

## Financial assurance for petroleum titles

### Core concepts

- Section 571(2) of the OPGGS Act requires that titleholders maintain financial assurance sufficient to give the titleholder carrying out the petroleum activity the capacity to meet the costs, expenses and liabilities that may result in connection with carrying out the petroleum activity; doing any other thing for the purpose of the petroleum activity; or, complying (or failing to comply) with a requirement under the OPGGS Act in relation to the petroleum activity.
- Regulation 5G of the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (Environment Regulations), provides that NOPSEMA must not accept an environment plan (EP), or a proposed revision of an EP, unless NOPSEMA is reasonably satisfied that the titleholder is compliant with section 571(2) of the OPGGS Act and that the compliance is in a form acceptable to NOPSEMA.
- A titleholder may satisfy NOPSEMA that it is meeting the legislative obligations, by applying an independently validated and NOPSEMA-endorsed method for estimating costs, expenses and liabilities, and completing a Financial assurance declaration (N-04730-FM1519) and Financial assurance confirmation (N-04730-FM1465) in line with this guideline.
- Financial assurance must be maintained for the life of the title but need only be accessible when the potential for costs, expenses and liabilities may arise.
- NOPSEMA acknowledges that, in most cases, the greatest reasonably credible costs, expenses and liabilities that may arise from a petroleum activity, are associated with the unlikely event of an escape of petroleum. As such, methods for estimating financial assurance are centred on the identifiable and estimable costs associated with implementing operational response measures, remediating the environment and undertaking environmental monitoring.
- Regardless of any declarations provided to NOPSEMA, the requirement for compliance with the duty to maintain sufficient financial assurance for the life of the title rests with the titleholder.
- In the event of an escape of petroleum, the titleholder must comply with the 'polluter pays' principle prescribed in the OPGGS Act and all relevant laws. Importantly, the financial assurance obligations do not in any way limit the liability of the titleholder as determined in a court of law, or under the 'polluter pays' statutory duty currently in force under the OPGGS Act.



## Contents

Core concepts .....	1
Contents .....	2
1. Purpose.....	3
2. Legislative requirements relevant to financial assurance .....	4
2.1. Capacity to meet costs, expenses and liabilities .....	4
2.2. Forms of financial assurance for a title .....	5
2.3. The polluter pays principle .....	6
3. Demonstrating financial assurance .....	7
3.1. Prior condition to acceptance of an environment plan .....	7
3.2. Estimating sufficient financial assurance .....	7
3.3. Validation and endorsement of methods for cost estimation .....	8
3.4. Determining forms of financial assurance .....	10
3.5. Ensuring form of financial assurance is accessible .....	10
3.6. Financial assurance declaration .....	11
3.7. Financial assurance confirmation .....	11
3.8. Cost recovery .....	12
4. Responsibilities for financial assurance.....	13
4.1. Duty on titleholders.....	13
4.2. Financial assurance for multiple titleholders .....	13
4.3. Maintaining financial assurance duty and notification of changes .....	14
4.4. Financial assurance for title applicants .....	14
5. Compliance and enforcement .....	16
5.1. Direction powers and remediation orders .....	16
5.2. Withdrawal of acceptance of environment plan .....	17
6. Further information.....	18
7. Related documents.....	18

## 1. Purpose

The purpose of this guideline is to describe NOPSEMA's administration of the financial assurance requirements set out in the OPGGS Act and the Environment Regulations which apply to titleholders undertaking a petroleum activity under a petroleum title.

This guideline provides advice on how titleholders can establish compliance with the duty to maintain sufficient financial assurance and how they can demonstrate compliance to NOPSEMA prior to acceptance of an EP.

Further, the guideline outlines the process a titleholder is required to follow to demonstrate financial assurance to NOPSEMA. Broadly, these include:

- Using an independently-validated and NOPSEMA-endorsed method to estimate the greatest reasonably credible costs, expenses and liabilities associated with response, clean up, and monitoring the impacts of an escape of petroleum incident.
- Identifying the appropriate form/s of financial assurance
- Maintaining financial assurance and ensuring that it will be accessible
- Making a financial assurance declaration to NOPSEMA (FM1519)
- Submitting a financial assurance confirmation to NOPSEMA (FM1465) prior to acceptance of the environment plan
- Demonstrating a process for review, management of change, and re-validation where required.

Whilst this guideline specifies what factors NOPSEMA will take into account when determining if it is reasonably satisfied that the titleholder has complied with the financial assurance duty, the requirement to maintain sufficient financial assurance for the life of the title rests with the titleholder.

The guideline is intended for titleholders who are required to demonstrate financial assurance in accordance with regulation 5G. This guideline also contains information for title applicants who will be required to demonstrate financial assurance if a title is granted and they become a titleholder prior to acceptance of an EP.

## 2. Legislative requirements relevant to financial assurance

### 2.1. Capacity to meet costs, expenses and liabilities

#### Section 571 Titleholder duty to maintain financial assurance

- (2) The titleholder must, at all times while the title is in force, maintain financial assurance sufficient to give the titleholder the capacity to meet costs, expenses and liabilities arising in connection with, or as a result of:
- (a) the carrying out of the petroleum activity; or
  - (b) the doing of any other thing for the purposes of the petroleum activity; or
  - (c) complying (or failing to comply) with a requirement under this Act, or a legislative instrument under this Act, in relation to the petroleum activity.

The Explanatory Statement<sup>1</sup> describes that financial assurance is required to deal with extraordinary costs, expenses and liabilities that a titleholder might not have the capacity to meet. It is not expected to cover expenses of a titleholder in meeting ordinary operating costs, such as the costs of compliance with title conditions. Further to this, the Explanatory Statement for the amended Environment Regulations<sup>2</sup> states that ordinary commercial commitments that fall to the titleholder to manage do not require financial assurance cover.

NOPSEMA is of the view that section 571(2) of the OPGGS Act requires titleholders to estimate the sum of the greatest reasonably credible costs, expenses and liabilities that may arise from a petroleum incident relating to the activities of the titleholder in order to determine the level of financial assurance that may be required.

For the purposes of this guideline NOPSEMA acknowledges that, in most cases, the greatest reasonably credible costs, expenses and liabilities that may arise from a petroleum activity, are associated with the unlikely event of an escape of petroleum. This does not limit the titleholder duty to maintain sufficient financial assurance for all costs, expenses or liabilities that may arise over the life of a petroleum title, whether relating to an escape of petroleum or otherwise.

Liabilities are considered to include costs under legal obligation. These are taken to include reasonably estimable costs, such as third party costs associated with responding to an incident, clean-up and remediation, and undertaking monitoring.

Methods for estimating financial assurance are not expected to address unidentifiable or inestimable costs which may be associated with compensation for loss and ongoing damage to other parties, and which are

<sup>1</sup> Explanatory Statement, *Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures No. 2) Bill 2013*, at 42.

<sup>2</sup> Explanatory Statement, *Offshore Petroleum and Greenhouse Gas Storage (Environment) Amendment (Financial Assurance) Regulations 2014*.

able to be pursued through civil action in a court of law. NOPSEMA does not consider these to be reasonably estimable prior to an incident occurring.

## 2.2. Forms of financial assurance for a title

Section 571(4) of the OPGGS Act provides the forms of financial assurance that may be maintained for the purpose of complying with the duty.

Titleholders may use their discretion in determining the form or mix of forms for their specific requirements, as long as the form or combination of forms covers the maximum financial assurance required to meet the financial assurance duty.

For NOPSEMA to be reasonably satisfied that sufficient financial assurance is being maintained, the titleholder must be able to draw on the financial assurance at the time that costs, expenses and liabilities may arise.

NOPSEMA makes the following interpretations of the forms of financial assurance listed in section 571(4) of the OPGGS Act that may be accessed by the titleholder in order to meet financial assurance requirements.

### Insurance

An arrangement by which one person undertakes in return for some agreed consideration to pay another person a sum of money, or provide an equivalent benefit, on the happening of a specified event, the occurrence or timing of which is uncertain.

### Self-insurance

The financial capability to cover a liability from an entity's own assets, or from assets to which the entity has access, rather than by purchasing an insurance policy.

### A bond

An instrument under seal, usually in the form of a deed poll, by which a person binds himself or herself to another to pay a specified sum of money at some fixed date. It is a form of specialty debt, being evidenced in writing in the form of a deed.

### The deposit of an amount as security with a financial institution

Section 571(5) of the OPGGS Act defines a financial institution as having its ordinary meaning, and (to avoid doubt) to include an authorised deposit-taking institution within the meaning of the *Banking Act 1959*; and a financial institution of a foreign country.

### An indemnity or other surety

An indemnity is a security or protection against a loss. A sum of money paid to compensate a person for liability, loss or expense incurred by the person. Legal protection against liabilities arising from one's actions. A surety is a person who makes himself or herself answerable for the obligations of another, either under a contract or as an equitable surety.

### A letter of credit from a financial institution

A letter of credit is an advice issued by a bank authorising the payment of money to a named person on presentation by that person of specified documents to another bank.

### A mortgage

A lender's interest in land, secured over the land of the borrower, including a charge on property for the purpose of securing money or money's worth.

## 2.3. The polluter pays principle

The polluter pays principle underpins ecologically sustainable development and recognises that those who generate pollution should bear the cost of containment, avoidance or abatement.

### Part 6.1A, Section 572C Escape of petroleum – titleholders' duty

- (2) The registered holder of the title must, in an offshore area, in accordance with the EP for the petroleum activity:
  - (a) as soon as possible after becoming aware of the escape of petroleum, take all reasonably practicable steps to eliminate or control it
  - (b) clean up the escaped petroleum and remediate any resulting damage to the environment
  - (c) carry out environmental monitoring of the impact of the escape on the environment.

The 'polluter pays' provisions of part 6.1A apply in the event that there is an escape of petroleum occurring as a result of, or in connection with, a petroleum activity undertaken by a titleholder.

The 'polluter', being the titleholder, is responsible for eliminating or controlling the escape of petroleum, cleaning up the escaped petroleum and remediating any resulting damage to the environment and carrying out environmental monitoring of the impact of the escape on the environment.

Part 6.1A also caters for circumstances where a titleholder has failed to comply with this duty by enabling NOPSEMA, the responsible Commonwealth Minister, a State or the Northern Territory to take necessary action and to recover the costs of that action from the titleholder.

There is a *no fault* element to the polluter pays obligations meaning that the titleholder is liable for all the costs associated with any response to an escape of petroleum, whether undertaken by the titleholder or by the Commonwealth, a State or the Northern Territory.

The financial assurance process in the OPGGS Act does not modify or cap liability as determined in a court of law or under the 'polluter pays' statutory duty.

### 3. Demonstrating financial assurance

#### 3.1. Prior condition to acceptance of an environment plan

##### **Regulation 5G Demonstration of financial assurance prior condition for acceptance of environment plan**

- (2) For paragraphs 571(3)(a) and (b) of the OPGGS Act, NOPSEMA must not accept the environment plan, or proposed revision of the environment plan, unless NOPSEMA is reasonably satisfied that:
- (a) the titleholder is compliant with subsection 571(2) of the OPGGS Act in relation to the petroleum activity; and
  - (b) the compliance is in a form that is acceptable to NOPSEMA.

Regulation 5G provides that NOPSEMA cannot accept an EP unless it is reasonably satisfied that the titleholder is compliant with the financial assurance obligations under the OPGGS Act and compliance with these obligations is in a form that is acceptable to NOPSEMA.

In determining whether the financial assurance held by a titleholder is satisfactory, NOPSEMA considers whether the titleholder has adequately estimated the costs, expenses and liabilities that may arise from a significant oil pollution incident associated with the petroleum activity and the titleholder has access to financial assurance for these matters.

A titleholder may demonstrate financial assurance in a form acceptable to NOPSEMA through:

- Use of an independently validated and NOPSEMA endorsed method for estimating the greatest reasonably credible costs, expenses and liabilities that may arise from a petroleum activity;
- A completed financial assurance declaration form; and
- A completed financial assurance confirmation form.

These matters are detailed in the following sections of this document.

#### 3.2. Estimating sufficient financial assurance

Titleholders should utilise a suitably robust method for estimating the greatest reasonably credible costs, expenses and liabilities that may arise from a petroleum activity.

Titleholders should select approaches for estimating greatest reasonably credible costs, expenses and liabilities that are appropriate for the petroleum activities under the title.

NOPSEMA does not prescribe any single approach to estimating financial assurance levels to meet obligations under the OPGGS Act. Titleholders may use any cost estimation tools available in the public

arena or develop their own practical approach for determining what level of financial assurance may be appropriate for their activities.

It is generally sufficient for the titleholder to hold financial assurance for the greatest reasonably credible costs, expenses and estimable third party liabilities that may arise from a petroleum incident relating to their activities, and as defined by:

- termination or control of the incident;
- operational response measures required for containment, clean up and remediation of the environment; and
- carrying out environmental monitoring of the impact of the petroleum incident.

The above estimation requires sufficient understanding of the scope of the activity in the EP and its associated response and monitoring provisions.

Financial assurance is required for all titles to which an EP submission relates, and is required to be demonstrated for each individual EP. Where a titleholder has a number of petroleum activities occurring across a number of titles they may consider estimating the greatest credible costs, expenses and liabilities that may arise from a petroleum incident relating to all petroleum activities across all titles. This approach will ensure that the titleholder's estimation of sufficient financial assurance will also be appropriate to cover any other lower order costs, expenses and liabilities that may arise from their activities.

### 3.3. Validation and endorsement of methods for cost estimation

Independent validation and NOPSEMA endorsement is required for all cost estimation methods. Titleholders should engage NOPSEMA early when a new estimation approach is used to discuss the requirements and ensure there is sufficient lead time for validation and endorsement to occur.

If the financial assurance estimation method has not been previously endorsed by NOPSEMA, it is unclear what method was used, or the assurance arrangements are more complex, NOPSEMA may require further information on how the level of financial assurance was estimated.

Where a previously endorsed method of calculation, such as the APPEA method (refer section 3.3.3), is used to determine the level of financial assurance required, a financial assurance declaration (refer section 3.6) supported by a financial assurance confirmation (refer section 3.7) will, in most circumstances, be sufficient to allow NOPSEMA to be reasonably satisfied that the titleholder has complied with the financial assurance duty.

#### 3.3.1. Scope of validation

Where a new cost estimation method is to be utilised titleholders are required to prepare a scope of validation and agree this with NOPSEMA prior to undertaking validation of the method.

The titleholder must select Validator(s) that are sufficiently competent and independent and provide documented information to demonstrate this to NOPSEMA. It should be noted that titleholders may utilise any competent Validator(s) and NOPSEMA does not prescribe in this area.





Prior to NOPSEMA agreeing to a scope of validation the following should be considered:

- It is expected that the scope of validation contains an overview of the proposed method of the validation and sets out a systematic process for evaluating the financial assurance method put forward;
- Demonstration of validator selection process, evidence of their independence and competence and that they will have free access to relevant data;
- The scope of validation should contain provision for the validator to assess the appropriateness of the method developed for calculating financial assurance;
- In particular, it is expected that the scope of the validation establishes to a reasonable level of assurance, that the method is sufficiently robust and provides representative coverage of activity types, risks and geographic locations to support relevant boundaries/limits set; and
- It is expected that clearly defined deliverables are identified, including
  - A detailed validation report for the titleholder to hold on record for the life of the EP
  - A concise validation statement for NOPSEMA's review.

When a scope of validation is agreed, NOPSEMA shall confirm this in writing to the titleholder.

### 3.3.2. Endorsement

Following independent validation, NOPSEMA may request a copy of the validated method and will require a concise validation statement from the independent validator(s).

In its decision to endorse a particular method, NOPSEMA will consider the extent to which the validation statement matches the agreed scope of validation and thereby provides reasonable assurance that the method employed for calculating financial assurance is sufficiently robust.

When a financial assurance method is endorsed to be a suitable form for demonstrating financial assurance as a prior condition to acceptance of an environment plan (in conjunction with financial assurance declarations and confirmations), NOPSEMA shall confirm this in writing.

### 3.3.3. 2018 APPEA method for estimating levels of financial assurance

APPEA has developed the *2018 APPEA method for estimating levels of financial assurance* (the APPEA method). The APPEA method has been developed to assist titleholders with a standard approach to meeting financial assurance requirements under the OPGGS Act by setting a series of cost bands based on the characteristics and potential impacts of a petroleum incident that may arise from the activity outlined in an environment plan. Further information regarding the 2018 APPEA method, is available from [APPEA](#).

The method was endorsed by NOPSEMA on 20 December 2018 as a suitable method for estimating financial assurance levels.

The APPEA method may not be appropriate in all individual circumstances and it is up to the titleholder's discretion as to its application. Where NOPSEMA considers, based on the information provided in an environment plan, that the APPEA method has been applied inappropriately, further information on the titleholder's application of the method may be required prior to acceptance of the environment plan.

NOPSEMA reserves the right to require titleholders to calculate financial assurance in greater detail, based

on case-specific risks and responses outlined in the EP and these estimations will require independent validation prior to NOPSEMA acceptance of the EP as described in section 3.3.1.

After estimating the level of financial assurance required the titleholder should then identify the form or forms of financial assurance to be maintained.

### 3.4. Determining forms of financial assurance

Titleholders should identify the form(s) of financial assurance that will be accessed in the event that the costs, expenses and liabilities arise. The titleholder may select a variety of forms of financial assurance that together aggregate to equal the maximum financial assurance required in order to meet the requirements of the OPGGS Act.

Titleholders may use their discretion in determining the form or mix of forms for their specific requirements as illustrated below but need to ensure that selected forms cover the maximum financial assurance estimated (refer section 3.2).

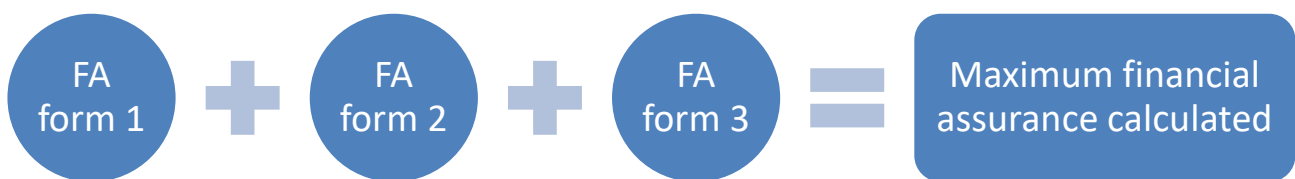


Figure 1 – Determining forms of financial assurance to cover the estimated financial assurance

### 3.5. Ensuring form of financial assurance is accessible

After identifying the maximum level of financial assurance needed and the forms the assurance will take, the titleholder must ensure the financial assurance will be accessible when the costs, expenses and liabilities have the potential to arise.

Maintaining accessibility to financial assurance for the life of the title is essential to ensure that the requirements of the OPGGS Act are met. The level of financial assurance required for a particular title may vary over the life of the title depending on what activities are being carried out by the titleholder. The titleholder should ensure that appropriate systems are in place to ensure that sufficient financial assurance is accessible when the need may arise.

Financial assurance does not need to be accessible at the time of submission or acceptance of an EP for an activity; only when the costs, expenses and liabilities have the potential to arise from activities under the title.

It is the responsibility of the titleholder to ensure the forms of financial assurance match the maximum financial assurance estimated and are accessible.

### 3.6. Financial assurance declaration

In administering the financial assurance requirements of the regulations, NOPSEMA has developed a Financial Assurance Declaration form (N-04730-FM1519) to assist titleholders in making financial assurance declarations.

The declaration requires the registered titleholder/s to certify that they are in, and will remain in, compliance with the financial assurance requirements of the OPGGS Act. This ensures that an appropriately authorised representative of the titleholder/s make a formal acknowledgement of their duty to maintain sufficient financial assurance over the life of the title.

A financial assurance declaration may cover:

- multiple activities under a single title
- a single activity across multiple titles
- multiple activities across multiple titles.

A financial assurance declaration may be submitted at any time to NOPSEMA, however NOPSEMA considers that submission of relevant financial assurance declarations best occur prior to or at the time of submission of an EP in most circumstances.

A titleholder may consider submitting a financial assurance declaration covering all titles for which they are the registered holder. The declaration may be applicable to multiple concurrent activities and multiple concurrent environment plans across the titles to which the declaration relates.

It is the responsibility of the titleholder to determine that valid declarations are in place for all titles to which an EP submission relates prior to submitting the EP to NOPSEMA. NOPSEMA does not require a revision to a financial assurance declaration to be provided unless information provided in the declaration changes sufficiently to invalidate the declaration. The declaration does not need to be resubmitted with every new EP submission.

### 3.7. Financial assurance confirmation

Prior to the acceptance of an environment plan, the titleholder undertaking the activity must also submit a financial assurance confirmation form (N-04730-FM1465) attesting that financial assurance declarations have been provided to NOPSEMA and that these are relevant to the petroleum titles, and to the nature and scale of the activities, to which the EP relates.

The purpose of the financial assurance confirmation form is for the titleholder to demonstrate to NOPSEMA that:

- The titleholder has implemented a validated and endorsed method to estimate the reasonably identifiable and estimable costs, expenses and liabilities.
- The method used was appropriate for the nature and scale of impacts that might arise from the activity and the financial assurance is within the limitations of the methods used.

- An authorised representative of the titleholder has confirmed that financial assurance declarations have been provided to NOPSEMA for all the titleholders and the titles which authorise the petroleum activities included in the environment plan.

Titleholders should contact NOPSEMA's Environment Division as soon as practicable where a financial assurance confirmation is unable to be provided with the EP submission. In accordance with NOPSEMA's Financial assurance policy (PL1780), NOPSEMA will commence an EP assessment without the accompanying confirmation, however NOPSEMA will be unable to accept the EP prior to receipt of the form.

### 3.8. Cost recovery

#### Regulation 33 Financial assurance

- (1) For section 685 of the OPGGS Act, a fee is payable to NOPSEMA by the titleholder for a petroleum activity if NOPSEMA assesses financial assurance arrangements, proposed by the titleholder in relation to the activity, for the purposes of regulation 5G.
- (2) The amount or rate of the fee is an amount or rate determined by the Chief Executive Officer of NOPSEMA and must not exceed the total of the expenses incurred by NOPSEMA for the purposes of assessing the proposed financial assurance arrangements.
- (3) The fee is payable at the time or times agreed in writing between the Chief Executive Officer of NOPSEMA and the titleholder.

In exceptional circumstances, NOPSEMA may engage relevant experts to assess and validate financial assurance arrangements proposed by the titleholder. In such circumstances expenses incurred by NOPSEMA for the assessment of financial assurance arrangements may be recovered under regulation 33 of the Environment Regulations. The fee recovered will not exceed the total of expenses incurred by NOPSEMA for the purposes of assessing the proposed financial assurance arrangements.

## 4. Responsibilities for financial assurance

### 4.1. Duty on titleholders

The titleholder is the registered holder of a petroleum title and is therefore responsible for maintaining sufficient financial assurance and complying with the financial assurance duty. This obligation cannot be discharged by affiliates, related companies or other entities who are not the titleholder for the purposes of the OPGGS Act.

The titleholder, an individual acting with the titleholder's express or implied authority or an individual appointed under power of attorney on behalf of the titleholder needs to make a financial assurance declaration to NOPSEMA.

### 4.2. Financial assurance for multiple titleholders

NOPSEMA acknowledges that in many circumstances there will be more than one individual or entity registered as the titleholder for a particular title. The OPGGS Act imposes the financial assurance obligation on each of the registered titleholders. However, it is recognised that this may not reflect the commercial arrangements of titleholders involved in joint ventures. NOPSEMA's Financial assurance declaration (N-04730-FM1519) provides that each of the registered holders of a petroleum title may make a declaration for the relevant interest of that titleholder in the title(s) for which the declaration is being made.

In the preparation phase of an EP for a particular activity, the titleholder undertaking the activity should:

- Estimate the level of financial assurance required to meet the financial assurance obligation for the proposed activity in accordance with an endorsed method.
- Confirm that they hold or will hold sufficient financial assurance for their relevant interests in each of the titles for the proposed activity.
- Confirm that the forms of financial assurance they hold will be accessible at the point where costs, expenses and liabilities may arise from the proposed activity.
- Inform all other titleholders for the proposed activity of the total amount of financial assurance to be held.
- Confirm with other titleholders that they hold the proportion of the total level of financial assurance for which they are responsible.
- Confirm with all other titleholders for the proposed activity that they have provided Financial Assurance Declarations to NOPSEMA for the relevant titles.
- Provide a Financial Assurance Confirmation to NOPSEMA on submission of the environment plan.



All other titleholders for the activity should:

- Confirm that they hold or will hold sufficient financial assurance for their relevant interests in each of the titles for the proposed activity.
- Confirm that the forms of financial assurance they hold will be accessible at the point where costs, expenses and liabilities may arise from the proposed activity.
- Inform the titleholder undertaking the activity that relevant financial assurance declarations have been provided to NOPSEMA.

Alternatively a titleholder for the activity may choose to discharge the full financial assurance obligation on behalf of all other titleholders in accordance with section 775D of the OPGGS Act. NOPSEMA's Financial assurance declaration (N-04730-FM1519) provides an option for titleholders to utilise this provision.

In all cases, regardless of the approach taken, it remains up to the titleholder(s) to implement an appropriate system to ensure that 100% of the estimated financial assurance amount will be accessible and that appropriate financial assurance declarations and confirmations are provided to NOPSEMA for all EP submissions.

#### 4.3. Maintaining financial assurance duty and notification of changes

The duty set out in section 571 of the OPGGS Act is an ongoing obligation and titleholders must ensure compliance with the duty is maintained and compliance can be demonstrated.

Titleholders should regularly review the cost estimation to ensure it remains relevant and provides sufficient financial assurance in order to meet the financial assurance duty.

The final assurance method should also outline the process(es) in place to ensure appropriate review, management of change, and re-validation periods to maintain the ongoing validity of the method.

NOPSEMA encourages titleholders to ensure records demonstrating compliance are held and that titleholders consider building a regular review of compliance into their internal management systems and authorities (e.g. manual of financial authorities). This may include maintaining records from other titleholder's confirming sufficient forms of financial assurance are held for their share, incorporating review mechanisms if there is a significant change to the petroleum activity, the forms of financial assurance to be drawn upon change, the titleholder changes or the tool used to estimate the financial assurance changes.

NOPSEMA does not require a revision to a financial assurance declaration to be provided unless information provided in the declaration changes sufficiently to invalidate the declaration.

#### 4.4. Financial assurance for title applicants

The requirement to demonstrate financial assurance as a prior condition to acceptance of an EP applies only where there is a titleholder in relation to the activity immediately before NOPSEMA decides whether or not to accept an EP. The Environment Regulations allow applicants for certain types of titles to submit and have environment plans accepted prior to a relevant title for the activity being granted. This may lead to a number of circumstances for title applicants as detailed below.

1. **Where an applicant submits an EP and remains an applicant at the point of acceptance of an EP** a financial assurance declaration and confirmation are not required to be submitted to NOPSEMA. However, once a title for the activity is granted the financial assurance duty under section 571 of the OPGGS Act applies, NOPSEMA may seek evidence of compliance with the duty through its compliance monitoring activities as described in section 5.
2. **Where an applicant submits an EP and a relevant title is granted prior to acceptance of the EP** the titleholder for the activity must notify NOPSEMA as soon as practicable after the relevant title has been granted and provide a financial assurance declaration and financial assurance confirmation to NOPSEMA. In these circumstances, where a titleholder does not provide a financial assurance declaration and confirmation and a title has been granted during the assessment of the EP, NOPSEMA will be unable to accept the EP.

## 5. Compliance and enforcement

NOPSEMA is empowered under the OPGGS Act to monitor and enforce compliance with listed NOPSEMA laws, including those relevant to financial assurance.

NOPSEMA develops and implements compliance monitoring programs in accordance with its published policies (refer to PL0973). The policies provide a risk-based approach to surveillance of a titleholders' compliance with their obligations.

NOPSEMA monitors compliance with financial assurance requirements through its environmental inspection program that considers environmental risk factors to inform inspection programming by targeting activities with the greatest potential environmental consequence.

Where a financial assurance inspection topic is selected, the inspection will seek to verify that there is a system in place to identify, monitor and maintain sufficient financial assurance as required by section 571 of the OPGGS Act and detailed in this guideline.

If NOPSEMA were to identify the potential for non-compliance with duties under the OPGGS Act and Environment Regulations, appropriate enforcement action would be considered. Any enforcement would align with NOPSEMA's existing graduated enforcement principles documented in published policies (refer to PL0067).

### 5.1. Direction powers and remediation orders

Part 6.2 of the OPGGS Act provides a range of powers for NOPSEMA and the responsible Commonwealth Minister to issue directions to a titleholder. These may be used to require the titleholder to:

- (a) take action anywhere in an offshore area, whether within or outside the title area, including in relation to the clean-up or other remediation of the effects of an escape of petroleum (sections 574, 574B)
- (b) if a significant offshore petroleum incident has occurred, take any action stated in the direction for the purpose of preventing or eliminating the escape of petroleum, mitigating, managing or remediating the effects of the escape, or any other action stated in the direction (section 576B).

Part 6.4 of the OPGGS Act provides a range of powers to issue remedial directions aimed at restoration of the environment.

If a direction is issued under the OPGGS Act, the titleholder must meet all the costs associated with complying with the direction, regardless if they exceed the level of financial assurance held by the titleholder to meet financial assurance obligations.

Section 274 of the OPGGS Act provides the ability for a title to be cancelled on certain grounds including failure to comply with a direction, failure to comply with a provision of chapter 6 of the OPGGS Act (which includes financial assurance requirements) and failure to pay an amount payable by the titleholder under the OPGGS Act.



## 5.2. Withdrawal of acceptance of environment plan

### **Regulation 23 Withdrawal of acceptance of environment plan**

- (1) The Regulator, by notice in writing to the titleholder for an activity, may withdraw the acceptance of the environment plan for the activity on any ground set out in sub-regulation (2).
- (2) For sub-regulation (1), the grounds are that:
  - (e) for a petroleum activity – the titleholder has failed to maintain compliance with subsection 571(2) of the OPGGS Act, in a form acceptable to NOPSEMA, in relation to the activity.

Sub-regulation 23(2) provides the grounds for withdrawal of acceptance of an EP to include the titleholder failing to maintain compliance with the financial assurance obligations under section 571(2) of the OPGGS Act, in a form acceptable to NOPSEMA, in relation to the activity.

## 6. Further information

[Explanatory Memorandum to the Offshore Petroleum and Greenhouse Gas Storage Amendment \(Compliance Measures No.2\) Act 2013](#)

[Final Government Response to the Report of the Montara Commission of Inquiry](#)

[Explanatory Memorandum to Offshore Petroleum and Greenhouse Gas Storage \(Environment\) Amendment \(Financial Assurance\) Regulation 2014](#)

[2018 APPEA Method for Estimating Levels of Financial Assurance \(available from APPEA\)](#)

## 7. Related Documents

N-04730-PL1780 – Policy - Financial assurance

N-04730-FM1519 – Form - Financial assurance declaration

N-04730-FM1465 – Form – Financial assurance confirmation