

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 253

Offshore Petroleum and Greenhouse Gas Storage Act 2006

Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Amendment Regulations 2011 (No. 1)

(Circulated by authority of the Minister for Resources and Energy,
the Honourable Martin Ferguson AM MP)

Section 781 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Principal Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Principal Act.

The Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Act 2011 (the NRA Act), which received Royal Assent on 14 October 2011, amends the OPGGS Act to give effect to the Government's upstream petroleum regulatory reform policy. The NRA Act amends the OPGGS Act to establish a new National Offshore Petroleum Titles Administrator (Titles Administrator) and expand the functions of the existing National Offshore Petroleum Safety Authority (the Safety Authority) to become the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA).

The purpose of the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Amendment Regulations 2011* (the Regulations) is to amend the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* (the RMA Regulations) to reflect the legislative arrangements outlined above. The amendments ensure that the full range of regulatory functions and powers previously exercised by the Safety Authority or the Designated Authority under the RMA Regulations can be exercised by the expanded NOPSEMA or by the Titles Administrator, as appropriate, when NOPSEMA and the Titles Administrator commence operations on 1 January 2012.

The Regulations also include a technical amendment to correct an error in subregulation 4.16(1) of the RMA Regulations, in order to ensure that the original policy intent is met. Previously, the provision applied to continue in force field development plans that were accepted by the Joint Authority prior to the commencement of the Principal Regulations on 29 April 2011 only in the event that petroleum was being recovered on or before that commencement day. The amendments ensure that all field development plans that were accepted by the Joint Authority prior to 29 April 2011 are continued in force, whether or not recovery of petroleum had commenced.

Details of the Regulations are set out in the Attachment.

The regulatory reforms relating to the upstream petroleum sector have been the subject of extensive consultations and numerous workshops with stakeholders, including other Australian Government agencies, State and Territory governments, the petroleum industry, environmental non-government organisations and interested individuals over an extended period of time from 2009 to 2011. The process commenced as a result of the Government's response to the 2009 Productivity Commission

(PC) Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector and the recommendations of the June 2010 Report of the Montara Commission of Inquiry. The regulations reflect the machinery changes that are required as part of the abovementioned reform process.

The Office of Best Practice Regulation was also consulted regarding the regulatory reforms to the upstream petroleum sector.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Regulations 1 to 3 and Schedule 1 to the Regulations commence retrospectively on 29 April 2011. Commencing the amendments in Schedule 1 from this date ensures that the policy intent that was communicated to industry and proposed to be reflected in the Principal Regulations is given effect from the date of commencement of the Principal Regulations. This also ensures that any petroleum production licensee that commenced recovery of petroleum *after* the commencement day, under a field development plan that was accepted *before* the commencement day, was not in breach of the requirement in regulation 4.02 of the Principal Regulations for a licensee to have an accepted field development plan in place before commencing production. Licensees may have commenced production believing that their previously accepted field development plan was valid (as that was the accepted policy position communicated to industry).

Regulation 4 and Schedule 2 to the Regulations commence on the commencement of Parts 1 and 2 of Schedule 2 to the NRA Act (on 1 January 2012).

ATTACHMENT

NOTES ON INDIVIDUAL CLAUSES

Regulation 1 - Name of Regulations

Regulation 1 provides for the title of the Regulations to be the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Amendment Regulations 2011 (No. 1)*.

Regulation 2 - Commencement

Regulation 2 provides for regulations 1 to 3 and Schedule 1 to the Regulations to commence on 29 April 2011. Schedule 1 amends subregulation 4.16(1) of the RMA Regulations to give effect to the original policy intent for this provision that all field development plans that had been accepted by the Joint Authority prior to commencement of the RMA Regulations would continue in force after commencement – see item [2] of Schedule 1. This policy intent was communicated to industry and intended to be reflected in the RMA Regulations from commencement. Schedule 1 therefore commences retrospectively from the date of commencement of the RMA Regulations. This retrospective commencement ensures that any petroleum production licensee that commenced recovery of petroleum *after* the commencement day, under a field development plan that was accepted *before* the commencement day, would not be in breach of the requirement in regulation 4.02 of the RMA Regulations for a licensee to have an accepted field development plan in place before commencing production. Licensees may have commenced production believing that their previously accepted field development plan was valid (as that was the accepted policy position communicated to industry).

Regulation 2 also provides for regulation 4 and Schedule 2 to the Regulations to commence on the commencement of Part 1 of Schedule 2 to the *Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Act 2011* – which is on a day to be fixed by Proclamation. This ensures that the amendments commence at the same time as NOPSEMA and the Titles Administrator commence to exercise regulatory functions and powers under the OPGGS Act.

Regulation 3 – Amendment of Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011

Regulation 3 provides that Schedule 1 to the Regulations amends the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011*.

Regulation 4 – Amendment of Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011

Regulation 4 provides that Schedule 2 to the Regulations amends the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011*.

SCHEDULE 1 Amendments taken to have commenced on 29 April 2011

Item [1] Regulation 4.16, heading

Item 1 alters the heading to regulation 4.16 of the RMA Regulations to include a heading that more accurately describes the provisions in regulation 4.16 following the amendment to subregulation 4.16(1) described in item [2] of Schedule 1.

Item [2] Subregulation 4.16(1), including the subheading

Item 2 is a technical amendment which substitutes the existing subregulation 4.16(1) with a revised subregulation 4.16(1) to reflect the original policy intent that all field development plans that had been accepted by the Joint Authority prior to the commencement of the RMA Regulations on 29 April 2011 be continued in force, whether or not petroleum recovery operations had commenced at or before the commencement of those Regulations. As currently drafted, the provision continues in force previously accepted field development plans only where ‘petroleum was being recovered under a petroleum production licence on or before the commencement day’ (i.e. the date of commencement of the RMA Regulations).

This amendment reflects the understood policy position that was communicated to industry prior to the commencement of the RMA Regulations. In addition, the amendment ensures that any petroleum production licensee that commenced recovery of petroleum *after* the commencement day, under a field development plan that was accepted *before* the commencement day, was not in breach of the requirement in regulation 4.02 of the RMA Regulations for a licensee to have an accepted field development plan in place before commencing production.

SCHEDULE 2 Amendments commencing on commencement of Part 1 of Schedule 2 to the *Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Act 2011*

Item [1] Regulation 1.05, definition of *accepted well operations management plan*

Item 1 omits the term ‘Safety Authority’ and replaces it with the term ‘NOPSEMA’.

Item [2] Regulation 1.05, after definition of *titleholder*

Item 2 inserts a definition for ‘Titles Administrator’ which is the ‘National Offshore Petroleum Titles Administrator’.

Item [3] Subregulation 1.06(5)

Item 3 omits the term ‘Designated Authority’ and replaces it with the term ‘Titles Administrator’.

Item [4] Regulation 2.03, heading

Item 4 alters the heading by replacing the reference to ‘Designated Authority’ with a reference to ‘Titles Administrator’.

Items [5] and [6] - Subregulations 5.04(3), note and 5.05(3), note

These items amend the notes to these subregulations to update references to provisions in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act), to reflect amendments made by the *Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Act 2011*. Following the commencement of those amendments, directions that must be complied with, despite anything in the RMA Regulations, are directions given under section 574 of the OPGGS Act by NOPSEMA, or direction given by the responsible Commonwealth Minister under section 574A or 580 of the OPGGS Act.

These items also expand the existing notes to explain that NOPSEMA or the responsible Commonwealth may give remedial directions to titleholders, under section 586 or section 586A of the OPGGS Act respectively, that may refer to the plugging or closing off of wells. A titleholder will be

required to vary an accepted well operations management plan if it is inconsistent with a direction given under section 586 or 586A, and an inconsistent well activity approval would cease to have effect - see item 12.

Item [7] Regulation 5.12, note

Item 7 substitutes the note to replace the reference to a direction issued by the Designated Authority with a reference to a direction given by NOPSEMA or the responsible Commonwealth Minister. It also updates the reference to new regulations 5.30 to 5.31A – see item 12.

Item [8] Paragraph 5.18(a)

Item 8 expands the list of the types of directions issued under the OPGGS Act by NOPSEMA or the responsible Commonwealth Minister that, if not complied with by the titleholder, would result in giving NOPSEMA the discretion to withdraw its acceptance of the titleholder's well operations management plan.

The list includes directions given by NOPSEMA under section 574 (general power to give directions to petroleum titleholders) and section 586 (power to give remedial directions to petroleum titleholders). It also includes directions given by the responsible Commonwealth Minister under section 574A (general power to issue directions to petroleum titleholders with respect to resource management, resource security or data management), section 580 (general power to give directions to greenhouse gas titleholders), and section 586A (power to give remedial directions to petroleum titleholders relating to resource management or resource security).

Item [9] Subregulation 5.22(3), note

Item 9 amends the note to this subregulation to update references to provisions in the OPGGS Act, to reflect amendments made by the *Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Act 2011* (NRA Act). Following the commencement of those amendments, directions that must be complied with, despite anything in the RMA Regulations, are directions given under section 574 of the OPGGS Act by NOPSEMA, or direction given by the responsible Commonwealth Minister under section 574A or 580 of the OPGGS Act.

These items also expand the existing note to explain that NOPSEMA or the responsible Commonwealth Minister may give remedial directions to titleholders, under section 586 or section 586A of the OPGGS Act respectively, that may refer to the plugging or closing off of wells. A titleholder will be required to vary an accepted well operations management plan if it is inconsistent with a direction given under section 586 or 586A, and an inconsistent well activity approval would cease to have effect - see item 12.

Item [10] Division 9, heading

Item 10 alters the Division heading by substituting the terms 'Designated Authority' and 'Safety Authority' with the terms 'Titles Administrator' and 'NOPSEMA' respectively.

Item [11] Regulation 5.28, heading

Item 11 alters the heading by substituting the terms 'Safety Authority' and 'Designated Authority' with the terms 'NOPSEMA' and 'Titles Administrator' respectively.

Item [12] Regulations 5.29 to 5.31

This item substitutes existing regulations 5.29, 5.30 and 5.31 with new regulations 5.29, 5.30, 5.30A, 5.31 and 5.31A.

Regulation 5.29 Requirement for titleholder to give copy of direction to NOPSEMA

In effect, the new regulation 5.29 amends the existing regulation 5.29 to replace the reference to a direction given by the Designated Authority under section 574 of the OPGGS Act with a reference to a direction given by the responsible Commonwealth Minister under section 574A or section 586A of the OPGGS Act. The reference to “the Safety Authority” in the existing regulation is also replaced with a reference to “NOPSEMA”.

The new regulation therefore requires that, in the circumstance where the responsible Commonwealth Minister gave a direction to a petroleum titleholder under section 574A or 586A of the OPGGS Act, the titleholder must provide a copy of the direction to NOPSEMA. This requirement is to ensure that NOPSEMA has access to the same set of documents and information as the titleholder and the responsible Commonwealth Minister, so that it is able to fulfil its regulatory role.

Regulation 5.30 Requirement to vary well operations management plan if consistent with NOPSEMA direction

In effect, the new subregulation 5.30(1) amends the existing regulation 5.30 to replace the reference to the Designated Authority with a reference to NOPSEMA. Therefore, if NOPSEMA issues a direction to a petroleum titleholder under section 574 of the OPGGS Act and that direction is inconsistent with the titleholder’s accepted well operations management plan (WOMP) (i.e. it would not be possible to comply with both the direction and the accepted WOMP), the titleholder must vary the WOMP to be consistent with the direction and apply to NOPSEMA for acceptance of that varied WOMP.

The new subregulation 5.30(2) places the same requirement on the titleholder to vary an accepted WOMP in the event that NOPSEMA issued a direction to the titleholder under section 586 of the OPGGS Act that was inconsistent with the accepted WOMP.

Regulation 5.30A Requirement to vary well operations management plan if inconsistent with responsible Commonwealth Minister direction

The new subregulation 5.30A provides that, if the responsible Commonwealth Minister issued a direction to a petroleum titleholder under section 574A or 586A of the OPGGS Act and that direction was inconsistent with the titleholder’s accepted WOMP (i.e. it would not be possible to comply with both the direction and the accepted WOMP), the titleholder must vary the WOMP to be consistent with the direction and apply to NOPSEMA for acceptance of the varied WOMP.

There is nothing in the RMA Regulations that would prevent the responsible Commonwealth Minister or the Titles Administrator, who would be providing advice to the Minister, from discussing the proposed WOMP or possible conditions for acceptance with NOPSEMA prior to acceptance, and the Titles Administrator would have the same set of information as provided by the titleholder to NOPSEMA.

Regulation 5.31 Well activity approval ceases if inconsistent with NOPSEMA direction

In effect, the new subregulation 5.31(1) amends the existing regulation 5.31 to replace the reference to the Designated Authority with a reference to NOPSEMA. Therefore, if NOPSEMA issued a direction

to a petroleum titleholder under section 574 of the OPGGS Act that was inconsistent with an approval of a well activity previously given by NOPSEMA (i.e. it would not be possible to comply with both the direction and the approval), the approval would cease to be in force.

The new subregulation 5.31(2) provides that a well activity approval also ceases to be in force in the event that NOPSEMA issued a direction to the titleholder under section 586 of the OPGGS Act that was inconsistent with the well activity approval.

In either case, the titleholder would have to apply to undertake the well activity in a manner that was consistent with the direction, and go through the process for approval of a well activity as outlined under regulation 5.23 of the RMA Regulations.

Regulation 5.31A Well activity approval ceases if inconsistent with responsible Commonwealth Minister direction

The new subregulation 5.31A provides that, if the responsible Commonwealth Minister issued a direction to a petroleum titleholder under section 574A or 586A of the OPGGS Act and that direction was inconsistent with an approval of a well activity previously given by NOPSEMA (i.e. it would not be possible to comply with both the direction and the approval), the approval would cease to be in force. The titleholder would have to apply to NOPSEMA to undertake the well activity in a manner that was consistent with the direction, and go through the process for approval of a well activity as outlined under regulation 5.23 of the RMA Regulations.

There is nothing in the RMA Regulations that would prevent the responsible Commonwealth Minister or the Titles Administrator, who would be providing advice to the Minister, from discussing the well activity application and/or possible conditions for approval with NOPSEMA prior to approval, and the Titles Administrator would have the same set of information as provided by the titleholder to NOPSEMA.

Item [13] Subregulation 8.06(4), including the note

Item 13 substitutes a new subregulation 8.06(4) to provide that a notice of decision given by the Titles Administrator, in relation to an objection by a titleholder regarding the classification of documentary information by the Titles Administrator, must state that the decision may be, upon request, reviewed by the responsible Commonwealth Minister.

This item also removes the existing note to subregulation 8.06(4). The provisions in the OPGGS Act referred to in the note relating to reconsideration and review of decisions relating to the offshore areas of external Territories were removed from the OPGGS Act on commencement of Part 1 of Schedule 2 to the NRA Act.

Item [14] Regulation 8.06, heading

Item 14 replaces the reference to “Designated Authority” with a reference to “Titles Administrator”.

Item [15] Regulation 8.07, heading

Item 15 replaces the reference to the ‘Designated Authority’ with a reference to the ‘Titles Administrator’.

Item [16] Subregulation 8.07(1)

In effect, item 16 substitutes the reference to a decision by the Designated Authority in the existing subregulation 8.07(1) with a reference to a decision by the Titles Administrator. The new provision

therefore provides that a person may ask the responsible Commonwealth Minister to review a decision made by the Titles Administrator to disallow an objection made by the titleholder in relation to the classification of documentary information – see also item 13.

Item [17] Subregulation 8.07(6), note

Item 17 omits the note. Following the commencement of amendments to the OPGGS Act, made by the NRA Act, the reference to review of Ministerial decisions by the Administrative Appeals Tribunal in Part 9.1 of the OPGGS Act is no longer be relevant. A person may, however, seek judicial review of a Ministerial decision under the *Administrative Decisions (Judicial Review) Act 1977*.

Items [18] and [19] - Subregulations 9.21(3), note and 9.22(3), note

These items update the notes, to reflect other amendments made by these Regulations, to inform the reader that the responsible Commonwealth Minister *or the Titles Administrator* must make the information in a monthly greenhouse gas accounting report or a an annual greenhouse gas accounting report publicly known within 15 days after *the Titles Administrator* receives the report – see items 23 and 24.

Item [20] Regulations 10.02 to 10.07

Item 20 replaces the existing regulations 10.02 to 10.07 in the RMA Regulations with new regulations 10.02 to 10.07A.

In effect, the only changes to regulations 10.02, 10.03, 10.04 and 10.05 are to replace references to “the responsible Commonwealth Minister” or “the Minister” with references to “the Titles Administrator”. As the entity that receives documentary information for greenhouse gas operations, the Titles Administrator will have the ability to consider the appropriate classification of that information, and to dispute the classification suggested by the greenhouse gas titleholder.

The new regulation 10.06 requires the Titles Administrator, on receiving an objection from a person about the classification of information, to decide whether to allow or disallow the objection, either wholly or in part. The Titles Administrator must advise the person in writing of their decision, within 45 days after receiving the objection. A notice of decision given by the Titles Administrator is required to state that the decision may be, upon request, reviewed by the responsible Commonwealth Minister.

The new regulation 10.07 provides for the review by the responsible Commonwealth Minister of the Titles Administrator’s decision to disallow an objection made by a titleholder in relation to the classification of documentary information. A titleholder would have the ability to write to the Minister, within 30 days of receiving the Title’s Administrator’s decision, to ask for a review of the decision to disallow the objection. The Minister must review the decision and either confirm or revoke the Titles Administrator’s decision (in whole or in part), within 45 days of receiving the request. Where the decision is revoked the Minister must substitute another decision for it.

The new regulation 10.07A explains the circumstances under which an objection ceases to be in force. The objection remains in force unless either: (a) the person withdraws it; (b) the Titles Administrator disallows it and the person does not seek review of the decision within the allowed timeframe; or (c) the Titles Administrator disallows the objection and the decision standing after all reviews have been finalised is that the objection is disallowed.

Items [21], [22], [23], [25], [26], [27], [28], [29] and [30] - Regulations 10.08, 10.09, 10.10, 10.11, 10.14 and subregulations 10.12(1), 10.13(1), 10.15(1), 10.16(1)

These items amend the RMA Regulations to provide that obligations, functions and powers in relation to release of documentary information that currently apply to the responsible Commonwealth Minister also apply to the Titles Administrator. Any obligation contained in a provision that is amended by these items is satisfied if the obligation is fulfilled by either the responsible Commonwealth Minister or the Titles Administrator.

Item [24] Regulation 10.10

Item 24 replaces the words ‘the Minister’, wherever appearing in this regulation, with the words ‘the Titles Administrator’. This clarifies that it is the Titles Administrator that receives monthly greenhouse gas accounting reports under regulation 9.21 and annual greenhouse gas accounting reports under regulation 9.22 – see item 36.

Item [31] Paragraph 12.02(1)(i)

Item 31 inserts a new paragraph 12.02(1)(i) that removes a reference to the Designated Authority.

Items [32] and [33] - Subregulations 12.03(5) and 12.07(3)

These items remove the subregulations. The Regulator for the purposes of regulations 12.03 and 12.07 in relation to a petroleum titleholder, infrastructure licensee or pipeline licensee, and also in relation to a greenhouse gas titleholder, is the Titles Administrator – see item 36.

Item [34] Regulation 12.08

Item 34 makes a machinery amendment by replacing each reference to ‘Designated Authority’ with ‘State Minister’. Upon commencement of Schedule 1 to the *Offshore Petroleum (Royalty) Amendment Act 2011* on 1 January 2012, the ‘State Minister’ (i.e. the responsible State Minister of Western Australia) will exercise functions previously exercisable by the Designated Authority relating to the verification, administration and collection of royalty under the *Offshore Petroleum (Royalty) Act 2006* (the Royalty Act).

Item [35] After subregulation 12.08(2)

Item 35 provides that ‘State Minister’ has the meaning given by section 4 of the Royalty Act. From 1 January 2012, section 4 of the Royalty Act will provide that ‘State Minister’ is the responsible State Minister of Western Australia. See item 34.

Item [36] Further Amendments

Item 36 provides that machinery amendments be made in the listed provisions to reflect the changes in regulatory responsibility commencing on 1 January 2012, with the abolition of the Designated Authorities, the establishment of the Titles Administrator and the expansion of the Safety Authority to become NOPSEMA. The Titles Administrator takes over the regulatory functions and powers of the Designated Authority provided in the listed provisions, and also certain powers and functions of the responsible Commonwealth Minister in relation to the collection of greenhouse gas data. NOPSEMA continues to exercise the regulatory functions of the Safety Authority.

In addition, this item corrects a typographical error in the RMA Regulations by replacing the word “office” in regulation 12.04 with the word “offence”.