



PETROLEUM – OIL AND GAS

Petroleum exploration and production occur both onshore and offshore to the State. Onshore petroleum activities are regulated under the *Petroleum Act 1967* (WA) (the Petroleum Act) and the *Petroleum Pipelines Act 1969* (WA) (the PPA) (where a pipeline is involved). Offshore petroleum activities are governed by the *Petroleum (Submerged Lands) Act 1982* (WA) (the WA PSLA) or the *Petroleum (Submerged Lands) Act 1967* (Cth) (the PSLA), depending on State and Commonwealth boundaries. It should also be noted that at the time of writing the PSLA has recently been reviewed by the Commonwealth government. The *Offshore Petroleum Act 2006* (Cth) (the OPA) will soon replace the PSLA but the operative provisions of the OPA had not been proclaimed at the time of writing.

What is petroleum?

Petroleum is defined in the PSLA and WA PSLA as including:

- (a) any naturally occurring hydrocarbon, or naturally occurring mixture of hydrocarbons, in a gaseous, liquid or solid state, or
- (b) any naturally occurring mixture of one or more hydrocarbons whether in a gaseous, liquid or solid state and one or more of the following:
 - (i) hydrogen-sulphide
 - (ii) nitrogen
 - (iii) helium, and
 - (iv) carbon dioxide,
 and includes any petroleum that has been returned to a natural reservoir.

The Petroleum Act follows this definition, but excludes oil shale.

Who owns petroleum?

The Crown (in effect the State) owns petroleum, regardless of whether it is found on private or Crown land.

The Crown provides a regulatory framework, through a title regime, for the exploration of petroleum and project development. As with the mining of minerals, once petroleum is extracted, ownership in the petroleum passes from the Crown to the titleholder.

Discovery and development of petroleum is carried out by the private sector.

What are petroleum activities?

Petroleum activities include any operations or works carried out under a petroleum instrument or authority. Petroleum activities include any activity relating to petroleum exploration or development which may have an impact on the environment such as drilling, construction, installation and operation of a facility and decommissioning, dismantling and removal of a pipeline.

Application of petroleum legislation

State jurisdiction

Onshore areas, including islands that fall within the boundary of Western Australia are governed by the Petroleum Act. Offshore areas that fall within the jurisdiction of Western Australia are governed by the WA PSLA. This generally covers the area from the low-water mark to the three nautical mile limit.

Commonwealth jurisdiction

The area beyond the State offshore area (as described above), to the outer limit of the continental shelf is under the jurisdiction of the Commonwealth and is governed by the PSLA.

What land and offshore areas can be the subject of petroleum activities?

Any land or offshore area in the jurisdiction of Western Australia is potentially open for petroleum exploration and production. However particular categories of land will sometimes require additional processes or consents in order for petroleum exploration and production activities to be permitted.

Private land

In most cases, entry into private land for exploration and production can be undertaken only after:

- (a) the landowner has given written consent
- (b) compensation (if any) has been agreed with the landowner.

If compensation cannot be agreed, either party may refer the matter to the Local Court.

IMPORTANT DISCLAIMER

This Factsheet is for general information purposes. Important legal details may have been omitted to provide a brief overview of this area of the law. It also constitutes work in progress as the EDO intends to update it in 2009. If you require legal advice relating to your specific circumstances you should contact the Environmental Defender's Office WA (Inc) or your solicitor. The EDO takes no responsibility for any loss or damage resulting from any error in this Factsheet.

Reserves

All reserves

Entry into land reserved under the *Land Administration Act 1997* (WA) (including a class A reserve, conservation park, national park or nature reserve) or any other written law requires the consent of the Minister for State Development who must first confer with the Minister responsible for the reserve land. The Minister for State Development may give consent subject to the inclusion of conditions in the petroleum permit, authority, lease or licence.

Aboriginal reserves

Before entering Aboriginal reserve land, an entry permit must first be obtained under the *Aboriginal Affairs Planning Authority Act 1972* (WA) from the Minister for Aboriginal Affairs.

Places and objects of cultural and spiritual significance are protected under the *Aboriginal Heritage Act 1972* (WA) (AH Act). A person wishing to use land for exploration or production of petroleum, which may disturb an Aboriginal site of cultural and spiritual significance, must comply with their obligations under the AH Act to protect such sites.

Marine reserves

The *Conservation and Land Management Act 1984* (WA) (CALM Act) provides that drilling for, or production of, petroleum in Western Australia cannot be carried out in a marine nature reserve or in certain areas of a marine park (a sanctuary area, a recreation area or a special purpose area). These prohibitions do not prevent the renewal or extension of a petroleum authorisation where the petroleum authorisation was granted, renewed or extended before the *Acts Amendment (Marine Reserves) Act 1997* (WA) commenced on 29 August 1997 or before the area was reserved or classified under the CALM Act.

Land subject to Native Title

Applications for petroleum titles in onshore areas

If proposed petroleum activities cover land where native title exists the *Native Title Act 1993* (Cth) (NTA) imposes procedural obligations on the State and applicant to enable the grant of a petroleum title to validly affect native title. Generally, the applicant must observe the "Right to Negotiate" process. Whether native title exists can be a difficult question but the State generally proceeds on the assumption that it does unless it can be shown to have been extinguished (eg by a prior grant of freehold).

Under the Right to Negotiate procedures, the Department of Industry and Resources (DoIR) will notify the native title parties of an application. Any "registered native title claimants" at the end of a three-to four-month notification period are afforded the right to negotiate with the applicant and the State about the grant. The parties must negotiate in good faith about the application. If the parties reach agreement, the petroleum title can be granted. If no agreement is reached

within six months of the notification, the matter may be referred to the National Native Title Tribunal for mediation and/or determination.

Applications for petroleum titles in offshore areas

The NTA requires that offshore grants of title and other Commonwealth actions are undertaken in a non-discriminatory manner. This means that native title holders are afforded the same procedural rights as afforded to other people holding rights and interests in the area.

The right to negotiate procedure does not apply to the grant of offshore titles. However, the Commonwealth Government undertakes consultations with native title interests as part of its release of areas for exploration, so some titles may be granted with special conditions attached to take account of native title interests.

What royalties apply to petroleum activities?

When title to minerals and petroleum is transferred from the Government to the title holders, the Government expects a return, or compensation, to be paid to the community in the form of royalties.

Petroleum royalties can be collected by both State and Commonwealth Governments, with royalties collected for onshore projects remaining with the State, and royalties collected from offshore projects generally being shared between the State and Commonwealth.

There are three main types of petroleum royalty:

- (a) Well-head royalty (based on a percentage of the value of petroleum recovered minus certain costs)
- (b) Resource Rent Royalty (RRR) (based on a percentage of net cash flow)
- (c) Petroleum Resource Rent Tax (PRRT) (a secondary tax on production based upon the cash flows of a project).

Areas covered by the PSLA are subject to PRRT, except for the North West Shelf project, which is subject to a well-head royalty. Other royalties do not apply to fields subject to PRRT.

Areas covered by the WA PSLA or Petroleum Act are generally subject to well-head royalty, except for Barrow Island operations which are subject to RRR.

What are the different types of petroleum permits/licences?

The rights conferred, procedures involved, term and area of petroleum permits/licences are generally the same for onshore and offshore titles, State and Commonwealth. The main petroleum permits/licences are as follows.

1 Petroleum exploration permit

Purpose

To explore for petroleum and carry out such operations as are necessary for that purpose. Work commitments and fees apply to exploration permits.

Where a commercially viable discovery is made, an exploration permit holder has a statutory right to be granted a Production Licence.

Term

The term of an exploration permit is 6 years. An exploration permit may be renewed for subsequent five year terms (although under the PSLA there is a maximum limit of 2 renewals). Renewals are generally on a reduced area basis.

Area

Not exceeding 400 blocks (blocks are graticules of 5 minutes of longitude by 5 minutes of latitude).

2 Production licence

Purpose

The purpose of a production licence is to recover petroleum.

Term

Production licences under the Petroleum Act are granted for 21 years and can be renewed for 21 years (on first renewal) and up to 21 years (for each subsequent renewal). Production licences under the PSLA can be held for an indefinite period so long as they are being utilised.

3 Retention lease

Purpose

A retention lease may be applied for when a petroleum discovery has been made that is not currently commercial, but may become commercial within 15 years.

A retention lease gives the holder the right to apply for a production licence in the event that the petroleum discovery becomes commercial.

Term

The term of a retention lease is 5 years and can be renewed for subsequent 5 year periods provided the title holder continues to comply with the requirements of the lease.

4 Drilling reservation

Purpose

Drilling reservations apply to onshore land in Western Australia, under the Petroleum Act. Similar to exploration permits, drilling reservations allow the title holder to carry out drilling activities.

Term

The term of a drilling reservation cannot exceed 3 years (although this term can be extended for 1 year if certain conditions are met).

5 Pipeline licence

Purpose

To construct and operate a pipeline for conveying naturally occurring hydro-carbons.

Term

Pipeline Licences under the PPA and WA PSLA are

granted for 21 years and may be renewed.

Pipeline Licences under the PSLA can be held for an indefinite period, so long as they are being utilised.

6 Infrastructure Licence (PSLA only)

Purpose

To accommodate infrastructure facilities.

Term

An infrastructure licence can be granted and held for an indefinite period, so long as it is being utilised.

Who grants the permits / licences?

DoIR is responsible to the Minister for State Development for administering the Petroleum Act and the WA PSLA. The PSLA is administered jointly by DoIR and the Commonwealth's Department of Industry, Tourism and Resources.

In order for a person or company to secure an exploration permit, they will need to take part in a competitive bidding process. From time to time, the government will invite interested parties to bid for exploration areas. The applicant that is both financially and technically able, and also submits the most comprehensive work program, will be awarded the title. Once a discovery of petroleum is made the permit holder has the right to convert that discovery into a production title (or retain it for use as a retention lease).

All applications are forwarded to DoIR which assesses the proposals and also assists the applicants with the process for obtaining government approvals.

How do I find out about petroleum permits/licences?

Under the Petroleum Act, the Minister for State Development must publish notices of the grants of permits, leases or licences in the Government Gazette. Similar requirements exist under the WA PSLA and the PSLA, in relation to the granting of a permit, lease, licence or a pipeline licence and the application for a pipeline licence. The Government Gazette is available online on the State Law Publisher website, www.slp.wa.gov.au/gazette/gazette.nsf

Applications made as part of the exploration title bidding process are regarded as strictly confidential. However, following the grant or refusal of an application, certain information from the application may be made publicly available (other than details of the financial/technical abilities of the applicant or any interpretative data), upon request made to DoIR.

If an application is being assessed by the Environmental Protection Authority (EPA) and the level of assessment is quite high (see below information about the EPA process), there will be a public review period, in which case there will be information about the application released to the public for comment.

The public should also note the provisions of the *Freedom of Information Act 1992 (WA)* and *Freedom of Information Act 1982 (Cth)* and (see Factsheet 40:

Freedom of information under Western Australian Law, and Factsheet 41: Freedom of information under the Commonwealth).

What does an applicant need to do, to gain environmental approval to carry out petroleum activities?

Environmental Management and Environment Plans

Applicants planning to carry out petroleum activities are required to submit an application to DoIR. For exploration and production proposals in State jurisdiction, DoIR requires applicants to submit an Environmental Management Plan (EMP) with their application under DoIR's Petroleum Guidelines: Environmental Assessment Processes for Petroleum Activities in Western Australia and the Australian Petroleum Production and Exploration Association's *Code of Environmental Practice 1996*. Similarly, applications for proposals in Commonwealth waters must also include an Environment Plan (EP) under the *Petroleum (Submerged Lands) (Management of Environment) Regulations 1999* (Cth) (Cth Environment Regulations).

The EP will facilitate the environmental assessment and approval process for the proposed activity. An EP must include a description of the proposed activity, environmental impacts and risks, environmental performance objectives and standards and an implementation strategy to meet those objectives.

An EMP or EP should identify any environmental effects the proposed activities may have and provide the applicant's procedures to manage, monitor and mitigate potential and actual effects. An EMP or EP should demonstrate whether the environmental risks are low and adequate management procedures are in place.

Oil Spill Contingency Plans

Where a proposal includes offshore activities, the development and approval of an Oil Spill Contingency Plan (OSCP) is required under the WA PSLA (for activities in State waters) and the PSLA (for activities in Commonwealth waters). Contingency planning for onshore activities is not currently required under petroleum legislation.

An OSCP should outline response structure, strategy and other information relevant to decision making in the event of an oil spill. An applicant will need to demonstrate that they have the resources, management structure and skills to prevent, contain and clean up oil spills.

The OSCP should be developed in consultation with relevant agencies such as the Australian Maritime Safety Authority and DoIR.

Assessment by DoIR

Before submitting an application for the proposal, a proponent should consult with DoIR's Environment Division, Petroleum Branch, in relation to the likely

environmental significance of the proposal and other relevant authorities that should be consulted.

The proponent must decide whether the proposal triggers a matter of national environmental significance and whether to refer the proposal to the Commonwealth Department of Environment, Water, Heritage and the Arts (DEWHA) under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) process. (See Factsheet 6: *Commonwealth Environmental Impact Assessment*.)

When the proponent submits the proposal to DoIR, DoIR will decide whether to refer it to the EPA for assessment under the *Environmental Protection Act 1986* (WA) (EP Act). If an EMP or EP is not submitted with the application, or if the content of the EMP or EP is insufficient for DoIR to decide whether to approve or refer the proposal, DoIR will request further information from the proponent.

How are environmental factors considered in the granting of petroleum permits/licences?

Where a proposal is submitted to DoIR in accordance with the process set out above and DoIR considers it has particular environmental significance, DoIR can refer the proposal for assessment to the Department of Environment and Conservation (WA) (DEC) and the EPA and, if required, to DEWHA.

Environmental approvals required under State legislation

Part IV Approval under the *Environmental Protection Act 1986* (WA)

Proposals that fall within State jurisdiction may be subject to assessment under the EP Act. DoIR will review the proposal and seek advice from other agencies on special issues such as fisheries or conservation areas. If DoIR considers the proposal is likely to have a "significant effect" on the environment, it will refer the proposal to the EPA for assessment under the EP Act.

The Memorandum of Understanding between DoIR and the EPA (Memorandum of Understanding) sets out the criteria used by the EPA and DoIR to determine whether a mineral exploration or mining development proposal requires referral to the EPA (Appendix 1 of the Memorandum of Understanding).

Any person can refer a proposal that is likely to have a significant effect on the environment to the EPA. A proposal can only be referred to the EPA once. Once the proposal has been referred to the EPA and the EPA has decided to assess the proposal, the proponent cannot commence the proposal until it has been approved.

When a proposal is referred to the EPA, the EPA will decide whether it is going to assess the proposal and, if so, set a level of assessment for the proposal. The EPA can decide not to assess the proposal and give comments informally instead. The DEC provides technical

assistance to the EPA, as well as recommendations on levels of assessment and Ministerial conditions.

The level of assessment set by the EPA will depend on the nature of the environmental effects and the level of public interest in the proposal.

The five levels of assessment available to the EPA are:

- (i) Assessment on Referral Information
- (ii) Proposals Unlikely to be Environmentally Acceptable
- (iii) Environmental Protection Statement
- (iv) Public Environmental Review
- (v) Environmental Review and Management Program.

There is usually a public review period for proposals that are formally assessed. Proponent documents open for public comment are available on the EPA website, www.epa.wa.gov.au/index.asp

Once the assessment process is complete, the EPA will report to the Minister for the Environment and make recommendations on managing the environmental issues and effects of the proposal. The Minister for the Environment will consult any other Ministers or decision-making authorities likely to be concerned in the outcome of the proposal then make a decision on approval taking into account the advice provided by the EPA. If the Minister approves the proposal, he or she will issue a statement which sets out the binding conditions on the proposal under the EP Act.

The EP Act allows any decision-making authority, responsible authority, proponent or other person to appeal to the Minister for Environment regarding:

- (i) a decision by the EPA not to assess a proposal;
- (ii) a decision by the EPA as to the level of assessment of a proposal; or
- (iii) the content or recommendations contained in the EPA's assessment.

If the Minister approves the proposal, the EPA will refer it back to DoIR to set any additional conditions under petroleum legislation in accordance with the requirements set out above under the heading "What does an applicant need to do in order to gain environmental approval to carry out petroleum activities?". DoIR will carry out the environmental assessment and set the environmental conditions for proposals which are not referred to the EPA, or which are referred but not assessed formally by the EPA.

Part V works approval or licence under the EP Act

Certain premises with potential to cause pollution are categorised as "prescribed premises" under the EP Act. The list of prescribed premises is found in Schedule 1 of the *Environmental Protection Regulations 1987* (WA). Premises on which oil or gas production occurs are prescribed premises. A proponent must obtain a works approval under Part V of the EP Act before commencing any work or construction that would cause the premises to become a prescribed premises.

A proponent must also obtain a licence under Part V to operate a prescribed premises.

Works approvals and licences are issued with conditions to regulate emissions or discharges which are likely to cause pollution. Such conditions usually include monitoring and reporting requirements. As a matter of policy, the DEC will only grant a works approval once the proponent has met the pre-construction conditions in any Ministerial Statement and it will only grant a licence once the proponent has met the conditions in its works approval.

Clearing permit for clearing of native vegetation

For petroleum activities, if the proposed activities involve the clearing of native vegetation, the proponent will require a clearing permit under the EP Act and the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* (WA) (Clearing Regulations) unless the activity falls within an exemption under the EP Act or the Clearing Regulations.

The exemption under Schedule 6 of the EP Act provides that a clearing permit is not required where the clearing is done in accordance with a licence, works approval, declaration or in the exercise of any other power conferred under the EP Act.

The exemption under item 24 regulation 5 of the Clearing Regulations provides that a proponent with authority to carry out petroleum exploration will not require a clearing permit where the clearing is the result of carrying out exploration under an authority under the Petroleum Act, the PPA or the WA PSLA.

The exemption under item 20 regulation 5 of the Clearing Regulations provides that a proponent will not require a clearing permit for clearing that is, or is the result of carrying out, a low impact or other mineral or petroleum activity described in Schedule 1 of the Clearing Regulations. For example, activities that are implemented in accordance with a Part IV EP Act approval or a Part V approval (works approval or licence) are low impact petroleum activities that do not require approval.

Clearing activity the subject of an exemption under item 20 regulation 5 must be carried out in accordance with the following:

- (i) in an area which is not an "environmentally sensitive area" section 51C(c) EP Act or a "non-permitted area" (which includes riparian vegetation) item 20 of regulation 5
- (ii) so that it does not result in clearing of riparian vegetation and limits or avoids indirect harm to riparian vegetation
- (iii) so that soil erosion and other similar land degradation is limited or avoided
- (iv) so that, to the extent practicable, the quality of surface and subterranean water is not affected.

Contacts and further information ►

Contacts and further information

- Department of Industry and Resources (DoIR):
Ph 9222 3333, www.doir.wa.gov.au
- Department of Environment and Conservation (DEC): Ph 6364 6500 (Environment head office) or 9334 0333 (Parks and Conservation head office)
- http://portal.environment.wa.gov.au/portal/page?_pageid=233,1&_dad=portal&_schema=PORTAL
- Environmental Protection Authority (EPA):
Ph 6364 6500, www.epa.wa.gov.au
- Department of Industry, Tourism and Resources (DITR): Ph 6213 6000, www.industry.gov.au