

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Resources and Northern Australia

Offshore Petroleum and Greenhouse Gas Storage Act 2006
Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011

Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Amendment (Data Sharing) Regulations 2017

Purpose and Operation

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 relevantly confers on the Governor-General the power to make regulations prescribing matters required or permitted by the OPGGS Act to be prescribed.

Section 712 of the OPGGS Act provides for the protection of confidentiality of documentary information obtained by the National Offshore Petroleum Titles Administrator (the Titles Administrator). Relevantly, paragraph 712(2)(c) of the OPGGS Act provides that the Titles Administrator must not make “documentary information” (as defined in the OPGGS Act) publicly known or available to a person (other than a Minister, a Minister of a State or a Minister of the Northern Territory), unless the Titles Administrator does so in accordance with regulations made for the purposes of that paragraph.

Regulation 7.19 of the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* (the RMA Regulations) sets out a requirement for petroleum production licensees to give the Titles Administrator a monthly production report for offshore petroleum licence areas in Commonwealth waters. The information in a monthly production report is “documentary information” for the purposes of the OPGGS Act.

The purpose of the Regulations is to amend the RMA Regulations to expressly authorise the Titles Administrator to share documentary information with an officer of the Department of the Environment and Energy (DoEE) if the Titles Administrator is satisfied that the information will enable or assist an officer of DoEE to perform or exercise any function or power under the *Petroleum and Other Fuels Reporting Act 2017* (the POFR Act).

The POFR Act establishes a mandatory reporting regime for fuel information. The information collected under mandatory reporting will be used to monitor Australia’s energy security, facilitate compliance with international reporting and stockholding obligations, and enable the publication of aggregate fuel statistics for the use of business, investors, academics and government.

The Australian Government has produced statistics on fuel for over forty years through a voluntary survey of business. The statistics derived from the information reported by

businesses are released in a range of government publications, the most notable of which is the Australian Petroleum Statistics (APS). The APS contains detailed monthly statistics on the production, refining, wholesaling and end-of-month stock levels of petroleum (crude oil and derivatives such as gasoline and diesel), petroleum-related products such as lubricants, bitumen and paraffin wax, and alternative fuels like ethanol, biodiesel and gaseous transport fuels like compressed natural gas. In recent years the proportion of the fuel market participating in the survey has declined, reducing the reliability of the resulting statistics. Mandatory reporting will enable the development of more accurate, reliable and informative statistics on petroleum, other fuels and fuel-related products.

Mandatory reporting of petroleum and other fuels forms part of the Australian Government's plan to return to compliance with the International Energy Agency (IEA) obligation to hold oil stocks equivalent to 90 days of the previous year's average daily net oil imports. The capturing of all IEA relevant stock under mandatory reporting will ensure an accurate picture of Australia's stockholding position can be determined.

The POFR Act empowers the Minister for the Environment and Energy to require persons to report fuel information to the Secretary of DoEE. The POFR Act also provides a range of safeguards to ensure that personal and commercial-in-confidence information provided to the Secretary of DoEE is protected. This includes a prohibition on the recording, use or disclosure of such information. If this prohibition is breached, a penalty of up to two years imprisonment may apply to DoEE employees, consultants and contractors. The POFR Act provides several defences and exemptions to this prohibition so that appropriate and authorised recording, use and disclosure of protected information can take place.

Monthly production reports given to the Titles Administrator, under regulation 7.19 of the RMA Regulations, contain a large portion of the information that offshore petroleum producers are required to report in order to meet requirements under the POFR Act.

Following consultation between the Titles Administrator, DoEE and businesses required to report offshore petroleum production information under the POFR Act, the parties agreed that a data-sharing arrangement between the Titles Administrator and DoEE is appropriate. The arrangement will enable the Titles Administrator to provide information, which has been given to the Titles Administrator by offshore petroleum producers in accordance with the RMA Regulations, to officers in DoEE for the purposes of the POFR Act. This is intended to reduce the reporting burden on offshore petroleum producers where re-reporting of the same information to these two Australian Government agencies is unnecessary.

Section 41 of the POFR Act provides that the Minister for the Environment and Energy may, by legislative instrument, make legislative rules prescribing matters required or permitted by the POFR Act to be prescribed by legislative rules, or necessary or convenient to be prescribed for carrying out or giving effect to the POFR Act. This includes the power to introduce flexibility into the reporting requirements, for example where data-sharing between government agencies removes the need to collect information directly. The *Petroleum and Other Fuels Reporting Ministerial Rules 2017* provide an exception to relevant reporting obligations where a regulated entity has already reported prescribed information to the Titles Administrator.

While relevant arrangements are in place under the POFR Act and associated legislative instruments to allow for this data-sharing, there is currently no legislative authority within the

offshore petroleum legislative regime for the Titles Administrator to share this information with DoEE. The *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Amendment (Data Sharing) Regulations 2017* (the Regulations) will provide the authority for the Titles Administrator to share the information.

Consultation

The creation of a mandatory reporting requirement for petroleum and other fuels has been subject to discussion with industry, government and international stakeholders, such as the IEA, since 2013.

DoEE released a public consultation paper on mandatory reporting in September 2016, conducting consultation sessions in Perth, Melbourne, Sydney and Brisbane with industry stakeholders in October 2016. Separate consultation was undertaken with Commonwealth, state and territory agencies which use the APS or collect similar information. In response to the feedback received by DoEE during this process, a Preferred Design Paper was released in December 2016.

Specific consultation was undertaken between the Titles Administrator, DoEE and businesses required to report offshore petroleum production information under the POFR Act. The parties agreed that a data sharing arrangement between the Titles Administrator and DoEE is appropriate. This is intended to reduce the reporting burden on regulated entities where re-reporting of information to these two Australian Government agencies is unnecessary.

Regulatory Impact

The Office of Best Practice Regulation advised that no RIS was required (OBPR ID: 23034).

Details of the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment (Safety Case and Environment Plan Levies) Regulations 2017*

Section 1 – Name

This section provides that the title of the Regulations is the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Amendment (Data Sharing) Regulations 2017*.

Section 2 – Commencement

This section provides for the Regulations to commence on 1 January 2018. This is to coincide with the commencement of mandatory reporting requirements under the *Petroleum and Other Fuels Reporting Act 2017* (POFR Act).

Section 3 – Authority

This section provides that the Regulations are made under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act).

Section 4 – Schedules

This section is a machinery clause that enables the Schedule to amend the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* (the RMA Regulations).

Schedule 1—Amendments

Part 1—Amendments

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

Item 1 – Regulation 1.05

This item inserts a new definition of “Energy Department” for the purposes of the RMA Regulations.

Item 2 – At the end of Division 3 of Part 8

This item adds new regulation 8.13A to specify that the Titles Administrator may make documentary information available to an officer of the Energy Department if the Titles Administrator is satisfied that the information will enable or assist an officer of the Energy Department to perform or exercise any function or power under the POFR Act.

“Documentary information” is defined in section 711 of the OPGGS Act, and includes information in a monthly production report provided by a petroleum production licensee to the Titles Administrator under regulation 7.19 of the RMA Regulations.

The new provision ensures there is legal authority for the Titles Administrator to share the information with an officer of the Energy Department, for the purposes of the POFR Act.

This item will also provide that the “Energy Department” is the Department administered by the Minister administering the POFR Act, which is currently the Department of the Environment and Energy.

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 (Data Sharing) Regulations 2017

These Regulations are 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 Regulations

The Regulations amend the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* (the RMA Regulations) to expressly authorise the National Offshore Petroleum Titles Administrator (the Titles Administrator) to share “documentary information” with an officer of the Department of the Environment and Energy (DoEE), if the Titles Administrator is satisfied that the information will enable or assist an officer of DoEE to perform or exercise any function or power under the *Petroleum and Other Fuels Reporting Act 2017* (the POFR Act).

While relevant arrangements are in place under the POFR Act and associated legislative instruments to allow for data sharing, there is currently no authority within the offshore petroleum legislative regime for the Titles Administrator to share this information with DoEE. The Regulations provide the authority for the Titles Administrator to share the information.

Human rights implications

Section 11 of the POFR Act empowers the Minister for the Environment and Energy to require a person to report fuel information to the Secretary of DoEE. As a result of the amendments made by the Regulations, certain fuel information relating to petroleum will be able to be provided to DoEE by the Titles Administrator. This information will be used to compile statistics instead of requiring companies to re-report the information to DoEE. This will reduce the regulatory burden associated with mandatory reporting.

The shared information could also be used by DoEE to monitor compliance with the reporting obligation contained at section 11 of the POFR Act. For example, a company paying excise on transport fuels would generally be expected to also report wholesaling under the reporting obligation in the POFR Act.

The information shared by the Titles Administrator with DoEE could be personal or commercial-in-confidence information, and will be used for the same purposes and subject to the same protections as protected information obtained directly from businesses. Therefore, the below analysis in relation to the engagement and limitation of human rights for the POFR Act is also relevant to the Regulations.

Petroleum and Other Fuels Reporting Act 2017 (POFR Act)

The POFR Act engages the following rights:

- *The Right to Privacy under Article 17 of the International Covenant on Civil and Political Rights.*

It is envisioned that some of the information reported to DoEE under the POFR Act, including information provided by the Titles Administrator, will be personal information (such as the name of the person submitting the report).

This collection of personal information is necessary to ensure the orderly operation of the legislative scheme, including its enforcement, so that the public benefits of the scheme can be realised.

The POFR Act provides a range of protections for personal information to ensure that information collected under the mandatory reporting requirement is used appropriately and not disclosed for purposes unrelated to its collection.

- *Right to Freedom of Expression under Article 19 of the International Covenant on Civil and Political Rights.*

To protect personal and commercial-in-confidence information collected under mandatory reporting, including information provided by the Titles Administrator, clause 20 of the POFR Act prohibits the recording, use and disclosure of this information by employees, contractors or consultants engaged by DoEE unless it is authorised by law. It is important to note that clauses 20 to 30 contain a number of authorisations to enable the orderly operation of the reporting and publication regime. This includes subclause 20(4) which makes clear that the prohibition does not apply to disclosures that fall within the constitutional doctrine of implied freedom of political communication.

Unauthorised use, recording or disclosure of protected information by DoEE employees, contractors or consultants (including those who have ceased their employment or engagement) is a criminal offence punishable by up to two years imprisonment.

The Secretary of DoEE is also granted a discretionary power under clauses 24 and 30 to impose conditions on other entities when he or she discloses information to them. It is envisioned that the Secretary of DoEE would, in certain circumstances, use this power to prohibit further recording, use or disclosure of protected information. It is also a criminal offence punishable by up to two years imprisonment to breach a condition imposed by the Secretary under clauses 24 and 30.

The restrictions on record-making, publication and disclosure engage the right to freedom of expression in Article 19 of the International Covenant on Civil and Political Rights. Article 19 permits restrictions on freedom of expression as provided by law when necessary to protect public order, which includes the protection of confidential information. The restrictions on record-making, publication and disclosure are compatible with the Article as they are required to ensure that persons required to report under the POFR Act can be confident that their sensitive

information will be protected and treated appropriately when it is used by DoEE or another entity.

Conclusion

These Regulations are compatible with human rights because, to the extent that they may limit human rights, those limitations are reasonable, necessary and proportionate.

Senator the Hon Matt Canavan, Minister for Resources and Northern Australia