

## **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 (Exploration Activities) 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. The Act is administered on a day-to-day basis by the states and the Northern Territory (the Designated Authorities) on behalf of the Commonwealth.

Subsection 440(1) 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. Paragraphs 440(2)(f) and (h) provide that, without limiting subsection 440(1), regulations may provide for the keeping of records, cores or samples, and the making of returns.

Section 124 of the Act provides that an exploration licence holder must keep whatever records, cores and samples, and make whatever returns, that are necessary to comply with the regulations. Sections 184, 261 and 309 make equivalent provision in relation to holders of retention licences, mining licences and works licences respectively.

The *Offshore Minerals (Data Lodgment and Reporting) Regulations 1996* (the sunseting Regulations), which are due to sunset on 1 April 2019, detail the manner in which samples, reports and other data derived from offshore minerals exploration authorised under the Act are to be kept and provided to the relevant Designated Authority.

The Department of Industry, Innovation and Science (the department) has conducted a review of the sunseting Regulations and determined that they should be remade in an updated form that retains provisions that continue to be required, updates references where necessary and removes provisions that are redundant or superfluous.

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

Subsection 33(3) of the *Acts Interpretation Act 1901* 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. State and Northern Territory governments were further consulted on a small range of minor technical drafting matters, and their views taken into consideration in settling the final form.

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 22803.

### **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 (Exploration Activities) Regulations 2018***

**Section 1 – Name**

This section provides that the name of the instrument is the *Offshore Minerals (Exploration Activities) 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 sections 124, 184, 261, 309 and 440 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.

**Section 6 – Keeping samples obtained in the course of exploration activities**

This section applies if a licence holder obtains a sample in the course of an exploration activity. The licence holder must keep the sample in good condition for at least one year after the end of the return period in which the sample was taken. “Return period” is defined in section 5.

The purpose of this provision is to facilitate section 371 of the Act, which enables the Designated Authority to ask a person to give the Designated Authority or an inspector a sample taken from the seabed or subsoil, if the sample is relevant to the operation of the Act and the Designated Authority has reasonable grounds for believing that the person is able to give the sample.

The Designated Authority and the licence holder may agree, in writing, for the licence holder to dispose of the sample earlier than one year after the end of the return period.

## **Section 7 – Making returns of exploration activities**

This section outlines the required form and contents of returns of exploration activities carried out under a licence. In the Act, “licence” is defined as an exploration licence, retention licence, mining licence or works licence.

The term “return” is used (rather than “report”) to reflect the language in the Act. The Oxford English Dictionary includes the following definition: “An official report or statement submitted in response to a formal demand”. In this sense, it is similar to a tax return, being a report of activities over the course of a particular period.

This section also provides for the period in which a return is to be lodged, and requires a copy of the return and any accompanying documents to be provided when giving the return and any accompanying documents to the Designated Authority.

The note to subsection (2) informs the reader that, under Division 137 of the *Criminal Code*, it may be an offence to knowingly give misleading or false information or documents.

## **Section 8 – Form for returns of exploration activities and accompanying documents**

This section provides for the Designated Authority to approve the form of returns and accompanying documents, and ensures the information about the approved form is made publicly available for licence holders.

## **Schedule 1 – Repeals**

This Schedule provides that the whole of the sunseting *Offshore Minerals (Data Lodgment and Reporting) Regulations 1996* 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 more accurately reflect the content of the Regulations. The Regulations broadly relate to exploration activities, and the new name covers both data *and* samples from exploration activities, not only data.

### *Regulation 2 of the sunseting Regulations*

The content of regulation 2 of the sunseting Regulations has been omitted from the 2018 Regulations. Regulation 2 described the purpose of the Regulations as ensuring that data and samples gathered during, and reports prepared in respect of, offshore mineral exploration by a licence holder are available by providing a system for lodgement of the data and samples in a repository. However, there is no regulation-making power in the Act that enables lodgement of data and samples for the purpose of maintaining a repository. Rather, the only applicable

regulation-making power in section 440 refers to provision of data and samples for inspection.

#### *“Report of exploration work”*

References to a “report” of “exploration work” in the sunseting Regulations have been changed to references to a “return” of “exploration activities” in the 2018 Regulations.

The change from “report” to “return” is to align with the language in the Act, and thereby provide a clearer link to the regulation-making power in paragraph 440(2)(h), and other references in sections 124, 184, 261 and 309.

The change from “exploration work” to “exploration activities” is also for consistency with the language in the Act. The Act refers to activities under a licence, and includes a definition of “offshore exploration or mining activity”, but does not include references to “exploration work”.

#### *Regulation 5 of the sunseting Regulations*

Regulation 5 of the sunseting Regulations provided for the form of geophysical data in an exploration report. Geophysical data could be provided in the form of a transparency or film, on paper, or in digital form. The types of digital form included references to outdated methods of data provision, including floppy disk.

Under section 8 of the 2018 Regulations, the form of a return of exploration activities (including the form of geophysical data) must be a form approved by the Designated Authority and published on the website of the Department administered by the Designated Authority. The Regulations no longer specify forms of geophysical data. This ensures that current forms of data may be requested, and can be changed over time if there are further changes in technology.

#### *Regulation 6 of the sunseting Regulations*

The content of regulation 6 of the sunseting Regulations has been omitted from the 2018 Regulations because it is superfluous. Regulation 6 enabled the Designated Authority to ask a licence holder to provide information, if the licence holder did not provide all of the information required in an exploration report, or did not provide the information in the required form. If a licence holder has not complied with the requirement to submit a return of exploration activities, or has omitted certain information that is required to be included in a return, the requirement to submit the information continues, and the Designated Authority can follow up with the licence holder without the need for a specific provision in the regulations.

#### *Regulation 7 of the sunseting Regulations*

The content of regulation 7 of the sunseting Regulations has been omitted from the 2018 Regulations because it is superfluous. Regulation 7 enabled the Designated Authority, at the request of a licence holder, to extend a period within which the licence holder must comply with a requirement of the Regulations.

Subsection 7(2) of the 2018 Regulations provides for the period within which a licence holder must give a return of exploration activities to the Designated Authority. Paragraph 7(2)(b)

enables the Designated Authority and the licence holder to agree in writing on a longer period. There are no other provisions in the 2018 Regulations that require information to be given to the Designated Authority within a specified period.

*Regulation 8 of the sunseting Regulations*

The content of regulation 8 of the sunseting Regulations has been omitted from the 2018 Regulations. Regulation 8 enabled a Designated Authority to request a licence holder to give it two representative portions of a sample. The Explanatory Statement to the sunseting Regulations states that a licence holder may be requested to provide the portions of a sample to be delivered to a specified (sample repository) location. However, this purpose does not appear to be supported by a regulation-making power in the Act.

Section 371 of the Act enables the Designated Authority to ask a person to give the Designated Authority a sample taken from the seabed or subsoil if the sample is relevant to the operation of the Act. Given that the scope of the regulation-making power is limited to requiring provision of samples for inspection, this is already sufficiently provided by section 371 of the Act.

*Regulation 10 of the sunseting Regulations*

The content of regulation 10 of the sunseting Regulations has been omitted in the 2018 Regulations. Regulation 10 made it an offence for a licence holder to knowingly give to a Designated Authority an exploration report that is significantly false or misleading.

Division 137 of the *Criminal Code* creates offences for the provision of false or misleading information or documents. It is therefore unnecessary to include similar provision in the 2018 Regulations.

**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 (Data Lodgment and Reporting) Regulations 1996*, and references to the 2018 Regulations are to provisions in the *Offshore Minerals (Exploration Activities) Regulations 2018*. Also, in the finding tables:

- “No equivalent” means that this is a new provision that has no equivalent in the sunseting Regulations; and
- “Omitted” means that the provision in the sunseting Regulations has not been rewritten in the 2018 Regulations. Typically, the provision has been removed because it is redundant.

**Table 1.1: 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	3
6	9
7	4 and 5
8	5
Schedule 1	No equivalent

**Table 1.2: Sunseting Regulations to 2018 Regulations**

<i>Sunseting Regulations</i>	<i>2018 Regulations</i>
1	1
2	Omitted
3	5
3A	Omitted
4	7
5	7 and 8
6	Omitted
7	Omitted
8	Omitted
9	6
10	Omitted (see note to subsection 7(2))

## Statement of Compatibility with Human Rights

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

*Offshore Minerals (Exploration Activities) 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 (Exploration Activities) 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 (Data Lodgment and Reporting) Regulations 1996* (the sunseting Regulations), due to sunset on 1 April 2019.

The sunseting Regulations detail the manner in which samples, reports and other data derived from offshore minerals exploration authorised under the Act are to be kept and provided to the relevant state or Northern Territory government authorities. A review of the sunseting Regulations determined that the Regulations are still required. The 2018 Regulations remake the sunseting Regulations in an updated form that retains provisions that continue to be required, updates references where necessary and removes provisions that are redundant or superfluous.

### 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**