

## LEGISLATIVE NOTES

---

### COMMONWEALTH PSLA REQUIREMENTS FOR MANAGING PETROLEUM ACTIVITY DATA

Charlie Grover<sup>\*</sup> and Tim Warman<sup>\*\*</sup>

*The Petroleum (Submerged Lands) (Data Management) Regulations 2004 (Cth) (“Regulations”) came into force on 4 June 2004 and provide for data management (including obtaining, recording, and disclosing data) in connection with petroleum activities in Commonwealth waters.<sup>1</sup> It is now an offence to conduct a petroleum activity (including exploration and production activities) without an accepted and current Data Management Plan (“DMP”) or permission from the Designated Authority (“DA”). As a result of these changes, the acquisition, recording, retention, and provision of data from petroleum activities is now significantly more regulated. This article outlines and discusses the data management obligations imposed by the Regulations.*

#### 1. PURPOSE OF THE REGULATIONS

The Regulations are intended to: “allow for data management arrangements to be changed in response to technology and management systems, as long as key principles are adhered to. An essential part of this flexibility is the development of an agreed DMP, which specifies acceptable methods of acquiring, maintaining and submitting data. This will allow industry to implement improved practices, without the need for Government to continually update regulatory requirements”.<sup>2</sup>

The objectives of the Regulations are:

- (a) “to provide a framework for encouraging the adequate collection and timely dissemination of petroleum data for the long term benefit of the Australian community;
- (b) to assist in ensuring the adequacy of the data acquired; and
- (c) to allow for the efficient management of data confidentiality and the disclosure of data on completion of the relevant confidentiality periods”.<sup>3</sup>

#### 2. KEY OBLIGATIONS

The Regulations require “holders” to record certain specified information in relation to petroleum exploration and production activities (including geophysical, geological and geochemical surveys)

---

<sup>\*</sup> Solicitor, Mallesons Stephen Jaques, Perth.

<sup>\*\*</sup> Senior Associate, Mallesons Stephen Jaques, Perth.

<sup>1</sup> Amendments to the *Petroleum (Submerged Lands) Act 1967* (Cth) (“PSLA”) contemplate that regulations may be passed requiring certain information be given to the Designated Authority or to a specified person (see section 122A(1)(c) PSLA).

<sup>2</sup> Explanatory Statement to the Regulations. Unless otherwise stated, all references to Regulations in this article are references to the *Petroleum (Submerged Lands) (Data Management) Regulations 2004* (Cth).

<sup>3</sup> Regulation 3.

and to give the DA a DMP for approval. “Holders” are defined to include exploration permittees and production licencees.

### 3. INFORMATION THAT MUST BE RECORDED UNDER PART 3 OF THE REGULATIONS

A holder must record certain information about petroleum exploration and production activities on its titles as specified in Part 3 of the Regulations.<sup>4</sup> Where contractors conduct exploration or production activities in a title area on the holders behalf, the holder is responsible for collecting and recording information about those activities.

This will have implications for the contractual arrangements between the titleholder and those people conducting, or otherwise having relevant information about the activity on their title.

The information that must be recorded about an activity includes:

- (a) the location and period of,<sup>5</sup> and the persons undertaking,<sup>6</sup> the activity;
- (b) the techniques and equipment used to collect, process and interpret the data;<sup>7</sup>
- (d) a data acquisition report detailing the operations carried out as part of the activity;<sup>8</sup>
- (e) if processing is undertaken as part of the activity – a data processing report;<sup>9</sup> and
- (f) if interpretation is undertaken as part of the activity – the interpretation, including maps.<sup>10</sup>

Other details required to be recorded depends on the type of activity being conducted. For example, in relation to geophysical, geological and geochemical surveys, the holder must record the following “written information” and “documents”:<sup>11</sup>

- (a) field and processed digital survey data; and
- (b) a report describing the acquisition and processing of the data.<sup>12</sup>

Geophysical surveys must also record navigation data.<sup>13</sup>

These requirements relate to recording data only, and nothing in Part 3 requires the holder to disclose that data to the Commonwealth or any person.

### 4. REQUIREMENT TO HAVE AN APPROVED DMP

A holder must submit a DMP for the DA to accept or reject. If the DMP complies with Regulation 17 (or parts of the DMP comply), the DA must accept it (or the relevant parts of the DMP).<sup>14</sup>

<sup>4</sup> Regulation 36 requires that the documentary information be kept securely and in a way that makes retrieval of the document practicable.

<sup>5</sup> Regulation 12(a).

<sup>6</sup> Regulation 12(b).

<sup>7</sup> Regulation 12(c).

<sup>8</sup> Regulation 12(e).

<sup>9</sup> Regulation 12(f).

<sup>10</sup> Regulation 12(g).

<sup>11</sup> The word “document” is defined in the Act to include “any map, book, record or writing”. “Writing”, in this context includes any mode of representing or reproducing words, figures, drawings or symbols in a visible form (s25 Acts Interpretation Act 1901).

<sup>12</sup> Regulations 14, 15.

<sup>13</sup> Regulation 14(c).

It is an offence of strict liability for a holder to undertake a petroleum activity without an accepted and current DMP or permission from the DA under Part 5 of the Regulations.<sup>15</sup> It is also an offence for a holder to carry out a petroleum activity which is not in accordance with an accepted DMP.<sup>16</sup>

## 5. INFORMATION WHICH MUST BE INCLUDED IN THE HOLDER'S DMP

A DMP must comply, and allow compliance with, the Act, the Regulations and the objectives of the Regulations. The DMP must also include the statements and information set out in Schedule 1 to the Regulations and certain undertakings to give reports.<sup>17</sup> Further, the data acquired under the DMP must be "adequate" in light of the prevailing technology and circumstances.<sup>18</sup>

The statements and information set out in Schedule 1 (which are required in the DMP) include:

- (a) a description of the activities to be undertaken and the reports and information relevant to those activities that the holder will make and keep;<sup>19</sup>
- (b) a description of the media and formats in which information will be held by the holder and an explanation of why it is a suitable medium or format;<sup>20</sup>
- (c) an undertaking to allow "reasonable access" to any data that is made publicly available under the PSLA or the Regulations and an explanation of how the holder will allow access to the data;<sup>21</sup> and
- (d) a statement that the holder will give reports and information to the DA in accordance with Part 2 of Schedule 1 or the timetable proposed in the DMP.<sup>22</sup>

The reports which must be given to the DA by the holder under Part 2 of Schedule 1 include the following.

- (a) A daily report on drilling operations.<sup>23</sup>
- (b) A weekly report on any geological or geophysical field survey being carried out.<sup>24</sup>
- (c) A monthly report on production.<sup>25</sup>
- (d) A quarterly report<sup>26</sup> on exploration including: "an outline of all geological and geophysical interpretations made as a result of the exploration, including any reprocessing or reinterpretation of basic data".
- (e) An annual report<sup>27</sup> on exploration, including: including conclusions derived from the exploration; an outline of planned operations for the next year; and a summary of the holder's annual expenditure.

<sup>14</sup> Regulation 18. Conversely, if the DMP does not comply with the Regulation 17 requirements (discussed in part 6), the DA must reject it.

<sup>15</sup> Penalty of up to \$27,500 for Corporations: Regulation 10.

<sup>16</sup> Regulation 10.

<sup>17</sup> Regulation 17.

<sup>18</sup> See the objectives of the Regulations, as set out in part 3.2 above.

<sup>19</sup> Paragraph 102, Schedule 1 to the Regulations.

<sup>20</sup> Paragraph 105, Schedule 1 of the Regulations.

<sup>21</sup> Paragraph 106, Schedule 1 of the Regulations.

<sup>22</sup> Paragraph 108, Schedule 1 of the Regulations.

<sup>23</sup> Paragraph 201, Schedule 1, Part 2 of the Regulations.

<sup>24</sup> Paragraph 202, Schedule 1, Part 2 of the Regulations.

<sup>25</sup> Paragraph 203, Schedule 1, Part 2 of the Regulations.

<sup>26</sup> Paragraph 204, Schedule 1, Part 2 of the Regulations.

<sup>27</sup> Paragraph 205, Schedule 1, Part 2 of the Regulations.

### **When the Holder Must Give Data to the DA**

The holder must undertake to give reports and information in accordance with the standard timetable in Part 2 of Schedule 1<sup>28</sup> or in accordance with a timetable proposed in the DMP.<sup>29</sup> Even if the holder's DMP proposed a timetable extending the periods for providing information, this would not extend the date on which the DA may publicly release that information.<sup>30</sup>

## **6. GENERAL POWER TO OBTAIN INFORMATION**

The DA also has a general power to require any person to give it any information it believes that person has relating to exploration, recovery, processing or storage of petroleum, or the preparation of petroleum for transport or operations connected with the construction or operation of a pipeline.<sup>31</sup> As long as the data relates to relevant operations, there is no express limit on the nature or scope of the information that the DA can request under this general power.

## **7. GUIDELINES**

Geoscience Australia has released the "Guidelines for reporting and submission of petroleum data required under State/Territory and Commonwealth (Petroleum (Submerged Lands) Act legislation and Petroleum (Submerged Lands) (Data Management) Regulations 2004" (Guidelines).<sup>32</sup> Geoscience Australia has also released a "Guide to Preparation of Data Management Plans" (Guide),<sup>33</sup> which includes a sample DMP.

## **8. RELEASE OF INFORMATION BY THE DA**

Paragraph 9 of the Guidelines sets out the DA's general approach to confidentiality of the data it receives:

All information and data submitted to the Designated Authority and the Commonwealth in accordance with the Petroleum (Submerged Lands) Act shall remain confidential at least until the information is eligible for public release, as prescribed in section 150 of the Commonwealth Petroleum (Submerged Lands) Act 1967. In Commonwealth waters, section 150(E) describes the "relevant day" on which submitted data can be publicly released. The relevant day is typically expressed as the number of years from when the data was submitted, or deemed (section 150(b)) to have been submitted.

The DA may not make information given to it pursuant to s115 or the Regulations ("relevant information") public, or give relevant information to any person (other than a State or Territory Minister) unless such disclosure is made in accordance with Regulations, or for the purposes of the administration of the PSLA or the Regulations.<sup>34</sup>

The DA and the relevant State or Territory Minister may publicly release information in accordance with Regulations after the "relevant day" has passed. The "relevant day" is a certain

---

<sup>28</sup> And, arguably, in the case of seismic information, Part 3 of Schedule 1.

<sup>29</sup> Paragraph 108, Schedule 1.

<sup>30</sup> See below – Release of information by the DA

<sup>31</sup> See section of the 115(1) PSLA.

<sup>32</sup> Available online at: [www.ga.gov/oceans/projects/20011022\\_2.jsp](http://www.ga.gov/oceans/projects/20011022_2.jsp)

<sup>33</sup> Available online at: [www.ga.gov/oceans/projects/20011022\\_2.jsp](http://www.ga.gov/oceans/projects/20011022_2.jsp)

<sup>34</sup> Section 150B of the PSLA. The legislation intends that any State or Territory Minister who receives relevant information will be constrained in their disclosure of the information in the same way as the DA is constrained. (Section 150E of the PSLA)

number of years after the activity was completed, depending on factors such as the right to access the area (e.g. the type of title under which the activities occur were permitted) and the purpose for collecting the information.<sup>35</sup> There are several exceptions to the general timetable for release of information:

- (a) **Publicly Available Information:** If holder has already made the information public, the DA can generally disclose the information immediately.<sup>36</sup>
- (b) **Derivative Information:** Where the information is a conclusion drawn wholly or partly from, or an opinion based wholly or partly on, other documentary information (“Derivative Information”) *and* it is not “protected confidential information”<sup>37</sup> *and* it relates to the seabed or subsoil, or to petroleum, in a block, then the DA may release that derivative information any time after the fifth anniversary of the date on which it was deemed to have been given to the DA.<sup>38</sup>
- (c) **Contested Information:** The person who gives the DA information may (upon giving the information) object to the disclosure of that information on the basis that the information is a trade secret<sup>39</sup> (in which case, if the objection is accepted, the trade secret cannot be disclosed) or that the release of the information would or could be reasonably expected to, adversely affect the person in relation to the person’s lawful business, commercial or financial affairs (in which case, if the objection is accepted, the information will be treated as if it is Derivative Information).<sup>40</sup>

## 9. IMPLICATIONS FOR “HOLDERS”

In the majority of cases, it will be necessary for holders to have an accepted DMP before conducting petroleum operations. Conducting such operations without an accepted DMP, or contrary to an accepted DMP is an offence. The implications of this for titleholders, contractors and anyone else involved in offshore petroleum operations under the PSLA is wide ranging. For example, holders will need to carefully consider whether their existing data acquisition and management procedures will need to be altered to comply with the requirements for DMPs, and whether the undertakings they make with the DA in their DMP are consistent with their other contractual obligations.

The DA is likely to permit varying degrees of flexibility in DMPs, depending on the holder’s circumstances. This is supported by the Guide, which states “with regard to the content and format of DMPs, as long as companies comply with the requirements of the Regulations, they may choose the approach that best suits them in preparing their DMPs.”

---

<sup>35</sup> Regulation 29.

<sup>36</sup> Regulation 31.

<sup>37</sup> It will only be protected confidential information if at the time the holder gives the information to the DA, the DA accepts the holder’s submission that the information is a trade secret or release of the information would or could reasonably be expected to adversely affect the holder in relation to its lawful business, commercial or financial affairs.

<sup>38</sup> Regulation 33.

<sup>39</sup> See paragraph 10.7 below.

<sup>40</sup> Regulations 34 and 35.