



Offshore petroleum legislation.

10 OFFSHORE PETROLEUM LAW IN AUSTRALIA A GUIDE FOR INVESTORS

In Australia offshore petroleum rights are owned by the Commonwealth government, with State, Northern Territory and Commonwealth governments jointly administering a regulatory regime which grant permits and licenses to companies to explore and exploit petroleum in offshore areas.

Responsibility for petroleum operations in Australia's offshore areas beyond three nautical miles from the coastal baseline rests with the Australian Government and is governed by Commonwealth legislation, primarily the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

Australian offshore petroleum legislation provides for orderly exploration and development of petroleum resources by establishing the rights, entitlements and responsibilities of governments and the petroleum industry.

Australian governments neither undertake offshore petroleum projects nor engage in commercial petroleum exploration and development. Australian governments consider their role as:

- › providing a regulatory framework for the exploration and development of petroleum, including safety and environmental aspects;
- › reducing commercial risk in petroleum exploration by collecting and disseminating geo-scientific information; and
- › examining opportunities to enhance industry competitiveness.

The legal and regulatory framework for offshore petroleum exploration and development in Australia is a result of an agreement between the States,

Northern Territory and Commonwealth governments to divide regulatory responsibilities between them. An overview of this, as well as links to more comprehensive information on the governmental legal and regulatory framework in place for offshore petroleum exploration, development and production in Australia, can be found at http://www.ret.gov.au/resources/upstream_petroleum/Pages/UpstreamPetroleum.aspx

Areas onshore and out to three nautical miles from the coastal baseline are the sole responsibility of State and Northern Territory Governments. State and Northern Territory systems vary but generally a two-stage system of exploration permit and production licences has been adopted. However, the minimum area, initial term of the permits, and charges and royalties levied, vary between jurisdictions.

OFFSHORE PETROLEUM REGULATORY REGIME

The Joint and Designated Authorities

The division of regulatory responsibility between the State/Northern Territory and Commonwealth governments is managed through the Joint and Designated Authorities arrangements. For the primary offshore areas, the Joint Authority consists of the Commonwealth and relevant State or Northern Territory minister. For the Eastern Greater Sunrise and external territories' offshore areas, the Joint Authority is the Commonwealth Minister only. The Joint Authority is responsible for most of the major decisions made under Australian offshore petroleum legislation including

awarding acreage for exploration and granting other petroleum titles.

The Joint Authority also designates the relevant state or Northern Territory minister as the Designated Authority. The Designated Authority is responsible for the day to day administration of offshore petroleum activities in accordance with the offshore petroleum regulatory regime.

Releasing Petroleum Exploration Acreage

The sustainable annual release of quality petroleum exploration acreage, to provide the global petroleum exploration industry with a variety of investment opportunities, is a key objective of the Australian government. As part of the acreage selection process, industry stakeholders are invited to nominate vacant areas to be considered for inclusion in the annual *Offshore Petroleum Exploration Acreage Release* (Acreage Release). Information on the current Acreage Release can be found at www.petroleum-acreage.gov.au

Except for environmentally sensitive areas, such as the Great Barrier Reef, offshore petroleum operations are permitted on most parts of the continental shelf. Operations must comply with the requirements and standards set by law and factors such as navigation, fisheries and environment are carefully considered, particularly where petroleum production is proposed.

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Work Program Bidding

The Joint Authority invites competitive work program-based bids for offshore petroleum exploration acreage. The primary objective in awarding an exploration permit is to select the bid most likely to achieve the fullest assessment of the petroleum potential within the permit area in the minimum guaranteed period of the permit.

Under this system, an applicant is required to propose an exploration program over six years. The first three year period of the program is known as the "minimum guaranteed work program." All the work in the first three years must be completed and satisfactorily reported to avoid cancellation of the permit. The applicant also identifies a 'secondary' work program to cover the second three years of the permit. The secondary work program becomes guaranteed upon entry into each secondary year.

Petroleum Titles

The OPGGSA makes provision for five basic types of petroleum title:

- 1. Exploration Permits** – provide exclusive rights to undertake geological and geophysical work to explore for petroleum, including seismic surveys and exploration drilling in a defined area;
- 2. Production Licences** – granted to the holder of an exploration permit or retention lease, for the recovery of petroleum following a commercial discovery;
- 3. Retention Leases** – granted to the holder of an exploration permit, who discovers petroleum but where the discovery is assessed as not currently commercially viable but is expected to become so within 15 years;
- 4. Infrastructure Licences** – granted to companies to enable them to carry out activities such as petroleum processing in areas not covered by their petroleum title; and
- 5. Pipeline Licences** – granted for the transport of petroleum by pipeline between facilities or to processing plants.

In areas not covered by titles, companies may be granted a Special Prospecting Authority to undertake seismic or other geophysical or geochemical survey work. This is a non-exclusive right to acquire geophysical data in an area. A Special Prospecting Authority over an area does not provide any rights in relation to the award of an exploration permit.

Exploration Permits

Exploration permits are issued for an initial six year term and, in most circumstances, may be renewed for a further two terms, each of five years. At each renewal the title holder will be expected to relinquish a portion of the permit area, generally 50%.

Once a permit has been granted (or renewed) under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, there are a number of conditions that apply to the continuing administration of the permit. This information is set out in the *Permit Condition and Administration Guidelines*, which can be found at www.petroleum-acreage.gov.au

If the exploration permit holder discovers petroleum they must notify the Designated Authority and provide details of the discovery. They can then apply to have a location declared over the discovery as a prelude to applying for a production licence or retention lease. If the discovery is commercially viable the permittee may apply for a production licence. Alternatively, if the discovery is not currently commercially viable the titleholder may apply for a retention lease.

Production Licences

If the permittee considers the discovery to be commercial they may apply for a production licence which allows them to produce petroleum from the licence area. The permittee has two years (and up to four years) after the declaration of a location in which to apply for a production licence and provide details of development proposals for the area. New production licences are issued for an indefinite term ('life of field'), but may be terminated if there is no production for a period of five years.

Retention Leases

If a permittee makes a discovery that is assessed as currently non-commercial but likely to become commercially viable within the next 15 years, the permittee may apply for a retention lease rather than a production licence. As with a production licence, the permittee has two years (and up to four years) after declaration of the location in which to apply for a retention lease and provide an assessment of the commercial prospects of the discovery.

Retention leases are issued for five year terms with renewal periods of five years. When applying for a retention lease and at each renewal of the lease, the lessee must demonstrate to the Joint Authority that the discovery is currently not commercial to develop but is likely to become commercially viable within the next 15 years.

Infrastructure Licences and Pipeline Licences

The Joint Authority may grant infrastructure licences to enable a company to build infrastructure to carry out activities such as gas compression, conversion of gas to LNG or methanol or storing or processing petroleum, in areas which are outside the area covered by their production licence.

The Joint Authority may also grant pipeline licences to allow the licensee to build and operate a pipeline to transport petroleum to onshore or offshore facilities. Both infrastructure and pipeline licences are granted for an indefinite duration but a pipeline licence may be cancelled if it is not used for a continuous period of five years.

Guidelines for Production, Infrastructure and Pipeline Licences and for Retention Leases are available at http://www.ret.gov.au/resources/upstream_petroleum/Pages/UpstreamPetroleum.aspx

Titleholder Obligations

The legislation provides that all titleholders must carry out operations according to good oilfield practice, including carrying out operations in a manner that is safe and prevents the escape of petroleum into the environment. In order to retain title, conditions of work must be met and annual rental fees paid.

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Additional information which may interest potential investors on matters relating to the Commonwealth's offshore petroleum legislation is contained in:

- › the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, as amended from time to time, the associated Explanatory Memoranda and Second Reading Speeches;
- › Administrative Guidelines issued to assist with the administration of the legislation and regulations;
- › the *Petroleum Resource Rent Tax Assessment Act 1987*; and
- › prospective applicants should be aware of the Special Notices that are set out in the Guidance Notes for Applicants' section of the current "Acreage Release Package".

A full list of Commonwealth, State and Northern Territory legislation and regulations in force as well as administrative guidelines and other information can be found on the Department of Resources, Energy and Tourism website at <http://www.ret.gov.au/offshorerresourceslegislation>

