

EXPLANATORY STATEMENT

Issued by authority of the Minister for the Environment and Energy

Sea Installations Regulations 2018

The *Sea Installations Act 1987* (the Act) establishes a scheme to regulate the operation of certain offshore sea installations fixed or moored to the sea bed of the Australian continental shelf beyond the territorial sea or adjacent to Australian territories.

Section 77 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Sea Installations Regulations 2018* (the Regulations) is to remake the *Sea Installations Regulations 1989* (the 1989 Regulations), which are due to sunset on 1 April 2018. The Regulations also update the 1989 Regulations by removing obsolete references that relate to obtaining a new sea installations permit.

On 17 October 2014, the Act was amended by the *Omnibus Repeal Day (Autumn 2014) Act 2014* (the Repeal Day Act). The Repeal Day Act repealed the sea installations permitting system from the Act, as equivalent environmental protections could be achieved under the *Environment Protection and Biodiversity Conservation Act 1999* and the *Great Barrier Reef Marine Park Act 1975*. The effect being that no new sea installations permits or exemption certificates can be issued under the Act.

Although the sea installations permit and exemption certificate provisions of the Act were repealed, a small number of permits and exemption certificates were granted under the Act before the Repeal Day Act commenced. The Repeal Day Act provides that the repeal of the permit and exemption certificate provisions do not apply to a permit or certificate in force at the commencement of the repeal, while that permit or certificate remains in force. The Regulations relating to sea installations permits, renewals and variations therefore apply to sea installations permits and exemption certificates that were in force on or before 17 October 2014.

The Regulations:

- maintain the three existing classes of structure that are not included in the definition of sea installation for the purposes of the Act;
- prescribe the fee amounts for applications to renew or vary a sea installations permit; and
- prescribe the maximum fee amounts, the timeframe for the payment of fees and the duration of a sea installations permit or renewal of a permit for the purposes of the Act.

The Department of the Environment and Energy undertook a 'fit for purpose' review to ensure that the Regulations operated efficiently and effectively. Targeted consultation with relevant stakeholders, including the holders of current sea installations permits or certificates, was undertaken during the review. The Regulations are supported by stakeholders.

Details of the Regulations are set out in the [Attachment](#).

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

The Regulations commence the day after it is registered on the Federal Register of Legislation.

Statement of Compatibility with Human Rights

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

Sea Installations Regulations 2018

The 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 Legislative Instrument

The purpose of the *Sea Installations Regulations 2018* (the Regulations) is to remake the *Sea Installations Regulations 1989*, which are due to sunset on 1 April 2018. The Regulations:

- maintain the three existing classes of structure that are not included in the definition of sea installation for the purposes of the Act;
- prescribe the fee amounts for applications to renew or vary a sea installations permit; and
- prescribe the maximum fee amounts, the timeframe for the payment of fees and the duration of a sea installations permit or renewal of a permit for the purposes of the Act.

No charges or fees imposed under the Act and prescribed by the Regulations have been increased or decreased in the remade Regulations.

Human rights implications

The Regulations do not engage with any of the applicable rights or freedoms.

Conclusion

The Regulations are compatible with human rights as they do not raise any human rights issues.

The Hon Josh Frydenberg MP, Minister for the Environment and Energy

Details of the *Sea Installations Regulations 2018*

Part 1 - Preliminary

Section 1 – Name

1. This section provides that the title of the Regulations is the *Sea Installations Regulations 2018* (the Regulations).

Section 2 – Commencement

2. This section provides that the Regulations commence on the day after the instrument is registered.

Section 3 – Authority

3. This section provides that the Regulations are made under the *Sea Installations Act 1987* (the Act).

Section 4 – Schedules

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

Section 5 – Definitions

5. This section defines key terms used in the Regulations.
6. The section confirms that 'the Act' means the *Sea Installations Act 1987*.
7. The section refers the reader to section 6 for the substantive definition of 'cost', in relation to an application for a permit to install, or add to, a sea installation.
8. The section defines the terms 'moorings', 'pontoon', 'prescribed pontoon', 'prescribed vessel' and 'relevant permission'.

Section 6 – Cost of installing, or adding to, a sea installation

9. This section defines that the cost of installing, or adding to, a sea installation, means the cost of constructing, transporting and installing the sea installation or addition. Subsection 6(2) clarifies that this meaning applies to costs incurred before and after an application is made for a permit to install or add to the sea installation. This definition is relevant to determining the fee amounts for applications to renew or vary a permit.

Section 7 – Meaning of *sea installation*

10. This section prescribes the three classes of structure that are not included within the definition of sea installation for the purposes of the Act, as provided for by paragraph (r) of the definition of sea installation in subsection 4(1) of the Act. These classes of structure are moorings, navigable vessels, other than prescribed vessels or pontoons and meteorological aids, or wave data recording stations, operated by the Commonwealth.

Part 2 – Renewal of permits

Section 8 – Applications to renew permits

11. This section prescribes the fee amounts for an application to renew a permit.
12. Subsection 8(1) provides the fee amounts for an application to renew a permit to operate a sea installation other than a prescribed vessel. The table at subsection 8(1) provides the fee amounts according to a range of costs for installing the sea installation. As defined in section 6, the cost to install a sea installation is the cost of constructing, transporting and installing the sea installation and applies to costs incurred before and after an application is made.
13. Subsection 8(2) provides the fee amounts for an application to renew a permit to operate a sea installation that is a prescribed vessel. A prescribed vessel is defined in section 5 as meaning a navigable vessel that is equipped with sleeping accommodation provided on a commercial basis for more than 8 persons. Paragraph 8(2)(b) provides a formula for calculating the amount, and the fee is the greater of that amount or \$17.
14. As no new permits can be granted under the Act, following the repeal of the permitting system by the *Omnibus Repeal Day (Autumn 2014) Act 2014*, this section does not prescribe fees for applications to obtain a permit.

Part 3 – Variations to permits

Section 9 – Applications to vary permits - all sea installations

15. This section prescribes the fee amounts for applications to vary a permit to authorise additions to a sea installation. The table at subsection 9(1) provides the fee amounts according to a range of costs for making the additions to the sea installation. As defined in section 6, the cost of adding to a sea installation is the cost of constructing, transporting and installing the addition and applies to costs incurred before and after an application is made.
16. Subsection 9(2) provides that a fee of \$100 applies to an application, other than an application to authorise an addition to a sea installation under subsection 9(1), to vary a permit to authorise an increase of not more than 50 members of the public being permitted to visit the installation per day, or authorise the operation of the installation for another environment-related activity. Fees to vary a permit to authorise an increase of more than 50 members of the public are provided for in section 10 (for sea installations other than prescribed vessels) and in section 11 (for prescribed vessels).
17. Subsection 9(3) prescribes that the fee amount for an application to vary a permit to authorise the removal of part of a sea installation is the lesser of the amount of the fee paid for the application for the permit or \$100.

Section 10 – Applications to vary permits - sea installations other than prescribed vessels

18. This section provides that the fee for an application to vary a permit for a sea installation, other than for a prescribed vessel, so as to authorise an increase of more than 50 members

of the public being permitted to visit the sea installation per day, is the amount of the fee paid for the application for the permit.

19. Subsection 10(3) prescribes the fee amounts for an application to vary a permit to authorise both an increase of more than 50 members of the public being permitted to visit the sea installation per day and additions to the sea installation. The table at subsection 10(3) provides the fee amounts according to a range of total costs for both installing and adding to the sea installation. As defined in section 6, the cost to install, or add to, a sea installation is the cost of constructing, transporting and installing the sea installation or addition, and applies to costs incurred before and after an application is made.

Section 11 – Applications to vary permits - prescribed vessels

20. This section prescribes the fee amounts for an application to vary a permit for a sea installation that is a prescribed vessel, so as to authorise an increase of more than 50 members of the public being permitted to visit the sea installation per day, or to stay overnight on the sea installation. A prescribed vessel is defined in section 5 as meaning a navigable vessel that is equipped with sleeping accommodation provided on a commercial basis for more than 8 persons. Paragraph 11(2)(b) provides a formula for calculating the amount, and the fee is the greater of that amount or \$17.

Part 4 – Other rules about fees and permits

Section 12 – Maximum fees

21. This section prescribes the maximum fees payable for renewing or varying a permit.
22. As no new permits can be granted under the Act, following the repeal of the permitting system by the *Omnibus Repeal Day (Autumn 2014) Act 2014*, this section does not prescribe fees to obtain a permit.

Section 13 – Time for payment of fees

23. This section provides that the payment of a fee for an application must be paid within 30 days after the application is made.

Section 14 – Duration of permits

24. This section prescribes the periods of operation for a permit for the purposes of subparagraph 22(b)(iii) (relating to obtaining a permit), and paragraph 27(4)(c) (relating to renewing a permit) of the Act.
25. Paragraph 14(1)(a) provides that the period for a permit, or renewal of a permit, to operate a sea installation other than a prescribed pontoon (for the purposes of the relevant subparagraph or paragraph of the Act) is five years.
26. Paragraph 14(1)(b) provides that the period for a permit, or renewal of a permit, to operate a sea installation that is a prescribed pontoon (for the purposes of the relevant subparagraph or paragraph of the Act) is the period that ends on the expiration of the relevant permission that is in force for the operation or use of the pontoon. A 'relevant permission' has the same meaning as the *Great Barrier Reef Marine Park Regulations 1983*, as defined in section 5.
27. Paragraph 14(2) clarifies that this section does not apply to a permit to operate a sea installation that is a floating structure used as a residential hotel.

28. As no new permits can be granted under the Act, following the repeal of the permitting system under the *Omnibus Repeal Day (Autumn 2014) Act 2014*, this section applies to applications to renew a permit under the Act.

Schedule 1 – Repeals

Item 1 – The whole of the instrument

29. Item 1 repeals the *Sea Installations Regulations 1989*.