

EXPLANATORY STATEMENT
Select Legislative Instrument No. 252, 2015

Issued by the authority of the Minister for Resources, Energy and Northern Australia
Offshore Petroleum and Greenhouse Gas Storage Act 2006
Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Amendment (Well Operations) Regulation 2015

The *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act) provides the legal framework for the exploration for and recovery of petroleum, and for the injection and storage of greenhouse gas substances, in offshore areas. Section 781 of the OPGGS Act provides that the Governor-General may make regulations prescribing matters required or permitted by the OPGGS Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the OPGGS Act.

Part 5 of the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* (Principal Regulations) provides the regulatory framework for offshore wells and well activities in Commonwealth waters.

The purpose of the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Amendment (Well Operations) Regulation 2015* (the Regulation) is to ensure that levies can be appropriately applied to well operations management plans (WOMP) submitted under transitional arrangements in relation to amendments to the Principal Regulations that commence on 1 January 2016.

Amendments to the Principal Regulations in the *Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Well Operations) Regulation 2015* (Well Operations Amendment Regulation) include strengthened content requirements for WOMPs, which will enable WOMPs to function as the sole permissioning document for well activities conducted by titleholders. The Well Operations Amendment Regulation includes transitional provisions that will keep existing WOMPs in force when the amendments commence, but also require titleholders to submit a *proposed revision* of the WOMP that complies with the Principal Regulations as amended within two years of the commencement of the amendments. If a WOMP that was kept in force has not been revised within the two years (i.e. by 31 December 2017), the WOMP will cease to be in force. A titleholder commits an offence if it undertakes a well activity without a WOMP in force for the well.

However, the first WOMP submitted by a titleholder in compliance with the Principal Regulations as amended by the Well Operations Amendment Regulation will in effect be a new WOMP, rather than a revision of the WOMP that has been kept in force. The new content requirements inserted by the Well Operations Amendment Regulation are substantial, so the first revision of a transitional WOMP is going to require the titleholder to do a substantial rewrite of the WOMP, and require NOPSEMA to apply the same level of regulatory scrutiny as would be necessary for a titleholder's initial WOMP. The regulatory costs associated with assessing these WOMPs must be recovered. One option is to amend the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* (Regulatory Levies Act) to impose levy on the submission by a titleholder of the first revision of a transitioned WOMP. However, such a levy would apply only once in relation to any transitioned WOMP and would become obsolete within two years at most. Instead, the Regulation amends the Principal Regulations, as amended by the Well Operations

Amendment Regulation, so that any requirement to submit a revision of a WOMP would instead be, in the case of the first revision of a transitional WOMP, a requirement to submit a *new* WOMP. This will enable NOPSEMA to recover its regulatory costs in assessing the WOMP under the existing levy in the Regulatory Levies Act.

Details of the Regulation are set out in [Attachment 1](#). The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences immediately after the Well Operations Amendment Regulation, which commences on 1 January 2016. The Regulation amends the Principal Regulations as they are amended by the Well Operations Amendment Regulation, and therefore must commence after the Well Operations Amendment Regulation.

The Regulation is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full Statement of Compatibility is set out in [Attachment 2](#).

The Office of Best Practice Regulation (OBPR) was consulted in the preparation of the Regulation. OBPR advised that no regulatory impact analysis was required to be undertaken.

Consultation

Specific consultation has not been undertaken in relation to the Regulation. The Regulation is consequential in nature, driven by recent amendments to the Principal Regulations, including transitional arrangements working in conjunction with the cost-recovery arrangements in the Regulatory Levies Act.

The amendments to the Principal Regulations made by the Regulation do not, in practical effect, substantially alter the arrangements that would otherwise have been in place, and in relation to which significant consultation was previously undertaken with the offshore petroleum industry prior to the making of the Well Operations Amendment Regulation. For example, titleholders will still be required to submit a WOMP that complies with the Principal Regulations, as amended by the Well Operations Amendment Regulation, within two years. The only real difference is that, for the purposes of the Principal Regulations, the WOMP submitted in accordance with the amended Principal Regulations will be a new WOMP, rather than a proposed revision of an existing WOMP.

One key change from the previous arrangement is that titleholders will, with the consent of the Regulator, be able to submit a proposed revision of a part of a WOMP only during the transitional period, rather than a completely new WOMP, in circumstances of relative urgency, e.g. where a proposed revision is required during drilling operations, so that there is not time to develop and assess a new WOMP. This amendment is for the benefit of industry, and will be notified to industry following the making of the Regulation.

Details of the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Amendment (Well Operations) Regulation 2015*

Section 1 – Name

This section provides that the title of the Regulation is the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Amendment (Well Operations) Regulation 2015*.

Section 2 – Commencement

This section provides for the Regulation to commence immediately after the commencement of the *Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Well Operations) Regulation 2015* (Well Operations Amendment Regulation), which commences on 1 January 2016. The Regulation amends the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* (the Principal Regulations) as they are amended by the Well Operations Amendment Regulation, and therefore must commence after the Well Operations Amendment Regulation.

Section 3 - Authority

This section provides that the Regulation is made under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

Section 4 - Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011

Item [1] – Paragraph 5.13(1)(c)

This item repeals paragraph 5.13(1)(c) of the Principal Regulations which, as amended by the Well Operations Amendment Regulation, applies to a *proposed revision* of a well operations management plan (WOMP) that is taken to be in force under subregulation 5.31(1). The Regulation amends the Principal Regulations to remove the requirement to submit a proposed revision of a WOMP that is taken to be in force under subregulation 5.31(1), and instead provide for submission of a *new* WOMP within a two year transitional period – see items 5 and 7. Paragraph 5.13(1)(c) is therefore redundant.

Paragraph 5.13(1)(a) of the Principal Regulations as amended by the Well Operations Amendment Regulation applies in relation to a WOMP submitted under new regulation 5.35.

Item [2] – Regulation 5.30

This item inserts a definition of the term *‘new plan’* into regulation 5.30. This is needed because, instead of applying for acceptance of a *proposed revision* of a transitional WOMP, the titleholder is applying for acceptance of a *new WOMP* under regulation 5.35 – see item 7.

The item also inserts definitions of *‘transitional 2-year period’* and *‘transitional plan’*. These definitions are inserted in order to reduce the complexity of the drafting of the substantive provisions.

Item [3] – Regulation 5.31 (heading)

This item repeals the heading inserted by the Well Operations Amendment Regulation, which refers to ‘Accepted’ well operations management plans, and replaces it with a heading which refers to ‘Transitional’ well operations management plans. This reflects the move away from treating WOMPs in force prior to the commencement of the Well Operations Amendment Regulation as being continued in force indefinitely under the Principal Regulations as amended by the Well Operations Amendment Regulation. The new approach implemented by the Regulation is to terminate the effect of a transitional WOMP upon the acceptance of a new WOMP during the transitional two year period, or at the end of the two year period if a new WOMP has not been accepted before that time.

Item [4] – Paragraphs 5.31(3)(a) and (b)

Subregulation 5.31(3) of the Principal Regulations, as amended by the Well Operations Amendment Regulation, provides for certain provisions of the Principal Regulations as amended not to apply, and for certain provisions of the Principal Regulations prior to amendment to continue to apply, until a *revised* WOMP has been accepted under the amended Regulations.

The Regulation amends the Principal Regulations to provide for submission of a *new* WOMP, rather than a proposed revision of a WOMP – see items 5 and 7. This item therefore amends subregulation 5.31(3) to refer to a new WOMP, rather than a revised WOMP.

Item [5] – Subregulations 5.31(5) to (7)

This item repeals subregulations 5.31(5) to (7) of the Principal Regulations, as amended by the Well Operations Amendment Regulation. These subregulations provide for submission of a proposed *revision* of a WOMP that has been kept in force by subregulation 5.31(1) of the Principal Regulations, as amended by the Well Operations Amendment Regulation, and for a WOMP that has been kept in force to cease to be in force after two years if a *revision* of the WOMP has not been submitted and accepted by the Regulator.

The Regulation amends the Principal Regulations to provide for submission of a *new* WOMP, rather than a *proposed revision* of a WOMP. The transitional arrangements in subregulations 5.31(5) to (7) are therefore replaced by a new regulation 5.35 in relation to submission of a new WOMP within two years of commencement of the Well Operations Amendment Regulation – see item 7.

Item [6] – Subregulation 5.33(2)

Subregulation 5.33(1) of the Principal Regulations, as amended by the Well Operations Amendment Regulation, provides for the case where, before the commencement of the Well Operations Amendment Regulation, a titleholder has applied under regulation 5.11 of the old Regulations for acceptance of a variation of a WOMP and, at the commencement time, the Regulator has not yet decided whether to accept or reject the variation. In that case, after the commencement time, the Regulator must continue to deal with the variation in accordance with the old Regulations.

Item 6 repeals subregulation 5.33(2) of the Principal Regulations, as amended by the Well Operations Amendment Regulation, and substitutes a provision that says that, if the variation is subsequently accepted, the *transitional* WOMP has effect as varied. No future variation of the WOMP is permitted. Instead, a new WOMP is required to be submitted within the transitional period in accordance with new regulation 5.35 – see item 7.

Item [7] – At the end of Division 10 of Part 5

This item inserts a new regulation 5.35, which implements the requirement that a transitional WOMP be replaced by a new WOMP within the 2-year transitional period. This may occur in a range of circumstances.

New subregulation 5.35(1) contains the basic requirement that the titleholder must apply for acceptance of a new WOMP before the end of the transitional period, unless the operation of the transitional WOMP ends within that period under regulation 5.17 (essentially, through plugging and abandonment). There are several scenarios that may result in a new WOMP being in place before the end of the transitional period.

One is under subregulation 5.35(2). This provides that if a titleholder is, apart from this subregulation, required under regulation 5.10 of the Principal Regulations, as amended by the Well Operations Amendment Regulation, to submit a proposed revision of a transitional WOMP, the titleholder must instead apply for the acceptance of a new WOMP within the same timeframe as applies under regulation 5.10. The new WOMP would have to contain any matters that would have had to be included in a proposed revision of the WOMP (in other words, it must comply with the new content requirements) and be accepted under the new acceptance criteria.

Paragraph 5.35(2)(b) provides for an exception to the above requirement. This is that, *with the consent of the Regulator*, a proposed revision of the transitional WOMP may be submitted, rather than a whole new WOMP. This is intended to deal with circumstances that may arise, e.g. during the actual drilling of a well, where the existing transitional WOMP does not cover particular conditions that have been encountered during drilling, but where there is insufficient time for the titleholder to put together an entire new WOMP and for NOPSEMA to assess it. The Regulator in such a case may permit a revision of the relevant part of the transitional WOMP. The transitional WOMP will be a less comprehensive document than a WOMP that complies with the new content requirements and acceptance criteria, so it is not impossible that cases could arise where the transitional WOMP fails to deal with the circumstances that have occurred.

If consent is granted to submit a proposed revision of the transitional WOMP, rather than a new WOMP, new subregulation 5.35(8) applies so that only the acceptance criteria in paragraphs 5.08(b) and (d) will be considered by the Regulator. The other acceptance criteria in regulation 5.08 reflect the new content requirements for a WOMP; therefore if

those acceptance criteria were considered in relation to a proposed revision of a transitional WOMP only, it is likely that the proposed revision would be rejected by the Regulator. Further, if the proposed revision is required because NOPSEMA or the responsible Commonwealth Minister gave the titleholder a direction which is inconsistent with the WOMP, a criterion for the acceptance of the proposed revision is that it is consistent with the direction (paragraph 5.35(8)(b)).

The ability to submit a proposed revision of a transitional WOMP with the consent of the Regulator does not replace the requirement to submit a new WOMP, in accordance with the Principal Regulations as amended by the Well Operations Amendment Regulation, during the 2-year transitional period.

New subregulation 5.35(3) provides for the case where a titleholder is required under regulation 5.10 to submit a proposed revision of the transitional WOMP for the well, because one of the triggers for a revision under regulation 5.10 has occurred, but where the titleholder has *already* applied for acceptance of a new WOMP under regulation 5.06. This subregulation 5.35(3), together with new subregulation 5.35(4), deals with cases where the already-submitted new WOMP either deals with, or does not deal with, the matter that gave rise to the trigger for a revision under regulation 5.10. They do this as follows.

Paragraph 5.35(3)(a) converts the titleholder's obligation into a requirement merely to notify the Regulator, as soon as practicable, giving details of the circumstance that would otherwise give rise to the requirement for a revision. Paragraph (b) then disapplies the requirement in subregulation 5.35(2) to submit a new WOMP (because this has already been done), and paragraph (c) disapplies the WOMP revision requirements in Division 4 of the Principal Regulations. These provisions leave it to the Regulator, which has received the notification of the circumstance under paragraph (a), to take appropriate action during the acceptance/rejection process being applied to the already-submitted new WOMP.

Given that it would be an unnecessary administrative burden on the titleholder to give a notification under paragraph 5.35(3)(a) where the titleholder has already drafted the new WOMP to take account of the 'circumstance' that led to the requirement for a proposed revision under regulation 5.10, new subregulation 5.35(4) removes the requirement to give the notification to the Regulator if the new WOMP already deals with the 'circumstance'.

Subregulation 5.35(5) provides that a titleholder for a transitional WOMP must apply under regulation 5.06 for acceptance of a new WOMP if the Regulator notifies the titleholder that the titleholder is required to do so. The objection process in regulations 5.11 and 5.12 of the Principal Regulations applies as if this were a requirement for a proposed revision of a WOMP.

Subregulation 5.35(7) deals with the case where a titleholder is required to submit a new WOMP under new subregulation 5.35(2) or (5) because NOPSEMA or the responsible Commonwealth Minister gave the titleholder a direction that is inconsistent with the transitional WOMP. Subregulation 5.35(7) makes it an acceptance criterion that the new WOMP is consistent with the direction.

New regulation 5.36 provides for the cessation in force of a transitional WOMP. A transitional WOMP ceases to be in force:

- (a) if a new WOMP in relation to the well is accepted by the Regulator before the end of the transitional 2-year period – when the new WOMP comes into force;

- (b) if an application for acceptance of a new WOMP is not determined at the end of the transitional 2-year period – when the new plan comes into force or when notice of refusal to accept is given to the titleholder, as the case may be;
- (c) if the operation of the transitional WOMP ends under regulation 5.17 before the end of the transitional 2-year period (i.e. through the plugging and abandonment process under that regulation) – when the operation of the WOMP ends;
- (d) in any other case, at the end of the transitional 2-year period.

The effect of paragraph (d) is that if a new WOMP is submitted to the Regulator in accordance with the Principal Regulations as amended by the Well Operations Amendment Regulation within the 2-year transitional period, and the Regulator decides to refuse to accept the WOMP before the end of the transitional period, the transitional WOMP will continue in force until the end of the transitional period, or until another new WOMP submitted within the transitional period is accepted by the Regulator.

New regulations 5.35 and 5.36 replace subregulations 5.31(5), (6) and (7), which would have made equivalent provision in relation to the *revision* of WOMPs during the transitional 2-year period. Those subregulations are repealed by the Regulation – see item 5.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Amendment (Well Operations) Regulation 2015

This Regulation is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Regulation

The purpose of the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Amendment (Well Operations) Regulation 2015* (the Regulation) is to ensure that levies can be appropriately applied to well operations management plans (WOMP) submitted under transitional arrangements in relation to amendments to the Principal Regulations that commence on 1 January 2016.

Amendments to the Principal Regulations in the *Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Well Operations) Regulation 2015* (Well Operations Amendment Regulation) include strengthened content requirements for WOMPs, which will enable WOMPs to function as the sole permissioning document for well activities conducted by titleholders. The Well Operations Amendment Regulation includes transitional provisions that will keep existing WOMPs in force when the amendments commence, but also require titleholders to submit a *proposed revision* of the WOMP that complies with the Principal Regulations as amended within two years of the commencement of the amendments. If a WOMP that was kept in force has not been revised within the two years (i.e. by 31 December 2017), the WOMP will cease to be in force.

However, the first WOMP submitted by a titleholder in compliance with the Principal Regulations as amended by the Well Operations Amendment Regulation will in effect be a new WOMP, rather than a revision of the WOMP that has been kept in force. The new content requirements inserted by the Well Operations Amendment Regulation are substantial, so the first revision of a transitional WOMP is going to require the titleholder to do a substantial rewrite of the WOMP, and require NOPSEMA to apply the same level of regulatory scrutiny as would be necessary for a titleholder's initial WOMP. The regulatory costs associated with assessing these WOMPs must be recovered. The Regulation therefore amends the Principal Regulations, as amended by the Well Operations Amendment Regulation, so that any requirement to submit a revision of a WOMP would instead be, in the case of the first revision of a transitional WOMP, a requirement to submit a *new* WOMP. This will enable NOPSEMA to recover its regulatory costs in assessing the WOMP under the existing levy in the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003*.

Human rights implications

The Regulation does not engage any of the applicable rights or freedoms.

Conclusion

The Regulation is compatible with human rights as it does not raise any human rights issues.