



## Recent Developments in Australia's Oil and Gas Sector

(covering topics such as: COVID-19 measures;  
decommissioning; 'domgas'; 'fracking'; foreign  
investment regulatory changes; and corporate update)

June 2020

**Hogan  
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This publication looks at some of the major issues affecting participants in the Australian oil and gas industry as a result of the COVID-19 pandemic together with other recent developments that may affect oil and gas sector participants.



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## COVID-19 Measures and relief

Offshore oil and gas operations around the world are impacted by the significant disruptions caused by the COVID-19 pandemic. In response to COVID-19, the Australian Government together with the regulator have released guidance and provided flexibility for offshore oil and gas permit holders. We summarise some of the key measures below.

### National Offshore Petroleum Safety and Environmental Management Authority

#### Release of a COVID-19 specific compliance strategy

On 30 March 2020, the National Offshore Petroleum Safety and Environmental Management Authority (“**NOPSEMA**”) released a COVID-19 compliance strategy documenting measures for regulating the offshore industry during the COVID-19 pandemic. The compliance strategy explains how NOPSEMA is acting to support the industry during COVID-19 in its production of essential energy supplies, whilst overseeing the management of health, safety and environmental risks.

NOPSEMA is focusing on the provision of advice, assistance and support to titleholders to ensure offshore activities can continue to be undertaken in a safe and responsible way, with NOPSEMA prioritising facilities and activities which provide essential services that maintain energy needs in the short to medium term.

The NOPSEMA compliance strategy will be regularly updated due to the rapidly evolving nature of the pandemic.

#### Federal Government announces flexibility for offshore explorers

On 17 April 2020, the Commonwealth Minister for Resources, Water and Northern Australia announced measures to provide flexibility for offshore oil and gas explorers in response to COVID-19. These measures provide a simplified application process to suspend and/or extend existing work programs, as well as further flexibility to be applied to well expectations in the renewal term of exploration permits. The COVID-19 Fact Sheet: Work-Bid Exploration Permits provides guidance to titleholders for applications and also outlines the approach to the 2019 and 2020 acreage release.

#### NOPSEMA received results from COVID-19 inspections

NOPSEMA completed a series of COVID-19 inspections to assess whether operators of

offshore facilities have adequate arrangements for protecting workers from COVID-19. The focused inspections were undertaken after NOPSEMA directed all operators to review their infectious disease management plans to ensure they had tailored arrangements in place for reducing COVID-19 related health risks.

On 6 May 2020, NOPSEMA stated that the results from these inspections indicate that operators have taken reasonable steps to protect the health of their workforce in relation to COVID-19, and that operators continue to monitor and evolve their arrangements in response to the latest information and expert medical advice. NOPSEMA also released a “list of better practice responses to inspection questions” as a means of encouraging consistent practices and approaches to COVID-19 across the industry.



## NOPSEMA issues safety alert to operators

In May 2020, NOPSEMA published a Safety Alert regarding COVID-19 roster changes on its website. This Safety Alert has been issued to all operators of offshore facilities who may be considering modified roster arrangements to reduce the risk of COVID-19 transmission amongst members of the offshore workforce. NOPSEMA has undertaken inspections in response to proposed COVID-19 roster modifications and will continue conducting these inspections to ensure that facility operators are undertaking appropriate workforce consultation, risk assessment and management of change processes. NOPSEMA has advised that while changes to roster arrangements is important in managing the risks associated with COVID-19, operators should ensure that the associated impacts of fatigue and psychological hazards are taken into account, are documented, and involve extensive workforce consultation.

## Western Australian Department of Mines, Industry Regulation and Safety

### Temporary Suspension and extensions for WA title holders

On 8 May 2020, Bill Johnson (Western Australian Mines and Petroleum Minister), published a Minister's Ministerial Opinion on

measures to protect employee safety, health and the wider community including travel restrictions, suspension of heritage surveys and protocols for minimising non-essential personal contact. In response, the Department of Mines, Industry Regulation and Safety (“DMIRS”) adopted the temporary measures set out in the Ministerial Opinion relating to applications for suspensions and work commitments required on petroleum titles. This includes allowing affected title holders to apply for suspensions and extensions to their work commitments on force majeure grounds relating to COVID-19 which will be assessed on a case-by-case basis.

Applications must be made no earlier than three months prior, and no later than the end date, of the current permit year in which the holder is seeking the suspension and extension. The application must be accompanied with sufficient evidence that the ability to complete the required work commitments has been directly impacted by COVID-19. Applications will not be considered on the grounds of COVID-19 where work commitments should have been completed prior to the declaration of Western Australia's State of Emergency on 15 March 2020. Generally, a 12-month suspension and extension will be approved where the Delegate is satisfied with the application and supporting information. An approved suspension and extension does not prevent proponents from undertaking work should the COVID-19 situation change within that time.

## Hogan Lovells COVID-19 Hub

In March this year, Hogan Lovells has launched a comprehensive COVID-19 hub which assesses the potential impacts ahead across all industries and sectors. The cross-disciplinary hub includes tools for crisis leadership preparedness and supply chain disruption and complex contracts and provides up to date commentary on government, regulatory and legal responses to the pandemic. You can access the COVID-19 hub via this link: <https://www.hoganlovells.com/en/knowledge/topic-centers/covid-19>



## Other oil and gas developments

Outside of COVID-19 measures that have rightly dominated the regulatory landscape in the short term, other developments pertinent to the oil and gas sector continue to progress, we take a look at some of these developments below.

### Federal Government continues to review its decommissioning framework

The Department of Industry, Science, Energy and Resources (“**DISER**”) continues its review of the decommissioning framework for offshore petroleum infrastructure in Commonwealth waters (“**Framework**”). The Framework requires companies to decommission oil and gas wells, pipelines and other infrastructure no longer needed or in use. To best prepare for increased and larger scale decommissioning activity, DISER is currently reviewing the Framework to identify areas where the Framework could be clarified, rationalised or improved.

The first stage of the review has been completed with comments on DISER’s first discussion paper having been provided. To ensure the Framework continues to apply best practice to the regulation of offshore petroleum activities, the discussion paper provided an overview of requirements in the United Kingdom, the United States and Canada (“**Considered Countries**”). Some differences between the

Australian Framework and the frameworks in the Considered Countries include:

- the Considered Countries have addressed specific timeframes for removing infrastructure, however, the Australian Framework has not; and
- Norway and the United Kingdom have implemented a model of alternative liability to decrease risk that the Government will foot the bill, however, Australia’s Framework lacks clarity in relation to statutory liability for past holders.

DISER is currently considering the comments on the discussion paper. In mid-2020, DISER is expected to publicly release an options paper detailing preferred options to enhance the Framework. Following the paper’s release, all interested parties will have an opportunity to comment on the paper through public sessions, as well as written comment and submissions. DISER will consider feedback on the proposed framework prior to providing final recommendations to the Australian Government to consider in late 2020. These recommendations will outline key legislative and regulatory changes required to be implemented in the proposed revised policy framework.

### Re-visiting state domestic gas positions

Currently Western Australia remains the only State in Australia that has implemented

a domestic gas policy. This gas policy is administered by and overseen by the Department of Jobs, Tourism, Science and Innovation (“**JTSI**”). JTSI updates the policy in accordance with the developments in the LNG industry, and negotiates and monitors agreements with LNG explorers to give effect to the policy. Western Australia currently has four domestic agreements, namely:

- Barrow island Act 2003;
- 2006 Pluto Domgas Arrangements;
- Gas Processing (Wheatstone Project) Agreement; and
- North West Gas Development (Woodside) Agreement Amendment Act 2015.

LNG exporters report annually on the implementation of their domestic gas commitments.

The Commonwealth Government is working with Victoria, New South Wales and Queensland on a domestic reservation policy on new gas fields.

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## Re-visiting State hydraulic fracturing positions

Hydraulic fracturing (“**fracking**”) policies remain inconsistent across Australia. Most States in Australia have either banned fracking completely or have lifted moratoriums on fracking whilst imposing very strict regulations. In March 2017, Victoria was the first state in Australia to permanently ban all onshore unconventional gas exploration and development, including Fracking. However, this ban ends on 30 June 2020. Tasmania has also banned Fracking since March 2014 and will maintain its moratorium until March 2025. In NSW, the ban is unofficial, but considered by many an “implicit” ban as projects are not proceeding due to community attitudes towards fracking.

In April 2018, the Northern Territory lifted its moratorium on Fracking on 51% of the territory. In lifting the ban, stricter regulations and increased penalties for environmental harm, particularly in relation to use of water were introduced. In November 2018, South Australia also issued a 10 year Fracking moratorium in the south-east of South Australia. In September 2019, Western Australia followed by lifting its moratorium on Fracking on existing petroleum titles, however, fracking is still not permitted in 98% of Western Australia.

Fracking can occur in Queensland, and as a result, most of the unconventional gas in Australia is produced from Queensland, mainly from the Bowen and Surat basins.



## General corporate updates

Below we take a look at a number of general updates to the broader corporate landscape, as a result of COVID-19 and otherwise that will likely impact oil and gas companies, projects and investments in the near to mid-term.

### Impact of COVID-19 on Australia's foreign investment regime

On 29 March 2020, the Australian Treasurer announced temporary changes to Australia's foreign investment regime to address risks arising from the COVID-19 pandemic. These changes have been implemented by amending the *Foreign Acquisitions and Takeovers Regulation 2015* (Cth) ("**FATR**"). The changes are as follows:

- effective from 10:30pm AEDT on 29 March 2020, all proposed investments into Australia subject to the *Foreign Acquisitions and Takeovers Act 1975* (Cth) ("**FATA**") require foreign investment review board ("**FIRB**") approval regardless of its value. The monetary screening thresholds are reduced to A\$0.
- the FIRB review period for new and existing applications under the FATA will be extended by up to six months with priority given to processing applications for investments that protect and support Australian businesses and jobs.

The amendments to the FATR have been implemented via the *Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020* (Cth) and do not have a sunset date. In summary, FIRB clearance will be required for foreign investors acquiring an interest of 20% or more in an Australian entity regardless of its value. It is important that overseas investors are aware of the changes and seek legal advice before committing to an Australian acquisition.

### Treasurer announces major reforms to Australia's foreign investment regime

On 5 June 2020, the Treasurer announced the most comprehensive reforms to the FIRB regime since the introduction of the FATA. Broadly, the reforms address national security concerns by:

- introducing a national security test which will require mandatory notification of foreign investors proposing to start to carry on activities or invest in a "sensitive national security business" regardless of the value of the investment;
- by requiring proposed investments to be "called in" for screening on national security grounds; and
- allowing the Treasurer to impose or vary conditions, or at a last resort, order disposal on national security grounds.





Broadly, the reforms also strengthen penalties, compliance and enforcement powers by implementing stronger enforcements including expanding infringement notices and increasing civil and criminal penalties. The Government will also have stronger powers to monitor investor compliance and give direction in order to prevent breaches of conditions or the foreign investment laws. Other proposed reforms include streamlining certain investments made by entities classed as “foreign government investors”. The Australian Government released a summary booklet which provides further detail of the reforms.

The Government will release exposure draft legislation in July ahead of six week consultation period. This legislation will be introduced to Parliament and scheduled to commence on 1 January 2021. These reforms will not immediately affect the temporary regime set in place in response to COVID-19.

### Modification of rules governing meetings and execution of company documents

On 5 May 2020, the *Corporations (Coronavirus Economic Response) Determination (No.1) 2020* (Cth) (“**Determination 1**”) was introduced in response to the COVID-19 pandemic and applies until its sunset date of 6 November 2020. The Determination 1 allows electronic execution under section 127 of the *Corporations Act*

2001 (Cth) (“**Corporations Act**”) where the electronic method is “as reliable as appropriate for the purpose”. Execution by a company under section 127 using multiple counterparts is now permitted on a temporary basis. Parties should be cautious in relying on these provisions in the execution of deeds, where it may still be necessary to print off and execute paper counterparts of deeds.

The Determination also allows for general meetings including annual general meetings to be held as fully virtual meetings. Everyone participating in virtual meetings is deemed to be present in the meeting for the purposes of meeting quorum requirements, and members may appoint proxies via suitable technology. The technology used at meetings held in this manner must allow attendees reasonable opportunity to participate. Voting is now undertaken by way of a poll instead of a show of hands, and votes may be recorded in advance of a meeting taking place. Notices of meetings must include information about how those entitled to attend can participate in the meeting, including voting, speaking, and appointing proxies. These changes override any rules set out in a company’s constitution.

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## Temporary modification of disclosure obligations for listed companies

The Corporations Act and the ASX Listing Rules specify that listed entities are required to immediately notify the ASX of any information that a “reasonable person” would expect to have a material effect on the price or value of its securities once it becomes aware of that information. Failure to comply is an offence and may result in civil or criminal penalties.

On 25 May 2020, the *Corporations (Coronavirus Economic Response) Determination (No 2) 2020* (Cth) (“**Determination 2**”) was introduced in response to the COVID-19 pandemic and has a sunset date of 25 November 2020. Determination 2 encourages listed entities and other disclosing entities to continue to disclose information, even when it is difficult to know what information materially affects the price or value of its securities. Determination 2 affects civil proceedings only. Company officers will now only be liable for failing to disclose market-sensitive information where they knew or were reckless or negligent as to whether that information would have a material effect on the share price. Determination 2 will also provide listed entities some safe harbour from potential shareholder claims and class actions during this period.

Note: The content in this publication is current as at **19 June 2020**. COVID-19 responses and issues within Australia and internationally are changing daily. It is important to regularly monitor and keep up-to-date with all relevant information and be prepared to respond as the social and economic landscape changes.

### Contacts



**Paul Shillington**  
Partner, Perth  
Infrastructure, Energy, Resources  
and Projects  
T +61 8 6208 6588  
paul.shillington@hoganlovells.com



**Michael Brady**  
Senior Associate, Perth  
Corporate; Infrastructure,  
Energy, Resources and Projects  
T +61 8 6208 6555  
michael.brady@hoganlovells.com

*The authors would like to acknowledge the valuable contributions of Maree Casey (Associate, Corporate, Perth) in the preparation of this publication.*

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