

EXPLANATORY STATEMENT

**Issued by the Authority of the Minister for Resources and Northern Australia,
Senator the Hon Matt Canavan**

Offshore Minerals Act 1994

*Offshore Minerals (Multiple Applications for Exploration or Mining Licences) Regulations
2018*

Purpose and Operation

The *Offshore Minerals Act 1994* (the Act) provides the legal framework for the exploration for, and mining of, minerals (other than petroleum) in offshore areas.

Section 440 of the Act provides that the Governor-General may make regulations prescribing matters either 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.

Sections 58 and 203 of the Act provide for dealing with multiple applications for an exploration licence or mining licence over a block. Subsections 58(2) and 203(2) provide that if applications are lodged within a particular time of each other, and the time is less than the time prescribed by the regulations, the Designated Authority must determine the order in which the applications are to be dealt with by drawing lots in the way prescribed by the regulations.

The *Offshore Minerals (Ballot Procedures) Regulations* (the sunseting Regulations), which are due to sunset on 1 October 2018, prescribe the time of lodgement of applications, the manner of lodgement and the ballot procedures for the purposes of subsections 58(2) and 203(2) of the Act.

The Department of Industry, Innovation and Science (the department) has conducted a review of the sunseting Regulations and determined that they should be remade without substantive change. To date, only a few licences have been granted under the Act. There has therefore been limited opportunity to assess whether the current timeframes and procedures are operating effectively.

The purpose of the *Offshore Minerals (Multiple Applications for Exploration or Mining Licences) Regulations 2018* (the 2018 Regulations) is to remake the sunseting Regulations in substantially the same form with amendments to ensure consistency with current drafting practices, including simplifying language and restructuring provisions for ease of navigation.

The 2018 Regulations also omit provisions relating to the manner of lodgement of applications, as there is a risk that this is outside the regulation-making power in the Act. Applicants and Designated Authorities may instead rely on provisions of the Commonwealth *Electronic Transactions Act 1999* and the *Acts Interpretation Act 1901* (the AI Act), which respectively provide for the manner of lodgement of information (including applications) in electronic form, and for the manner of service (including lodgement) of documents (including applications).

Subsection 33(3) of the AI Act relevantly provides that where an Act confers a power to make an instrument of a legislative character (including regulations), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions to repeal, rescind, revoke, amend, or vary any such instrument. The 2018 Regulations also repeal the sunseting Regulations.

A provision-by-provision description of the 2018 Regulations is set out at [Attachment A](#). Finding tables, which set out equivalent provisions in the sunseting Regulations to provisions in the 2018 Regulations and vice versa, are at [Attachment B](#).

Consultation

State and Northern Territory governments were consulted during the drafting of the 2018 Regulations. Jurisdictions were advised of the proposal to remake the sunseting Regulations with no substantive change at the March 2018 meeting of the Upstream Petroleum Resources Working Group of the Council of Australian Governments' Energy Council, with comments sought by 11 April 2018. No comments were received.

The offshore minerals industry in Australia is relatively small. In order to consult with the industry, and ensure broader awareness of the proposal to remake the sunseting Regulations, information about the proposal and an invitation to comment were published on the department's Consultation Hub. Interested stakeholders were also advised through an issue of Australian Petroleum News. Comments in relation to the proposal were sought by 13 April 2018. One submission was received; however, the content of the submission related to matters outside the scope of the sunseting Regulations.

Regulatory Impact

The Office of Best Practice Regulation (OBPR) has confirmed that a Regulation Impact Statement is not required for the 2018 Regulations. The OBPR reference is ID 22729.

Statement of Compatibility with Human Rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker of a legislative instrument to which section 42 (disallowance) of the *Legislation Act 2003* applies to cause a statement of compatibility to be prepared in respect of that legislative instrument. A Statement of Compatibility with Human Rights has been prepared to meet that requirement and is set out at [Attachment C](#).

Details of the *Offshore Minerals (Multiple Applications for Exploration or Mining Licences) Regulations 2018*

Part 1—Preliminary

Section 1 – Name

This section provides that the name of the instrument is the *Offshore Minerals (Multiple Applications for Exploration or Mining Licences) Regulations 2018* (the 2018 Regulations).

Section 2 – Commencement

This section provides that the 2018 Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the 2018 Regulations are made under the *Offshore Minerals Act 1994* (the Act). The applicable provisions that provide authority are subsections 440(1), 58(2) and 203(2) of the Act.

Section 4 – Schedules

This section is a machinery provision that enables the Schedule to the 2018 Regulations to operate according to its terms.

Section 5 – Definitions

This section provides for the definitions of terms used in the 2018 Regulations.

Part 2—How multiple applications are dealt with

Section 6 – When applications made other than by electronic communication or pre-paid post are taken to have been lodged

This section provides that an application is taken to have been lodged at the time it is received at the principal office of the Designated Authority, if it is lodged in a manner other than by electronic communication or pre-paid post (for example, by courier or personal delivery). As a result of the definition in section 5, the “principal office of the Designated Authority” is the principal office of the Department of State administered by the relevant Designated Authority.

Specific provision for the time of lodgement is necessary as subsections 58(2) and 203(2) of the Act require applications for exploration or mining licences that cover the same block to

be dealt with in the order determined by drawing lots, if the applications are lodged within a particular time of each other. That time is prescribed by the 2018 Regulations as 30 minutes (see section 7). The Electronic Transactions Act 1999 (the ET Act) and the Acts Interpretation Act 1901 (the AI Act) apply to applications for exploration licences and mining licences submitted under the Act. The ET Act provides that if a person is required or permitted to give information in writing under a Commonwealth Act, the person may give the information by means of electronic communication. Subsection 9(5) of the ET Act provides that “giving information” includes making an application.

Section 14A of the ET Act provides for the time of receipt (lodgement) of electronic communications. Section 14A provides that the time of receipt of the electronic communication is the time when the electronic communication becomes capable of being retrieved by the addressee at an electronic address designated by the addressee.

The AI Act provides for documents (such as an application for an exploration or mining licence) that are required or permitted to be served on a person under a Commonwealth Act (including lodgement of an application) to be given by means of personal delivery or pre-paid post. Section 29 of the AI Act provides for the time of lodgement of applications made by pre-paid post. Lodgement is taken to have been effected “at the time at which the letter would be delivered in the ordinary course of post”.

Section 29 of the AI Act does not apply to the personal delivery of a notice of a decision. As discussed above, this is provided for by section 6 of the 2018 Regulations.

There is no provision of the Act that appears to expressly require or permit the 2018 Regulations to deal with the time of lodgement of applications under the Act. Section 6 therefore relies on the necessary and convenient power in paragraph (b) of the regulation-making power in subsection 440(1) of the Act.

Designated Authorities should note the time of lodgement of applications for exploration licences and mining licences, in case another application for an exploration licence or mining licence covering the same block is received within the prescribed timeframe.

Paragraphs 54(1)(b) and 199(1)(b) of the Act respectively require applications for exploration and mining licences to be made “in the approved manner”. Section 4 of the Act defines “approved” as approved by the Designated Authority under section 41 of the Act.

Section 7 – Time in relation to lodgement of applications

This section prescribes 30 minutes as the time within which multiple applications for exploration or mining licences over a block have to be lodged in order to have the order in which they will be dealt with determined by drawing lots.

Section 8 – Way of drawing lots

This section sets out the procedures that are to be followed in the drawing of lots to determine the order in which multiple applications for an exploration or mining licence over a block will be dealt with, if they are lodged within 30 minutes of each other.

Subsection 8(2) requires the Designated Authority to give each applicant written notice of the time and place of the draw at least seven days before the draw. Subsection 438(2) of the Act deals with the manner of service of documents on an applicant for a licence.

Part 3—Application, saving and transitional provisions

Section 9 – Application of this instrument

This section provides that the 2018 Regulations apply to applications for an exploration or mining licence made on or after the commencement of the instrument.

As the situation dealt with by the sunseting Regulations has not occurred in practice, a savings provision has not been included.

Schedule 1 – Repeals

This Schedule provides that the whole of the sunseting *Offshore Minerals (Ballot Procedures) Regulations* is repealed.

Several changes have been made in the 2018 Regulations compared to the sunseting Regulations. The key changes are discussed below. Other changes are directed at improving the clarity of the regulations and/or reflect current drafting practice, but do not change the substance.

Name of the Regulations

The name of the Regulations has been changed to reflect the language used in the Act. The Act does not refer to “ballot procedures”.

References to delegate of the Designated Authority

The sunseting Regulations provide for the role and responsibilities of the delegate of the Designated Authority in relation to the drawing of lots. These references have been replaced with references to the Designated Authority, as under section 419 of the Act a Designated Authority may delegate to a person all or any of the powers or functions of the Designated Authority under regulations made under the Act.

Regulation 4 of the sunseting Regulations

The content of regulation 4 of the sunseting Regulations has been omitted from the 2018 Regulations, to the extent to which it purported to provide for the manner of lodgement of an application for an exploration licence or a mining licence. This does not appear to be

supported by a regulation-making power in the Act. Subsection 54(3) of the Act provides that an application for an exploration licence must be lodged with the Designated Authority. Subsection 199(3) provides similarly in relation to an application for a mining licence. The breadth of these provisions suggests they cannot be narrowed by regulations.

The provisions of the sunseting Regulations that dealt with the time of lodgement of applications lodged by post or electronic message have also been omitted – see discussion in section 6 regarding the application of the ET Act and the AI Act to applications for licences under the Act. Section 6 of the 2018 Regulations provides for the time of lodgement of applications received other than by electronic communication or pre-paid post.

Finding table

As a result of some of the changes outlined in Attachment A and the inclusion of additional provisions to deal with commencement, repeal of the sunseting Regulations, etc., it was necessary to renumber the provisions in the Regulations. This explanatory statement includes a finding table to assist in identifying which provision in the Regulations corresponds to a provision in the old law that has been rewritten or consolidated, and vice versa.

In the finding table, references to the sunseting Regulations are to provisions in the *Offshore Minerals (Ballot Procedures) Regulations*, and references to the 2018 Regulations are to provisions in the *Offshore Minerals (Multiple Applications for Exploration or Mining Licences) Regulations 2018*. “No equivalent” means that this is a new provision that has no equivalent in the sunseting Regulations.

Table: 2018 Regulations to Sunseting Regulations

<i>2018 Regulations</i>	<i>Sunseting Regulations</i>
1	1
2	No equivalent
3	No equivalent
4	No equivalent
5	2
6	4
7	3
8	5
9	No equivalent
Schedule 1	No equivalent

Statement of Compatibility with Human Rights

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

Offshore Minerals (Multiple Applications for Exploration or Mining Licences) Regulations 2018

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 Legislative Instrument

The *Offshore Minerals (Multiple Applications for Exploration or Mining Licences) Regulations 2018* (the 2018 Regulations) are a legislative instrument for the purposes of the *Legislation Act 2003*.

The 2018 Regulations are prepared under section 440 of the *Offshore Minerals Act 1994* (the Act), and repeal and remake the *Offshore Minerals (Ballot Procedures) Regulations* (the sunseting Regulations), due to sunset on 1 October 2018.

The sunseting Regulations prescribe, for the purposes of the Act, the procedure for determining the order in which multiple applications for an exploration licence or mining licence covering a block will be considered, when those applications are received within a prescribed time of each other. The matters prescribed include the relevant timeframe and the procedure for determining the order of consideration of applications by the drawing of lots. A review of the sunseting Regulations determined that the Regulations are still required. The 2018 Regulations remake the sunseting Regulations without substantive change.

Human rights implications

The 2018 Regulations do not engage any of the applicable rights or freedoms.

Conclusion

The 2018 Regulations are compatible with human rights, as they do not raise any human rights issues.

Senator the Hon Matt Canavan

Minister for Resources and Northern Australia