- Restoring the environment.

As the industry continues to mature, large companies may move to divest their mature assets to focus on areas of new production potential. Australia can expect to see new entrants to the industry—smaller companies or joint ventures who bring a fresh perspective and a different risk profile. As this transition occurs, government will focus on appropriate stewardship and management of the resource, ensuing the robust technical and financial capacity of operators and the planning for decommissioning.

Purpose

This document has been developed to outline and explain the key measures in the Offshore Petroleum and Greenhouse Gas Storage Amendment (Titles Administration and Other Measures) Bill 2021 (the Bill). These measures will amend the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act) to improve the offshore regulatory framework, including:

- **Changes in company control**: expanding the types of transactions requiring government assessment and approval to include changes in ownership or control of a titleholder entity, such as through a corporate merger, acquisition or takeover.

- **Trailing liability**: expanding the circumstances where a previous titleholder can be 'called back' to remediate the title areas or conduct other activities where the current titleholder is unable to do so and introducing the concept of a 'related person'.
- **Suitability**: inclusion of decision-making criteria within the legislation to assess competency and suitability of entities applying to operate in Australia's offshore regime. These assessments at key decision points include financial capacity, technical capability, history of compliance and corporate governance arrangements. .
- **Other measures**: minor and technical amendments to improve the operation of the Act, including the facilitation of electronic submission of all documents that accompany an application for a transfer or dealing of a petroleum or greenhouse gas title. The Bill removes the requirement to provide additional copies of documents that accompany an application, reducing the administrative burden on industry and streamlining the application process.

The proposed amendments are required as the first stage in implementing the outcomes of the review of Australia's decommissioning framework for offshore oil and gas activities. The Bill will be implemented and supported by policies that will be developed in consultation with National Offshore Petroleum Titles Administrator (NOPTA), the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) and the industry.

Amendments to the OPGGS Act

Changes in Company Control

The department's decommissioning policy review and the Independent review into the circumstances leading to the administration and liquidation of Northern Oil and Gas Australia (NOGA) ('Walker Review') both identified the need for more transparency in, and oversight of, commercial transactions by government that result in any change to ownership and/or control of a titleholder entity through a corporate merger, acquisition or takeover.

The Act currently requires a technical and financial assessment when a title is transferred and only captures changes in the registered titleholder or the interests of the registered titleholder.

In recent years, there have been occasions where companies have entered or exited Australia's regime through a change in company control. For example, where a new company buys a registered titleholder, the name of the registered titleholder remains the same, but the entity controlling the registered titleholder has changed. NOPTA cannot currently assess these types of transactions.

The proposed amendments expand the types of transactions requiring government assessment and approval to include any change in the ownership or control of a titleholder entity, such as through a corporate merger, acquisition or takeover, where it proposes to acquire an interest above 20 per cent, or reduces its interest below 20 per cent in a titleholder entity.

This type of control change results in a new entity ultimately controlling the titleholder and may affect the titleholder's ability to meet its legislative obligations, and therefore should be subject to a government approvals process.

Frequently Asked Questions

If a company already has an interest in a titleholder entity, but is increasing the share above 20 per cent does the transaction require approval?

Yes, any transactions which would result in a company acquiring up to or more than a 20 per cent share in a titleholder entity is required to obtain approval, regardless of whether that acquisition occurs in single or multiple transactions.

If a company has an interest in a titleholder entity of 20 per cent or more, and is decreasing its share below 20 per cent does the transaction require approval?

Yes, any transactions which would result in a company reducing its share in a titleholder entity below 20 per cent is required to obtain approval, regardless of whether that divestment occurs in single or multiple transactions.

What happens if approval is not obtained?

There are penalties for proceeding with the change of control without both obtaining approval and notifying the government that the acquisition has taken place.

For proceeding with an acquisition without approval, a person may:

- commit an offence, which is subject to a maximum criminal penalty of 5 years imprisonment, 1,200 penalty units (or a fine of up to $266,400) or both for an individual, or a fine of up to $1,332,000 for a body corporate, or
- be liable for a civil penalty, which is subject to a maximum civil penalty of 2,400 penalty units, which is a fine of up to $532,800 for an individual or $2,664,000 for a body corporate.

For failing to notify NOPTA that an acquisition has taken effect without approval within 30 days, a person may be liable for a maximum civil penalty of 480 penalty units (or a fine of up to $106,560 for an individual or $532,800 for a body corporate). This is a continuing civil penalty provision, meaning that a person may be liable for a separate civil penalty for each day that the contravention continues, which is capped to 10% of the maximum civil penalty of 480 penalty units.

A titleholder will also be required to notify NOPTA if it knows that it was subject to such an acquisition within 30 days of the change taking effect. If the titleholder fails to do so, it may be liable for a maximum civil penalty of 480 penalty units, which is a fine of up to $532,800 for a body corporate.

These penalties reflect the importance of ensuring that companies operating in Australia's offshore oil and gas regime are suitable. Contravening any of these requirements is also grounds for cancellation of the title. Other compliance actions may also be taken where the titleholder is unable to meet its obligations under the Act (such as being unable to comply with the requirements under the Environment Plan).

If a company is acquiring a 20 per cent interest in a titleholder entity which is part of a joint venture, does the transaction require approval if the company's total interest in the title is less than 20 per cent?

Yes, the 20 per cent threshold is in relation to the corporate acquisition, not the title interest held in the joint venture.

Trailing Liability

The department's decommissioning policy review and the Walker Review identified the need to enhance the existing trailing liability provisions to protect the interests of the broader community and taxpayers. The Walker Review also observed the current limited application of trailing liability is inconsistent with comparable jurisdictions that manage a mature industry.

There are two key policy objectives of enhancing trailing liability to reduce the risk that existing titleholders dispose of mature to late-life assets to entities which may not be financially or technically capable of undertaking petroleum activities and fulfilling their obligations:

- Ensure the risks and liabilities of petroleum activities remain the responsibility of those who have derived the greatest financial benefits from the project.
- Bring about a change in behaviour and increase the due diligence undertaken by companies of who they sell their titles and assets to.

The Bill proposes to expand the existing trailing liability provisions in the Act, to be used as a last resort measure. Where deemed necessary, a former titleholder may be able to be called back to decommission and remediate the environment, regardless of how its interest in the title ceased. This includes the ability to call back companies who have been given consent to surrender the title by the Joint Authority or sold their interests via a transfer, dealing or other form of commercial transaction. Requiring a former titleholder to decommission and remediate the environment is intended to be an option of last resort where all other regulatory options have been exhausted.

The amendments also introduce the concept of a 'related person' for the purposes of trailing liability. The framework will allow a 'related person' to be called back where they are a related body corporate, or a determination is made that the person was capable of benefiting, or has significantly benefited, financially from the operations, has been in a position to influence compliance and/or acts or has acted jointly with the titleholder. This will enable the government to require a range of entities, such as either a current or former titleholder or a parent company of one, to undertake and/or pay for remedial activities, including decommissioning in the event the current titleholder does not meets it obligations. This approach recognises the ways in which companies are able to structure transactions to divest assets and titles to limit accountability for decommissioning obligations.

Frequently Asked Questions

If there are multiple former titleholders, how will the Minister and/or NOPSEMA determine which former titleholder to issue the remedial direction to?

The proposed amendments do not specify the order in which a remedial direction will be issued to former titleholders. It is intended that while it will need to be assessed on a case-by-case basis and reflect the nature of activities required, practically, this is likely to be in chronological order (i.e. back from the current, or immediate former titleholder). The Titles Register maintained by NOPTA will be used to determine the chronological order.

To support the legislative amendments, the government will develop guidance to provide a clear and consistent interpretation of the legislation and how the provisions will operate.

If a direction is given to a former titleholder which was a joint venture, which participant will be required to comply with the direction?

It is the government's expectation that if a direction is given to the titleholder which is a joint venture (and the parties are individually named), it is the responsibilities of the parties to determine how they will individually and collectively comply with the direction, and how reimbursement will be sought as part of their own commercial arrangements. The direction will set the expectation of compliance, not the manner in which the parties discharge their respective responsibilities. Similar to other duties and obligations imposed throughout the OPGGS Act, the titleholder group are responsible for working together to meet legislative requirements.

What happens if a former titleholder does not comply with a direction?

Where a direction is issued to a former titleholder to decommission and/or remediate a title area and the titleholder does not comply, the government may undertake the activity and recover the costs from the former titleholder, through the financial assurance mechanism and/or the court system.

Failure to comply with a direction may also result in criminal prosecution or application of a civil penalty. Continuing criminal or civil penalties apply for an ongoing failure to comply.

Suitability

The government is committed to ensuring that companies operating in Australia's offshore oil and gas regime are capable, competent and responsible in managing their offshore oil and gas activities, and can meet their obligations under the title.

The Bill increases regulatory scrutiny and expands the types of information that can be requested from applicants seeking to enter into Australia's offshore oil and gas regime or to progress to higher-risk activities. This ensures that the government is better equipped to 'screen' applicants, reducing the risk that an entity who does not meet the financial and technical capability requirements, will undertake petroleum activities in Australian waters.

In determining whether an applicant is suitable, the decision-maker will consider 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. This assessment is necessary to ensure they can meet their obligations under the Act, including complying with financial assurance requirements .As is the case with the existing provisions of the Act, the decision-maker has the discretion to, and may request, additional information on a case-by-case basis, to assist and inform its consideration of the application.

The exposure draft of the Bill includes the amendments relating to suitability of an applicant for the petroleum-related title application and decision provisions of the OPGGS Act and for approval of changes in company control. The final Bill will include equivalent amendments to the greenhouse gas-related title application and decision provisions in the OPGGS Act.

Frequently Asked Questions

What factors are taken into account when assessing the suitability of an entity at key decision points?

To support the legislative amendments, the government will develop policy and guidance that will provide a clear and consistent interpretation of the legislation and will consider how the provisions will operate. Suitability is determined by consideration of a range of factors, including (but not limited to) financial and technical capacity, history of compliance and corporate governance arrangements.

Other Measures

The proposed amendments include other minor and technical amendments which improve the administration of the Act and are designed to support a transition to the use of digital systems for the lodgement of applications and related documents. The amendments also provide flexibility in the application process for the receipt of supporting documentation and fees.

The amendments reduce regulatory burden by removing the requirement for documents to be resubmitted for multiple applications where the information previously provided is still relevant and current.

Frequently Asked Questions

If an applicant has recently submitted information for another purpose, can this information be used by the decision-maker without the applicant resubmitting it?

If the information is still current and relevant to the decision-making criteria, NOPTA has the discretion to use the information for the purpose of a new decision.