

Operational policy

Special amendment of an authority to prospect work program

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Application

This policy relates to applications for special amendment of an authority to prospect under the following sections of the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act):

- s. 107A Application for special amendment
- s. 107B Special amendment of relinquishment requirements
- s. 107C Special amendment of work program
- s. 107D Approval of special amendment

The principles of this policy may also be applied to the *Petroleum and Gas (General Provisions) Regulation 2017*.

Purpose

The intent of this policy is to provide guidance and clarity to authority to prospect holders regarding how the department will carry out the assessment of, and decide an application for, a special amendment.

Furthermore, this policy will provide guidance regarding how a project related special amendment may be assessed, decided and conditioned.

The information provided in this policy **does not limit the exercising of discretion** nor does it override legislative requirements. All changes will be published through a revised version of this policy.

Background

The special amendment provisions under the P&G Act are intended to provide authority to prospect (ATP) holders with a mechanism, beyond that provided under ss.59 to 63E of the P&G Act, to amend their ATP work program and/or relinquishment requirements.

An application for a special amendment of an ATP is made using the published form PA-44 in accordance with the application and assessment requirements under ss.107A-107D of the P&G Act and this policy.

Applications made during the special extension period under s.63A to s.63E of the P&G Act may be considered less favourably where the holder is not able to justify a special amendment being required for this period.

If there is more than one holder, then all holders must collectively apply or a holder must have consent to apply on behalf of the other holders.

Holders are encouraged to make an application for special amendment of an ATP **as soon as they become aware** of the need for the amendment or at least **three months** before any requirements sought to be amended need to be satisfied. Holders are encouraged to discuss with the department circumstances upon which a special amendment application may be based as soon as is practicable after they become known to the holder.

An approval of a special amendment to the work program takes effect from the day the notice is given, or if the notice states a later date, on the later date. A change of conditions of an ATP takes effect on the day the approval takes effect.

Overlapping Tenure Framework – Coal and Coal Seam Gas

The new overlapping tenure framework for coal and coal seam gas (CSG) outlined in the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERC Act) provides a process for managing situations where a resource authority for one resource type (e.g. mining lease (ML) (coal)) overlaps a resource authority for another resource type (e.g. petroleum lease (PL) (CSG)). The new framework establishes a direct path to grant for overlapping production authorities based on the principle that a ML (coal) holder will have an overriding 'right of way' to develop coal deposits within a defined area of sole occupancy.

The 'right of way' principle will operate by allowing for the coexistence of coal and CSG tenures over the same area, with PL (CSG) and ATP (CSG) holder rights to be temporarily suspended (subject to notice periods, giving of notices, and compensation) or abandoned within those areas of the ML (coal) where sole occupancy is required for safe and efficient coal mining operations.

After receiving at least 18 months' notice from the ML (coal) holder, ATP (CSG) holders will not be able to undertake activities in the initial mining area (IMA) or rolling mining area (RMA) from the mining commencement date for each area. The mining commencement date is the date set under section 115 of the MERC Act, by which the ATP (CSG) holder must abandon an area of sole occupancy i.e. an IMA or RMA. Abandonment is required to effect coal's right of way being a foundation principle under the new overlapping tenure framework.

ATP (CSG) holders will be able to claim relief from relinquishment obligations to the extent of sole occupancy of the IMA by a ML (coal) holder. An application for special amendment to a work program or relinquishment resulting from sole occupancy will need to include supporting documents for the area and duration of sole occupancy, for example an 18 months' notice from a ML (coal) holder under section 122 of the MERC Act.

ATP (CSG) holders will also be able to claim relief from relinquishment obligations to the extent of sole occupancy of an RMA by a ML (coal) holder. An application for special amendment to a work program or relinquishment resulting from sole occupancy will need to include supporting documents for the area and duration of sole occupancy, for example a RMA notice from a ML (coal) holder under section 125 of the MERC Act.

If practical, applications for special amendment relating to multiple areas of sole occupancy may be made together.

The following general parameters apply for special amendment to relinquishment obligations due to sole occupancy of certain areas by a ML (coal) holder in an overlapping area:

- applies to the entire ATP area to the extent of any areas of sole occupancy, i.e. any IMA or RMA;
- applies to the duration of any areas of sole occupancy, ending at the maximum ATP tenure term; and
- supporting documents for areas of sole occupancy and duration of sole occupancy must accompany the application, including coordinates and calculations of area.

Application and assessment requirements

To facilitate timely assessment, an application for special amendment should provide information about the circumstances that exist in relation to the ATP and how the circumstances justify the special amendment¹. This information includes, but is not limited to the following:

1. Information about how the amended work program activities or relinquishment requirements are appropriate in their nature and timing for the ATP to optimise the knowledge and development of the State's petroleum resources.²

Generally, the existing work program and relinquishment obligations set at the grant of an ATP, or otherwise approved and amended under the P&G Act, are considered to optimise the use and development of knowledge of the State's petroleum resources. Therefore, a special amendment application will be considered favourably where the proposed special amendment provides for at least the equivalent level of use and development of knowledge of the State's petroleum resources.

Where the application proposes reduced work program activities or relinquishment (including delay of either), it is recommended that the application emphasise how the proposed amendments supports s.3 of the P&G Act.

Important Note: In circumstances where the application proposes a reduction/delay to work program or relinquishment requirements, it is recommended that pre-lodgement and post lodgement meetings with the assessing officer of the department and the applicant are arranged to assist in timely assessment and decision-making.

2. Where an application is made in the initial work program period, a holder should provide information about why the amendment is more suitable for enhancing the State's resource knowledge as opposed to the program they submitted for competitive tender. For example, an ATP holder may make an application in year two of their ATP's term and state that they are making the amendment based on knowledge gained during the first two years of the term.
3. If applying for special amendment of an ATP's relinquishment requirements, a description of the amendment sought and details of the existing and proposed relinquishment requirements for the ATP (including dates and sub-blocks required to be relinquished).

¹ s.107A(2) of the *Petroleum and Gas (Production and Safety) Act 2004*

² s.107D(2) of the *Petroleum and Gas (Production and Safety) Act 2004*

Important Note: A special amendment to an ATP's relinquishment requirements cannot have the effect of extending the ATP beyond the maximum term.

4. If applying for special amendment of an ATP's work program activities, details of the proposed amended work program (the alternative or additional activities) to be carried out in each remaining year of the work program period and estimated cost. This should consist of a description of where the activities are proposed to be carried out (including maps).
5. A statement about the holder's performance regarding the work program, reporting, rent, relinquishment, security, and royalty requirements for the ATP for the current term.
6. Any other matters the holder wishes the Minister to consider in deciding the amendment sought.

Generally, where the ATP has been transferred, assessment of past performance will relate to the current holder.

Where an application for special amendment has been received in the initial work program period of an ATP granted following a competitive 'call for tenders', the Minister may have regard to work programs proposed by other tenderers. For example the Minister may consider whether the proposed amendment maintains an appropriate level of competition in the carrying out of petroleum activities.

Should an ATP holder provide insufficient information to enable proper assessment of an application, this may result in delays in assessment and decision making while further information is sought. It may also result in refusal of the application. Where assessment timeframes impact on the holder's ability to complete the proposed activities this may be taken into consideration when granting amendments and/ or assessing compliance of the work program.

Project-related authority to prospect

Project-related status under this policy **only relates to making an application for a special amendment** i.e. to justify the circumstances requiring the amendment, ATPs will still be administered and regulated individually.

A project-related ATP may be defined as an ATP that forms part a group of ATPs, usually located within a specific geological basin, that have a unifying exploration or proposed development concept.

When making a special amendment application the holder can use the ATP's participation in a project to justify an amendment to narrow or widen relinquishment and work program commitments across the ATPs that form part of the project.

To use the special amendment provisions, holders must demonstrate how their project-related ATP forms part of a project by providing a description and details about the project, including:

- a project name;
- a list of all ATPs comprising the project;
- how activities on the ATPs comprising the project are operationally interrelated (for example the ATP is one of a group of ATPs in the same basin or geographic area that is being explored by common holders or under the one joint venture arrangement);

- evidence that the ATPs were granted a Project Environmental Authority;
- the overall exploration strategy of the project, including existing and proposed project wide work program and relinquishment requirements; and
- the role and exploration status of each ATP in the project.

Although ATPs comprising a recognised project will generally have common holders, holder commonality is not a prerequisite to project recognition. A special amendment that affects the work program or relinquishment of multiple holders in the project should be made jointly by the affected holders in the project or with consent.

Special amendment applications will be considered more favourably where the proposed amendments directly substitute existing work program and relinquishment requirements between ATPs in a recognised project.

Example

ATPs A and B have been recognised as project-related ATPs. ATP A has relinquishment requirements of 100 sub-blocks due on 31 May 2015. Project proponents wish to satisfy this requirement by amending ATP A's 31 May 2015 relinquishment requirement to zero sub-blocks and amending ATP B's relinquishment schedule to include the additional relinquishment of 100 sub-blocks on 31 May 2015.

Example

ATPs A and B have been recognised as project-related ATPs. ATP A has a work program requirement to drill 5 wells by 31 May 2018. Project proponents wish to satisfy this requirement by amending ATP A's work program to 3 wells by 31 May 2018 and amending ATP B's work program requirement to include an additional two wells to be drilled by 31 May 2018.

An application for transfer of an ATP will need to indicate that the transferee will complete the project related work program. If the transferee will not be completing the project related program, they will be required to lodge a special amendment application as soon practicable which proposes the activities for the remainder of the term.

Important Note:

Where an ATP ceases to be part of a project or a project ends, holders should assess whether they will be required to make special amendment application.

ATP holders considering seeking a special amendment of an ATP based upon project considerations are encouraged to contact the department pre-lodgement to discuss and agree a project definition is sufficient for the purposes of the special amendment provisions of the P&G Act.

Conditioning of authority to prospect

In approving the special amendment, pursuant to ss. 107B (2) and 107C (2) the Minister may also approve a change of conditions of the ATP with respect to the amendment of the work program relinquishment. For example, the Minister, may condition project-related amendments as only having effect while the ATP is managed as a part of the project.

Any change to the conditions of an ATP to be imposed under these sections will be made in consultation with the holders of the relevant ATP.

Amending work programs (ss.59- 63 of the P&G Act)

To ensure that proper assessment and decision making is undertaken with respect to the holder's proposed amendment, and that assessment is conducted in a timely manner, the holder should consider whether making an application under ss.59-63 is more appropriate with respect to amendment required or the reasons for the amendment.

Example

A holder who is amending their ATP's later work program and is substituting the authorised activity/s with another activity/s of equivalent value should consider using ss.59-63 of the P&G Act as they will only need to submit information about the substitutes activities with the application and will not need to provide information with respect to justifying the circumstances or optimising the use and development of resources.

Example

A holder who is amending their ATP's initial work program due to circumstances beyond the holder's control (not related to financial or technical resources, ability to manage exploration or exploration results) should consider ss.59-63 of the P&G Act as they will only need to submit information regarding the exceptional circumstance with the application and will not need to provide information with respect to justifying the circumstances or optimising the use and development of resources.

Example

A holder not meeting the requirements of s.59(2)(d),(e) or (f) of the Act, as a result of a flooding event in the second last year of a work program will be unable to complete remaining work program activities in the required time. The holder may apply for the special amendment of the ATP to delay the required relinquishment and extend the time for work program activities. In the circumstances, the Minister is likely to be satisfied a special amendment is required and will continue to optimise the use and development of the State's petroleum resources.

Executive Director

Mining and Petroleum Operations

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