



**Australian Government**  
**Department of Industry, Science,  
Energy and Resources**

# Guideline: Trailing liability for decommissioning of offshore petroleum property

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

Effective 2 March 2022

This document has been developed as a general guide only. It is subject to, and does not replace or amend the requirements of, the [Offshore Petroleum and Greenhouse Gas Storage Act 2006](#) and associated regulations, which should be read in conjunction with this guideline.

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This document has been prepared by the [Department of Industry, Science, Energy and Resources](#). It will be reviewed and updated as required.

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# 1. Introduction

1.1. Decommissioning is a normal activity in the lifecycle of an offshore petroleum project. Its purpose is to remove or otherwise satisfactorily deal with structures, equipment and property previously used to support oil and gas activities in the offshore area. This includes:

- plugging and abandoning wells
- removing property
- rehabilitating the site
- carrying out any necessary monitoring.

These activities must be done in a safe and responsible manner. For more information, see the Guideline: Offshore petroleum decommissioning.

1.2. The Australian Government announced in April 2021 that it would enhance Australia’s framework for the decommissioning of offshore oil and gas infrastructure.<sup>1</sup> This would involve a suite of policy measures to strengthen and build on the existing provisions for decommissioning in the [Offshore Petroleum and Greenhouse Gas Storage Act 2006](#) (OPGGs Act) and regulations.

1.3. The Australian Parliament passed amendments to the OPGGS Act in August 2021 to implement some key elements of the framework. The amendments included provisions to expand the existing remedial direction provisions under the OPGGS Act. This enables former titleholders, related bodies corporate or related persons of current or former titleholders, to be called back to undertake remedial work, if required. These provisions are referred to through this guideline as the ‘trailing liability provisions’. For more information on related persons, see Section 3: [Trailing liability](#).

1.4. The government expects titleholders to proactively plan for decommissioning at all times during the lifecycle of a petroleum activity. Titleholders must undertake due diligence when selling their assets to other entities. The strengthened trailing liability provisions ensure that the risks and liabilities of petroleum activities remain the responsibility of the petroleum industry.

1.5. The expanded remedial direction provisions are in effect from 2 March 2022. They apply to titles, and their relevant titleholders and related persons, as they existed on or after 1 January 2021. Please see Section 3: [Trailing liability](#)

1.6. Remedial directions can also be issued in relation to titles that ceased to be in force, and/or to titleholders that ceased to hold a title, before 1 January 2021. Please see Section 4: [Trailing liability – ownership ceased before 1 January 2021](#)

1.7. The suite of policy measures announced by government will strengthen the decommissioning policy and regulatory framework overall and ensure early planning and appropriate funding is in place to meet decommissioning obligations. In the context of the strengthened regime, trailing liability is intended as an option of last resort and is expected to be used rarely. The primary obligation to decommission will remain with the current titleholder.

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<sup>1</sup> <https://www.minister.industry.gov.au/ministers/pitt/media-releases/enhancing-offshore-oil-and-gas-decommissioning-framework>

## 2. Purpose

2.1. This guideline aims to clarify:

- who can be subject to a remedial direction
- when and how the trailing liability provisions may be applied.

2.2. The strengthened trailing liability provisions in the OPGGS Act are broad. This guideline does not replace, nor limit, the OPGGS Act and associated regulations. The guideline does not constrain the powers of the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) or the responsible Commonwealth Minister.

2.3. The government recognises that policies such as trailing liability may have an impact on how commercial arrangements, including mergers and acquisitions, are structured. This guideline aims to clarify the scope of the trailing liability provisions and provide general information on how these provisions may be applied.

## Application of guideline

2.4. This guideline focuses on the revised trailing liability provisions that apply to

- offshore petroleum titleholders (including former titleholders)
- related bodies corporate
- related persons<sup>2</sup>

that have, or had, an interest in, or in relation to an offshore petroleum title from 1 January 2021.

2.5. Different provisions apply for entities that ceased to hold a title, wholly or in part, prior to 1 January 2021. These arrangements are set out in Section 4: [Trailing liability – ownership ceased before 1 January 2021](#).

2.6. This guideline applies to all petroleum structures, equipment, wells and other property brought into the area under the authority of a title granted under the OPGGS Act, during any stage of operations. These items are collectively referred to hereafter as **‘property’**.

2.7. This guideline relates to property that was first installed for the purpose of exploring for, or exploiting, offshore petroleum. It is part of a suite of government documents outlining the requirements for decommissioning of offshore petroleum property.

2.8. The trailing liability provisions for greenhouse gas storage activities have also been expanded. A separate guideline will be developed relating to property installed for greenhouse gas storage purposes.

2.9. This guideline is part of a suite of measures to enhance the framework for decommissioning of offshore oil and gas activities. The department will commence a review of the guideline 12-months after commencement to ensure that the guideline is fit for purpose and appropriately reflects other new policy measures which are being implemented.

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<sup>2</sup> [Related persons](#) are persons who have been identified as a related person via a [related persons determination](#).

## 3. Trailing liability

3.1. Trailing liability is designed to ensure that the costs and liabilities associated with decommissioning will be borne by the petroleum industry and do not become the responsibility of Government or the Australian community.

3.2. This policy will ensure that such costs are incurred by:

- titleholders
- related bodies corporate
- related persons who
  - acted jointly with the titleholder
  - derived a significant financial benefit from the title
  - had the ability to influence activities under the title.

3.3. Decommissioning is the responsibility of titleholders. Titleholders are required to:

- remove property brought into the title area for operations authorised by the title in accordance with the provisions of section 572 of the OPGGS Act, or
- have made alternative arrangements in relation to that property that are satisfactory to NOPSEMA.

Titleholders must complete the removal of property prior to the surrender of title, in accordance with section 270 of the OPGGS Act.<sup>3</sup>

3.4. The remedial directions provisions in Part 6.4 of the OPGGS Act are used to implement trailing liability. These provisions set out the matters in relation to which NOPSEMA and the responsible Commonwealth Minister may require persons to take action.<sup>4</sup>

3.5. Any entity that holds or held a title on or after 1 January 2021 is subject to the trailing liability provisions. Similarly, the trailing liability provisions also apply to all related bodies corporate and related persons from 1 January 2021.

3.6. Different provisions apply for entities that ceased to hold a title, wholly or in part, prior to 1 January 2021. See Section 4: [Trailing liability– ownership ceased before 1 January 2021.](#)

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<sup>3</sup> Titleholders should be aware that section 572 of the OPGGS Act also requires removal of property that is no longer used, nor to be used, for activities under the title – this requirement may be enforced at any time it is relevant. The government will not ordinarily issue remedial directions to someone other than the current titleholder in the case of a title that still has ongoing petroleum activities.

<sup>4</sup> NOPSEMA may issue a direction in relation to matters set out under section 586 or section 587. The responsible Commonwealth Minister may issue a direction in relation to matters set out under section 586A and section 587A so long as the direction is given for a purpose that relates to resource management or resource security.

## When trailing liability will be used

3.7. Trailing liability provisions operate in the context of a rigorous regulatory regime that has many checks and balances. It aims to minimise the risk of the current titleholder's non-compliance with decommissioning requirements under the OPGGS Act and regulations. This includes:

- screening of incoming titleholders
- ongoing oversight of financial assurance<sup>5</sup>
- reporting and compliance monitoring of commitments in permissioning documents
- directions.<sup>6</sup>

3.8. Trailing liability is intended to be a last resort option. It should be employed when no other effective avenues<sup>7</sup> for remediation by the current titleholder are available, or where there is no current titleholder.

3.9. Trailing liability provisions may be used where:

- a current titleholder has failed to decommission in accordance with regulatory requirements
- issues arise in relation to previously decommissioned property.

3.10. In this guideline, we will refer to the use of trailing liability provisions in the following categories:

- Failure to decommission
  - Example: if a titleholder was to go into liquidation and obligations were not met, or if a title ceases to be in force prior to completing decommissioning activities.
- Residual issues
  - Example: if a previously plugged and abandoned well has a leak or impacts arise from a previously decommissioned activity.

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<sup>5</sup> Financial assurance for petroleum activities is required by s571 of the OPGGS Act.

<sup>6</sup> To view other relevant guidance, please visit [NOPTA.gov.au](http://NOPTA.gov.au) and [NOPSEMA.gov.au](http://NOPSEMA.gov.au).

<sup>7</sup> Avenues of remediation may include enforcement action under the OPGGS Act and associated regulations by the regulator, NOPSEMA, or general or remedial directions to the current titleholder.

## Trailing liability is enduring

3.11. In relation to titles that are, or have been, in force on or after 1 January 2021, the trailing liability provisions under the OPGGS Act can be applied on an ongoing basis. This includes where a title has:

- expired
- been wholly or partly revoked
- been wholly or partly cancelled
- been wholly or partly surrendered<sup>8</sup>
- been wholly or partly terminated.

3.12. A person could be issued with a remedial direction at any point after their involvement in the title has ceased.

3.13. The trailing liability provisions apply in relation to property brought in to the title area and operations authorised by the title. If a new title not derived from the previous title is awarded over the same geographic area, a remedial direction in relation to the property that was installed or drilled under the previous title cannot be issued to:

- the holder of the new title
- their related bodies corporate
- related persons involved with that title.

In this case, a remedial direction could be issued to a former holder of the previous title, a related body corporate or related person involved with the previous title.

## Equipment re-purposed or left in-situ

3.14. Any property that remains in the title area after a title has ceased to be in force may be the subject of a remedial direction. This includes:

- wells which have been permanently plugged and abandoned
- property which has been left in situ
- property that has been re-purposed for other activities under the OPGGS Act or another legislative regime.

3.15. This does not include property which was installed or drilled under a previous title – see section 3.13.

3.16. Where offshore petroleum property has been repurposed and is regulated for greenhouse gas storage activities or under another legislative regime, this will not prohibit a remedial direction being issued under Part 6.4, Division 1 of the OPGGS Act. This includes, but is not limited to:

- re-use of assets within the offshore petroleum regime
- re-purposing of property to facilitate greenhouse gas storage activities
- re-purposing of property under other legislative regimes
- where permission has been given to leave items in situ under the [Environment Protection \(Sea Dumping\) Act 1981](#).

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<sup>8</sup> That is, where a consent to surrender has been provided in accordance with section 270 of the OPGGS Act.

3.17. Where NOPSEMA has accepted a titleholder's proposal to leave property in situ within a title area, trailing liability provisions will only be applied where changed circumstances raise concern about the previously decommissioned property. This could include, but is not limited to:

- a previously plugged and abandoned well that is leaking
- property left in situ which is causing damage to the seabed or subsoil in the vacated title area.

3.18. A decision to issue a remedial direction in re-use situations will be considered on a case-by-case basis. Depending on individual circumstances, the government may consider remediation options under other legislative regimes in the first instance. The trailing liability provisions under OPGGS Act remain as a measure of last resort.

3.19. The trailing liability provisions apply to property brought into the area under petroleum titles only. It will continue to apply to that property if it is reused in the same area but will not apply to property brought in under different legislation.

3.20. NOPSEMA is the health and safety, well integrity and environment management regulator for offshore petroleum, greenhouse gas storage and electricity infrastructure. Approvals from NOPSEMA must be sought in regard to both cessation and commencement of using equipment for activities under these regimes.

3.21. NOPSEMA will take a case by case approach to projects proposing to reuse or re-purpose equipment that is currently regulated under the OPGGS Act. Proponents are encouraged to engage with NOPSEMA early in their planning regarding the suitability of equipment for re-use. Approvals under other regulatory regimes may also be required.

## Liability for future activities

3.22. The trailing liability provisions under the OPGGS Act are intentionally broad. The provisions apply to all property installed and wells drilled in a title area. They ensure decommissioning costs are borne by the petroleum industry and do not become the responsibility of government or the Australian community.

3.23. The OPGGS Act provides for NOPSEMA or the responsible Commonwealth Minister (as applicable) (the **decision-maker**) to direct a former titleholder, related body corporate or related person to conduct relevant remedial activities. Directions may relate to actions undertaken by a person engaged or concerned in operations authorised by the petroleum title after the former titleholder ceased to be the registered titleholder, in respect of:

- property brought into the title area or vacated area
- wells made in the title area or vacated area
- damage to the seabed or subsoil in the title area or vacated area,

or for the conservation and protection of the natural resources in the title area or vacated area.<sup>9</sup>

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<sup>9</sup> Vacated area' is defined in section 14 of the OPGGS Act.

3.24. The trailing liability provisions in the OPGGS Act do not differentiate between property that was:

- in the title area at the time that person was involved and
- brought in subsequent to that person's involvement.

Note: When considering to whom to issue a remedial direction, a person's experience either installing, using or operating a specific piece of property will be considered by the decision maker, where relevant – see the [Experience with the property](#) section.

3.25. In some cases a holder of an exploration permit may not hold an interest in the subsequent retention lease or production licence derived from the exploration permit. If so, the holder of the exploration permit and their related bodies corporate or related persons can't be issued with a remedial direction with respect to property brought in or wells drilled by persons engaged or concerned in the operations of the subsequent derived titles.

3.26. A person can be given a remedial direction in relation to property brought into the title area by any person engaged or concerned in operations authorised by that title.

Note: The trailing liability provisions do not apply to property brought in under different legislation.

## Who can be issued a remedial direction?

3.27. The OPGGS Act provides for NOPSEMA or the responsible Commonwealth Minister to issue remedial directions to a range of persons that are or were connected to a title on or after 1 January 2021, including:

- the current registered holder of the title
- a related body corporate of the current registered holder of the title
- a related person of the current registered holder of the title
- a former registered holder of the title
- a related body corporate of a former registered holder of the title at the time the title was in force
- a related person of a former registered holder of the title at the time the title was in force.

3.28. Where a trailing liability could apply to any of the persons listed above, this guideline will use the term 'person' or 'persons'.

3.29. A direction may be issued to one or more persons, depending on the individual circumstances of the title and actions required.

## Titleholders, former titleholders and related bodies corporate

3.30. The current registered holder of the title is any person (including a body corporate) that is a titleholder,<sup>10</sup> either individually or with other titleholders.

3.31. A former registered holder of the title is any person (including a body corporate) that was a registered titleholder, either individually or with other titleholders, on or after 1 January 2021, but is no longer registered as a holder of that title.

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<sup>10</sup> A register of titleholders is available at <https://public.neats.nopta.gov.au/Title>

3.32. 'Related body corporate' is defined in section 50 of the *Corporations Act 2001* (Corporations Act). A body corporate will be related to another body corporate if it is a holding company of that body corporate, a subsidiary of that body corporate, or a subsidiary of a holding company of that body corporate.

3.33. 'Subsidiary' is defined in section 46 of the Corporations Act. It provides that a body corporate is a subsidiary of another body corporate if that other body:

- a) controls the composition of the first body's board, or
- b) is in a position to cast or control the casting of more than one-half of the maximum number of votes that might be cast at a general meeting of the first body, or
- c) holds more than one-half of the issued share capital of the first body.

The definition of 'subsidiary' in the Corporations Act also provides that a subsidiary of a subsidiary of a body corporate is itself a subsidiary of that body corporate.

3.34. A direction can only be given to a person if they were related at the time the title is or was in force. This includes a person who is or was a related body corporate or is determined to be a [related person](#) of a current or former titleholder.

3.35. If a company has been dissolved and no longer exists, related entities to that company, such as related bodies corporate or related persons, may still be issued a direction.

### Joint ventures

3.36. Joint venture ownership and interest share percentages are not considered in relation to obligations of titleholders under the OPGGS Act. Where an obligation is imposed on the registered holder of a petroleum title and there are two or more registered holders, the obligation is imposed on *each* of the parties, but can be discharged by *any* of the registered holders. This is described in section 775D of the OPGGS Act.

- In practice, this means that all joint venture parties are titleholders, and as such are liable for obligations under the Act, including remedial directions.

3.37. If a remedial direction is issued, the titleholders would be required to coordinate and determine how they would meet the requirements of the direction.

- In the event that one or more of the titleholders has ceased to exist, the remaining titleholders are obligated to meet the full requirements of the remedial direction.

3.38. Depending on the individual circumstances of the joint venture, a decision-maker may issue a direction to:

- the entity nominated to receive notices or documents for the joint venture, or
- all titleholders.

However, as discussed above, the direction will apply to each of the titleholders regardless of how it is issued.

## Related persons

3.39. NOPSEMA or the responsible Commonwealth Minister may issue a remedial direction to a related person of the current or any former registered titleholder.

3.40. For the purposes of this guideline, **'related persons'** are considered to be persons that have not directly been a titleholder but:

- is, or has been at any time, in a position to influence compliance with obligations under the OPGGS Act, and/or
- have or had the capacity to derive a significant financial benefit from operations, and/or
- act or have acted jointly with the current or former titleholder in relation to activities authorised by the title.

3.41. Related persons can include companies and individuals.

3.42. The responsible Commonwealth Minister must issue a related persons determination before a remedial direction can be issued to a related person.

## Related persons determinations

3.43. Under the OPGGS Act, the responsible Commonwealth Minister may make a written determination that a person may be subject to a remedial direction.<sup>11</sup> The Minister must be satisfied on reasonable grounds that it is appropriate to do so based on criteria set out under the OPGGS Act.

3.44. The matters that the responsible Commonwealth Minister will consider when making a related person determination are:

- whether the person is capable of significantly benefiting financially, or has significantly benefited financially, from operations authorised by the title;
- whether the person is, or has been, in a position to influence compliance with obligations under the OPGGS Act;
- whether the person acts, or acted, jointly with a current or former titleholder in relation to operations authorised by the title.

A person may meet one or more of the matters listed above.

3.45. In deciding whether to make a related person determination, the Minister may not have regard to matters that relate to circumstances or events that occurred before 1 January 2021.

3.46. Whether, and in relation to whom, a determination is made will depend on the individual circumstances of each case.

3.47. Persons who are paid market value for work undertaken or goods or services provided are *not* in the scope of the trailing liability provisions. This may include:

- employees, contractors, customers, advisers or suppliers
- banks and financial institutions entering into a lending or security agreements with a company on arm's length commercial terms.

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<sup>11</sup> See OPGGS Act ss586(2B), 586A(2B), 587(2B), 587A(2B)

- 3.48. Persons such as major shareholders (including company directors) that have received a significant financial benefit from their shareholding would be within the scope for the responsible Commonwealth Minister to make a determination as a 'related person'. As a related person they may be issued a remedial direction.
- 3.49. What is considered to be a 'significant' financial benefit is considered in the context of offshore petroleum operations, such as the large profits that may be made, as well as the costs expended to undertake operations.
- 3.50. Related persons that are individuals will generally only be issued remedial directions where there is not a former titleholder or a related body corporate of the current or former titleholder who is capable of undertaking the remedial works.
- 3.51. A related persons determination is not required for NOPSEMA or the responsible Commonwealth Minister to issue a remedial direction to a current or former titleholder or a related body corporate of a current or former titleholder.
- 3.52. Depending on corporate structures, some companies (bodies corporate) that are related to a current or former titleholder may not satisfy the criteria of 'related body corporate' using the definitions within the Corporations Act. In these cases, the responsible Commonwealth Minister may consider whether the company meets the criteria to be determined a related person. If a written determination is made, the company could be issued a remedial direction.

## Considerations prior to issuing a remedial direction

- 3.53. Issuance of remedial directions under the trailing liability provisions will be targeted at ensuring that any required decommissioning is undertaken or any residual issues are addressed. Recognising that each case is different, the OPGGS Act provides the flexibility to decide which person is the most appropriate, in the individual circumstances, to be issued a remedial direction.
- 3.54. In determining to whom a remedial direction is issued, the following considerations may be taken into account:
- experience with the property
  - recency of interest in the title
  - capacity to conduct the relevant remedial actions
  - other matters considered relevant by the decision maker.

Note: these are general considerations and do not indicate a set order or sequence.

- 3.55. The factors that can be taken into account by the responsible Commonwealth Minister in making a related person determination, such as significant financial benefit, may not be relevant considerations in making the decision on whom to issue a remedial direction.

## Experience with the property

- 3.56. Wherever possible, for safety and environmental protection reasons, property should be decommissioned by a person that has expertise and experience in relation to the property.
- 3.57. When the decision maker is considering if a person has experience with the property, relevant factors may include involvement with:
- installing, managing or operating the property that requires attention, including the drilling or operation of a well
  - caring for, or maintaining, the property.

3.58. Consideration of experience will not be limited to the titleholders who directly operated the property requiring attention. For the purposes of considering who is issued with a remedial direction, the following persons are also considered to have 'experience' if they were associated with a title at the time the property was installed or in operation:

- a related body corporate or related person of a registered titleholder, such as a parent company
- all registered titleholders

and all subsequent titleholders.

3.59. However, limited or no experience with the property requiring attention does not preclude a person from being issued a direction in relation to the equipment. This includes in a situation where one or more other considerations apply that make that person suitable to be given a direction, or where that person is the only person able to be issued a direction (as may be the case in relation to property installed after a person was involved with the title).

## Recency of interest in title

3.60. Generally, a person who was more recently involved in a title will have more relevant knowledge of the operations, the work which has been or was planned to be undertaken and condition of the property.

3.61. When considering the recency of a person's interest, the decision-maker may consider how long ago the person was involved with the title and if there is a person with more recent involvement that could be issued a direction.

## Capacity to undertake the remedial actions

3.62. The decision-maker may consider factors that would impact on the ability of a person to undertake works in response to a direction in a reasonable timeframe. Depending on the nature of the works required, relevant factors may include but are not limited to:

- capacity to act swiftly in response to a time sensitive issue
- financial capacity.

Note: there may be instances where commercial arrangements are in place that make financial provision for decommissioning and remedial works – for example insurance policies, securities or commercial arrangements with a former or subsequent titleholder.

3.63. It is recognised that technical capacity can be acquired by the recipient of a remedial direction in order to comply with the direction.

3.64. The size of the company will not be given undue weight in considerations relating to the capacity of a person to act in response to a direction – for example, it would not automatically be assumed that a larger company will be more capable to decommission or remediate particular property than another person or entity.

## Other relevant considerations

3.65. NOPSEMA or the responsible Commonwealth Minister may take into account other relevant considerations in determining to whom a direction should be given. Matters will be considered on a case by case basis, having regard to the nature of the remedial activities required to be undertaken.

## Procedural fairness

3.66. Where NOPSEMA or the responsible Commonwealth Minister propose to issue a remedial direction, the principles of procedural fairness will apply. Decisions will be:

- made in accordance with the legislation;
- based on evidence; and
- fair and reasonable.

3.67. Where NOPSEMA or the responsible Commonwealth Minister propose to issue a remedial direction, the person subject to the proposed direction will be notified and provided with relevant information, including reasons for and the content of the proposed direction. The person or persons will be provided with a reasonable opportunity to respond to the proposed direction.

3.68. A copy of any issued direction will be published by NOPSEMA or the responsible Commonwealth Minister.<sup>12</sup> Published directions will not be removed when they cease to have effect, however, in the event a direction is the subject of external review, it will be removed while the review is finalised.

## Undertaking activities in compliance with remedial directions

3.69. Where a title is no longer in force, a remedial direction allows the person issued with the direction to do the required actions set out in the direction but does not confer tenure or a title.

3.70. A person who is issued a remedial direction will have the same regulatory obligations of a titleholder and will be required to:

- Prepare and have accepted by NOPSEMA all the relevant permissioning documents required for the activity undertaken to comply with the remedial direction. This may include an environment plan, well operations management plan or safety case as relevant.
- Comply with relevant provisions of the OPGGS Act and regulations including, but not limited to, holding financial assurance for the activity.
- Pay regulatory levies in accordance with the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* and *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004*.

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<sup>12</sup> Directions issued by NOPSEMA will be published at [www.nopsema.gov.au](http://www.nopsema.gov.au). Directions issued by the responsible Commonwealth Minister will be published at [www.industry.gov.au](http://www.industry.gov.au).

## Non-compliance with remedial directions

- 3.71. The person to whom a remedial direction is issued will be required to demonstrate compliance with the direction. NOPSEMA and/or the responsible Commonwealth Minister will monitor compliance to ensure that the person has met the required outcomes as set out in the direction.
- 3.72. NOPSEMA or the responsible Commonwealth Minister may take action if a direction is breached and do anything required by the direction. Any costs incurred in relation to the doing of these actions are recoverable.
- 3.73. If a person breaches a remedial direction, the OPGGS Act provides for penalties to be enforced including imprisonment, penalty units or both. The OPGGS Act provides for penalties to accumulate for each day that a person continues to be non-compliant with a direction.

## 4. Pre-existing trailing liability provisions – ownership ceased before 1 January 2021

- 4.1. Prior to commencement of the expanded remedial directions provisions on 2 March 2022, a form of trailing liability was already provided for under the OPGGS Act. This guideline will refer to this as the ‘pre-existing provisions’. The pre-existing provisions continue to apply.
- 4.2. Where a title wholly ceased to be in force before 1 January 2021, including as a result of a renewal of the title<sup>13</sup>:
- A remedial direction may be issued under the pre-existing provisions to the immediate former holder of the title. The immediate former holder of the title is the holder of the title at the time it ceased to be in force.
- 4.3. Where a title ceased to be in force in part before 1 January 2021:
- A remedial direction may be issued under the pre-existing provisions to the holder of the title at the time it ceased to be in force in part, in relation to the blocks that are no longer part of the title.
- 4.4. A direction cannot be issued to related bodies corporate and related persons under the pre-existing provisions.
- 4.5. In relation to titles that have wholly or partly ceased to be in force prior to 1 January 2021, remedial directions can be issued under the pre-existing provisions in relation to the vacated area<sup>14</sup> only if the title ceased to be in force other than by way of surrender. This includes titles that have expired, been cancelled or have been terminated.
- 4.6. In the case of an access authority or special prospecting authority that ceased to be in force prior to 1 January 2021, a direction can be issued regardless of how the title ceased to be in force.

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<sup>13</sup> The titleholder may have elected not to renew the title in relation to all blocks or in the case of renewing an exploration permit was required to relinquish blocks in accordance with the halving rules as set out in OPGGS Act Part 2.2.

<sup>14</sup> ‘Vacated area’ is defined in section 14 of the OPGGS Act.