

Change to the titleholder with operational control of activities

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Core concepts

- This guidance note is intended to assist incoming and existing titleholders (relevant parties) in ensuring ongoing compliance with relevant regulatory requirements where there is a change to the titleholder with operational control of a well or petroleum activity.
- For the purposes of this guidance, a titleholder with operational control of an activity is defined as the entity that has responsibility for day to day oversight and management of the activity under that entity's corporate policies, management systems, contracts and other arrangements.
- The *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGGS Act) and associated regulations place duties and responsibilities on all holders of a petroleum title, irrespective of which holder has operational control. For this reason, transfers in operational control may have implications for all relevant parties, all of whom have an interest in ensuring an effective transfer of operational control.
- Changes to the titleholder with operational control can occur in various instances, including but not limited to the following:
 - Transfer of operational control from one existing titleholder to another existing titleholder for the title on which the activity is taking place; or
 - Sale of part or all of a titleholder's interest in the title to another entity, which results in the incoming entity becoming a titleholder and assuming operational control; or
 - An existing titleholder with operational control being subject to a change of parent company. The entity holding the title remains unchanged, but the entity comes under new ownership.
- A change in operational control is likely to change the manner in which activities are managed and may make it more challenging for the titleholder that has acquired operational control to demonstrate compliance with regulatory requirements, including compliance with a well operations management plan (WOMP) and/or environment plan (EP) in force for an activity.
- Given the often complex nature of transactions which affect operational control, each circumstance is likely to be different. Relevant parties should engage with NOPSEMA to discuss any compliance related issues that may arise as early as possible.
- NOPSEMA recommends that titleholders ensure that a revised WOMP and/or EP can be accepted by NOPSEMA to coincide with any proposed change to the titleholder that has operational control of an activity.

Table of contents

Core concepts	1
Abbreviations/acronyms	3
Key definitions	3
1 Scope	4
2 Introduction.....	4
3 Regulatory requirements	5
3.1 Requirement to comply with a WOMP and/or EP in force	6
3.2 Requirements to submit a revised WOMP and/or EP.....	6
4 Maintaining continuity of compliance.....	7
4.1 Timely submissions to NOPSEMA.....	7
4.2 Early consideration and access to information	10
4.3 Managing transitional periods	10
5 Other advice	10
5.1 Compliance and enforcement	10
5.2 Non-ongoing activities.....	11
5.3 Ongoing compliance with the facility safety case	11
5.4 Transfers and dealings in petroleum titles – NOPTA.....	11
5.5 Engaging with NOPSEMA.....	11
6 References, acknowledgments and notes.....	12

Abbreviations/acronyms

ALARP	As low as reasonably practicable
Environment Regulations	Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009
EP	Environment plan
JOA	Joint operating agreement
NOPTA	National Offshore Petroleum Titles Administrator
OPGGS Act	<i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i>
RMA Regulations	Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011
WOMP	Well operations management plan

Key definitions

Corporate policies	Policies that apply to the corporate structure of a parent company and its subsidiaries which might include such matters as health, safety and environmental management, governance, accountability and risk management.
Dealing	A commercial agreement entered into by parties to a dealing in a petroleum title which meets Part 4.6 or Part 4.7 of the OPGGS Act and is approved and registered by NOPTA against a petroleum title.
Management system	A framework of policies, processes, procedures, control measures and resources used by an organisation to ensure it can fulfil all of the tasks required to achieve operational and organisational objectives.
Operational control	Oversight and day to day management of an activity under an entity's corporate policies, management systems, contracts and arrangements.
Petroleum activity	Operations or works in an offshore area undertaken for the purpose of exercising a right conferred on a petroleum titleholder under the OPGGS Act by a petroleum title, or discharging an obligation imposed on a petroleum titleholder by the OPGGS Act or a legislative instrument under the OPGGS Act (Regulation 4, Environment Regulations).
Relevant parties	The entity that intends to be in operational control of an activity at some future time, in addition to all titleholders involved in a change and their parent companies.
Transfer of title	Legislative process administered by NOPTA for transferring a petroleum title as outlined under Part 4.3 of the OPGGS Act.
Well activity	An activity relating to a well that is carried out during the life of the well.

1 Scope

This guidance note provides advice to relevant parties on compliance issues that may arise from changes to the titleholder with operational control of well activities under the Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011 (RMA Regulations) and/or petroleum activities under the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (Environment Regulations).

The fundamental principle contained in this guidance note is that regulatory documents such as a WOMP or EP are prepared for, and specific to, a particular entity; the titleholder with operational control. These regulatory documents are based on the corporate policies, management systems, contracts and arrangements of that entity and reflect the way in which they will oversee and manage the relevant components of the activity from the perspective of well integrity and/or environmental management.

NOPSEMA has prepared separate guidance specific to considerations for a change in operator for an operating facility see the *Replacement of a registered operator for an operating facility* guidance note (GN0619). While that guidance note focusses on operating facilities under the safety case regime it is underpinned by the same fundamental principle; that documents relevant to management of a facility are specific to the entity with operational control of that facility.

This guidance does not apply to circumstances where there is no change to the titleholder with operational control of an activity, e.g. where an interest held in a title by a titleholder that does not have operational control is transferred to another entity that will not have operational control.

This guidance note provides general advice to the offshore petroleum industry about the approach that NOPSEMA takes in carrying out its regulatory functions under the OPGGS Act and associated regulations. It should not be relied on as advice on the law, nor treated as a substitute for independent legal advice in any relevant situation.

2 Introduction

A WOMP and/or EP accepted by NOPSEMA details the way in which the titleholder with operational control proposes to oversee the operational aspects of an activity. Under an objective-based regime and in accordance with the relevant regulations,¹ the corporate policies, management systems, and arrangements with contractors and third parties of the titleholder with operational control play a collective and substantial role in demonstrating how risks will be managed under a WOMP or EP. This includes how risks associated with activities will be managed to a level that is as low as reasonably practicable (ALARP), which is a key requirement under the relevant regulations.

¹ For this Guidance Note, the relevant regulations are the Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011 (RMA Regulations) and Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (Environment Regulations).

Examples of instances where there may be a change to the titleholder with operational control are outlined below.

Change to the titleholder with operational control of a well and/or petroleum activity

Changes to the titleholder with operational control can occur under a number of scenarios, which may include, but are not limited to:

- Transfer of operational control from one existing titleholder to another existing titleholder for the title on which the activity is taking place; or
- Sale of part or all of a titleholder's interest in a title to another entity which results in the incoming entity becoming a titleholder and assuming operational control; or
- An existing titleholder with operational control being purchased by another entity. The entity holding the title remains unchanged, but the entity comes under new ownership by a different parent company.

In conducting regulatory activities, NOPSEMA deals predominantly with the titleholder that has operational control of an activity, as this is the entity that manages the operational risks associated with well and petroleum activities.

Where there is more than one titleholder for a title, the titleholder that has operational control of an activity is ordinarily the titleholder nominated to take eligible voluntary actions² on behalf of the titleholder group and is generally the entity that will prepare a WOMP and/or EP for submission to NOPSEMA.

NOPSEMA encourages titleholders to consider the need to ensure that a revised WOMP and/or EP can be accepted by NOPSEMA to coincide with any proposed change to the titleholder that has operational control of an activity. Early consideration of compliance matters that may arise as a result of a change to the titleholder with operational control will ensure that revised submissions can be prepared and submitted for consideration by NOPSEMA before those arrangements are finalised, or before they take effect.

Mechanisms to achieve this outcome are discussed in further detail below.

3 Regulatory requirements

The OPGGS Act and regulations place duties and responsibilities on all holders of a petroleum title, irrespective of which holder has operational control. For this reason, transfers in operational control may have implications for all relevant parties, all of whom have an interest in ensuring an effective transfer of operational control. Collaboration and open sharing of information between relevant parties is encouraged to ensure that regulatory risks associated with a transfer of operational control are able to be effectively managed.

² Submissions made in relation to WOMPs and EPs are eligible voluntary actions under Part 9.6A of the OPGGS Act. Accordingly, the titleholder making any such submission to NOPSEMA must be the titleholder nominated by all of the holders of the title under section 775B of the Act or the submission must be made jointly by all titleholders.

3.1 Requirement to comply with a WOMP and/or EP in force

The RMA and Environment Regulations require titleholders to comply with and undertake activities in accordance with regulatory documents in force for that activity. The below requirements apply at all times, unless NOPSEMA has consented in writing to the undertaking of the activity in another specified manner.³

Regulation 5.05 – RMA Regulations

Requirement to undertake activities in accordance with well operations management plan

- (1) A titleholder commits an offence if:
 - (a) the titleholder undertakes a well activity in a title area; and
 - (b) the well activity is regulated by:
 - (i) one or more requirements of the well operations management plan in force for the well; or
 - (ii) one or more conditions to which the acceptance of the plan was subject; or
 - (iii) both requirements and conditions; and
 - (c) the titleholder does not undertake the activity in accordance with the requirements, conditions or both that regulate the activity.

Penalty: 80 penalty units

Regulation 7 – Environment Regulations

Operations must comply with the accepted environment plan

- (1) A titleholder must not undertake an activity in a way that is contrary to:
 - (a) the environment plan in force for the activity; or
 - (b) any limitation or condition applying to operations for the activity under these regulations.

3.2 Requirements to submit a revised WOMP and/or EP

There are numerous requirements for submission of a revised WOMP and/or EP under the RMA and Environment Regulations. Some of these requirements are relevant to instances where there is a change proposed to the titleholder with operational control of a well and/or petroleum activity. These relate to the manner in which impacts and risks are to be managed under a WOMP and/or EP and are summarised as follows:

³ Consent to operate in another specified manner are separate provisions under regulation 5.05 of the RMA Regulations and Regulation 7 of the Environment Regulations.

⁴ As at March 2017, certain transitional arrangements apply to WOMPs which, in some instances, will require submission of a new WOMP rather than a revised WOMP. Should clarification be required, please contact NOPSEMA.

Regulation 5.10 (2) – RMA Regulations

A titleholder must (except when the regulator has consented under subregulation 5.05(5)) submit to the Regulator a proposed revision of a WOMP that is in force for a well in the title area, before making a significant change to the manner in which risks to the integrity of the well are reduced to as low as reasonably practicable.

Note: The titleholder must undertake activities in accordance with the well operations management plan in force for the well, except when the regulator has consented to the titleholder undertaking an activity in

Regulation 17(7) – Environment Regulations

Change in titleholder

If a change in titleholder will result in a change in the manner in which the environmental impacts and risks of an activity are managed, the new titleholder must submit a proposed revision of the environment plan for the activity as soon as practicable.

Regulation 5.05 of the RMA Regulations and regulation 7 of the Environment Regulations require the titleholder to maintain compliance with an in force WOMP and/or EP on an ongoing basis. The revision provisions outlined above do not remove or influence this ongoing requirement, even where a revised plan has been submitted to NOPSEMA and is under assessment.

4 Maintaining continuity of compliance

As detailed in section 3, it remains the responsibility of the titleholder to ensure compliance with WOMPs and EPs is maintained on an ongoing basis. Transfers of operational control of well and petroleum activities represent points in time where there is potential for increased risk of non-compliance with these requirements. NOPSEMA provides the following advice to all relevant parties who may be considering a transfer in operational control.

4.1 Timely submissions to NOPSEMA

NOPSEMA considers that, in the event there is a proposed change in the titleholder with operational control of an activity, one of the existing holders of the title should submit a revised WOMP and/or EP which details how the activity is proposed to be managed under the new operational control, in advance of the change. To ensure that compliance can be demonstrated on an ongoing basis, it is recommended that operational control of the activity is not transferred until the revised WOMP and/or EP can be accepted by NOPSEMA.

Under the RMA Regulations and the Environment Regulations, only a titleholder can submit an EP or WOMP to NOPSEMA for assessment.⁵ This means that relevant parties should consider any issues relating

⁵ An exception to this is that applicants for certain types of titles can submit an EP to NOPSEMA for assessment (limited to access authorities, special prospecting authorities and pipeline licences). However, this is not relevant for title transfers regarding existing assets, for example, within a production licence.

to regulatory submissions that may arise early in any transfer process and implement a strategy to manage the transition.

NOPSEMA notes that submissions can be made by an existing titleholder:

- for a proposed change in operational control to another existing titleholder for the title on which the activity is taking place
- for a proposed change in operational control to an entity to whom interest in all or part of a title is being transferred
- for a proposed change in operational control as a result of a change of parent company.

The above submissions require facilitation and agreement between the existing titleholder with operational control and the entity who is proposing to assume operational control of an activity. Therefore early consideration and coordination between relevant parties, NOPSEMA and, where applicable, the National Offshore Petroleum Titles Administrator (NOPTA) is essential.

In any period prior to NOPSEMA's acceptance of the revised WOMP and/or EP, it remains the responsibility of all titleholders to ensure that arrangements are put in place to maintain and demonstrate compliance with all legislative and regulatory requirements applicable to the activity.

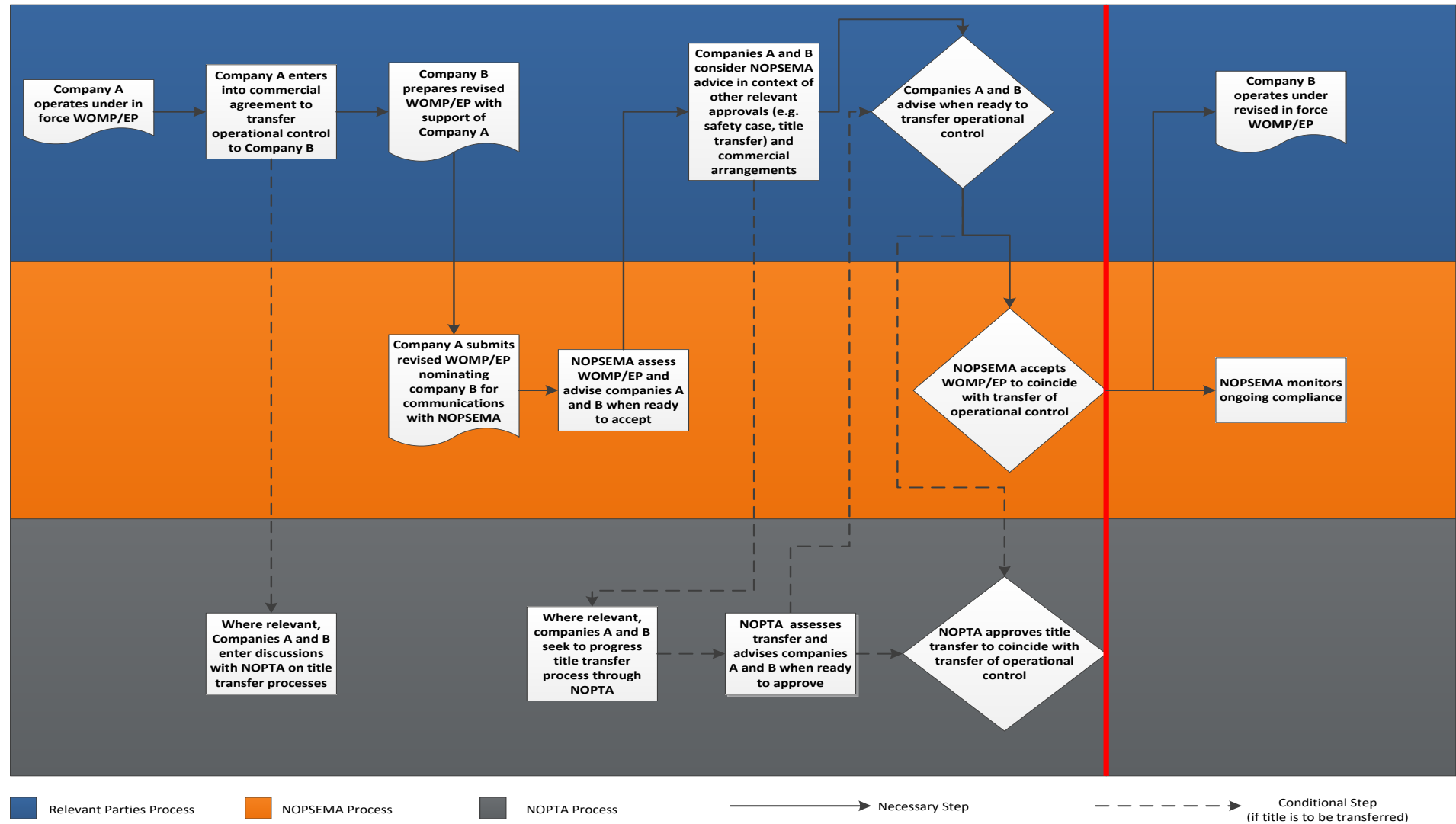
NOPSEMA will advise titleholders once it reaches a decision point where it is ready to accept revised plans. This advice may be used to ensure that NOPSEMA's acceptance of documents can be timed to align with the relevant change in operational control taking effect.

Relevant parties should consider how WOMP and EP assessment and decision making processes may interact with other key requirements relevant to an activity such as requirements to maintain and demonstrate sufficient financial assurance for a title. Relevant parties are encouraged to engage with NOPSEMA throughout regulatory processes to ensure that decisions are able to be scheduled in a logical manner that facilitates continuity of compliance.

Relevant parties should also consider the interaction between regulatory requirements administered by NOPSEMA with the processes to seek approval and registration of a transfer or dealing by NOPTA (see section 5 for further information).

A process illustrating how a transfer in operational control could be managed is represented in Figure 1 below.

Figure 1 – Potential process for transfer of operational control



4.2 Early consideration and access to information

NOPSEMA recognises that transfers in operational control can extend over long periods of time. It is therefore important to recognise that potential risks to scheduling and cost may arise where maintenance of ongoing compliance with regulatory requirements is not considered early in a transfer process and effectively managed throughout. Where ongoing compliance is considered early as a part of due diligence processes, parties will be in a position to avoid the risk of non-compliance.

The following may assist in ensuring this outcome is achieved:

- Relevant parties have access to the in force WOMP and/or EP and are aware of all commitments and requirements under the plan(s).
- Relevant parties have access to other regulatory compliance related information that may assist in understanding how commitments and requirements under in force WOMPs and/or EPs are being monitored and met.
- Relevant parties ensure that appropriate expertise relevant to regulatory compliance under the OPGGS Act regime is obtained early in a transfer process and retained throughout.
- Relevant parties are able to have submissions made in a timely manner with sufficient time before a change in operational control is proposed to occur.

4.3 Managing transitional periods

During any transfer of operational control there is likely to be a transitional period where the management systems of the outgoing party are progressively replaced by those of the incoming party. It is therefore likely that relevant parties will enter into arrangements, such as a transitional services agreement, to effectively manage the transition. It is important to ensure that transitional arrangements are structured in a way that maintains continuity of compliance and that, where relevant, these arrangements are appropriately reflected in WOMPs and/or EPs for the activity.

5 Other advice

5.1 Compliance and enforcement

Under the OPGGS Act, where there is more than one registered holder of a petroleum title, all titleholders are jointly and severally liable to meet all obligations, requirements and liabilities under the title. This includes circumstances where there is more than one registered holder for a title, but only one titleholder with operational control of activities conducted under that title.

Relevant parties should note that NOPSEMA may, at any time, conduct an inspection to ensure that an in force WOMP and/or EP is being complied with.⁶ In the event that compliance cannot be demonstrated, NOPSEMA may take enforcement action. Further details on enforcement tools available and NOPSEMA's approach to enforcement are detailed in NOPSEMA's Enforcement policy (PL0067).

⁶ These inspections are undertaken in accordance with NOPSEMA's inspection policies, as follows: PL1523 - Inspection policy, PL0973 - Petroleum environmental inspections policy and PL1422- Well integrity planned inspection policy.

5.2 Non-ongoing activities

This guidance note is relevant to all petroleum and well activities being undertaken at the time that a change to the titleholder with operational control is proposed to take effect. If there is a WOMP and/or EP in force but no activities are currently taking place under that plan (e.g. short term exploration activities), the titleholder may elect to make a submission in advance of a change of operational control (as outlined above). The titleholder may alternatively elect to submit a revised WOMP and/or EP after the change in operational control has taken effect and manage this through the normal submission process. Unless compliance can be demonstrated with the in-force WOMP and/or EP, titleholders will need to have revised plans accepted before any activities are conducted.

5.3 Ongoing compliance with the facility safety case

As detailed in the scope of this guidance note, NOPSEMA has prepared separate guidance specific to considerations for a change in operator for an operating facility (GN0619). NOPSEMA recognise that a change in operator of an operating facility may take place in conjunction with a transfer of operational control of a well or petroleum activity. Titleholders and facility operators should ensure that appropriate arrangements are put in place to maintain and demonstrate compliance with all legislative and regulatory requirements, including in force WOMPs, EPs and safety cases, on an ongoing basis.

5.4 Transfers and dealings in petroleum titles – NOPTA

NOPTA has responsibility for the assessment, approval and registration of transfers and dealings in petroleum titles in accordance with Part 4.3 and Part 4.6 of the OPGGS Act. Transfers and dealings can, but do not always, give effect to changes in the titleholder with operational control of activities.

It is the responsibility of the applicant for a transfer or dealing to manage the timings of separate NOPTA and NOPSEMA regulatory processes and any risks that may arise from this. Where a transfer of operational control involves a transfer of title, titleholders are encouraged to keep NOPSEMA and NOPTA up to date with the progress of applications, including anticipated dates for transfer of titles.

Applicants should allow sufficient time for the transfer and dealing applications to be considered by NOPTA.

For further information regarding NOPTA's processes see NOPTA's Transfers and Dealings guideline.

5.5 Engaging with NOPSEMA

NOPSEMA's approach to compliance includes provision of advice to industry on how to meet regulatory requirements and improve safety, well integrity and environmental outcomes. NOPSEMA is readily available to meet with companies to discuss their particular circumstances.

It should be noted that NOPSEMA will not discuss with a non-titleholder (regardless of whether they may become a titleholder in the future) any information which has been submitted to NOPSEMA under law by another entity and which is held by NOPSEMA for regulatory purposes. An exception to this is where a non-titleholder is accompanied by a person authorised to represent the current titleholder or that titleholder has provided its express agreement in writing authorising access to those documents. In the absence of such an agreement, discussions prior to a company becoming a titleholder will be limited to requirements of the legislation and regulations.

6 References, acknowledgments and notes

Offshore Petroleum and Greenhouse Gas Storage Act 2006

Offshore Petroleum and Greenhouse Gas (Environment) Regulations 2009

Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011

Offshore Petroleum and Greenhouse Gas (Safety) Regulations 2009

Environment Alert 2: Failure to comply with environmental management requirements due to titleholder asset ownership changes

N-01000-GN0619 - Replacement of a registered operator for an operating facility

N-05000-PL0067 - Enforcement

N-02000-PL1523 - Inspection

N-02200-PL0973 - Petroleum environmental inspections

N-02300-PL1422 - Well integrity planned inspection

Offshore Petroleum Guideline - Transfers and Dealings Relating to Petroleum Titles available at:
http://www.nopta.gov.au/_documents/guidelines/transfers-and-dealings-guideline.pdf