

EXPLANATORY STATEMENT

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

Offshore Petroleum and Greenhouse Gas Storage Act 2006

Offshore Petroleum and Greenhouse Gas Storage (Environment) Amendment (Consultation and Transparency) Regulations 2019

The *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the 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.

The *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (the Environment Regulations) provide for the regulation of environmental management of upstream petroleum and greenhouse gas activities in offshore areas. The Environment Regulations ensure offshore petroleum and greenhouse gas activities are carried out in a manner that is consistent with the principles of ecologically sustainable development, and in a manner by which the environmental impacts and risks of the activity will be reduced to as low as reasonably practicable and of an acceptable level.

Under the Environment Regulations, persons who want to conduct a petroleum or greenhouse gas activity are required to prepare and implement an environment plan for the period of the activity. The environment plan sets out the risks and impacts of the activity and the titleholder's proposed measures to reduce the risks and impacts to as low as reasonably practicable and an acceptable level. The Regulator must assess the environment plan and decide whether to accept it. An accepted environment plan for a petroleum or greenhouse gas activity must be in place prior to commencement of the activity.

The *Offshore Petroleum and Greenhouse Gas Storage (Environment) Amendment (Consultation and Transparency) Regulations 2019* (the Amendment Regulations) amend the Environment Regulations to implement the outcomes of a review of consultation and transparency requirements for offshore petroleum and greenhouse gas activities.

The key amendments in the Amendment Regulations include the following:

- Requirement for publication of environment plans and proposed revisions of environment plans, both on submission to and on acceptance by the Regulator
- Introduction of a completeness check of submitted environment plans to ensure that plans include material apparently addressing the content requirements of the Environment Regulations, prior to publication
- Introduction of a public comment period for environment plans for seismic or exploratory drilling activities, prior to assessment by the Regulator
- Requirement for the titleholder and the Regulator to prepare a statement for publication, setting out how they have taken into account comments received during the public comment period.

In 2016, the Australian Government commenced a process to review and reform the consultation and transparency requirements under the Environment Regulations. To ensure that industry's consultation practices represent leading practice and meet community expectations, the Australian Government has considered options to improve consultation and transparency requirements and reinforce community confidence in the offshore petroleum and greenhouse gas storage regime and regulatory decision-making processes.

Based on the feedback received through public consultation (see below), the Australian Government has determined that improvements to the consultation and transparency requirements could be made.

In November 2017, the Minister for Resources and Northern Australia, Senator the Hon Matt Canavan, announced a series of regulatory reforms to improve consultation and increase the transparency of Australia's offshore oil and gas regime. The key changes announced were:

- A new requirement for full publication of environment plans. Publication of environment plans is intended to provide transparency and clarity to community members about the information contained in environment plans, including the arrangements in place in the event of a major offshore petroleum incident.
- The introduction of a public comment period for offshore exploration activities (in addition to the ongoing requirement for consultation with relevant persons during development of an environment plan). A formalised public comment period for environment plans for certain offshore exploration activities will give the public the opportunity to make comments directly to the Regulator on the content of the environment plan.

The public comment period will not apply to environment plans for petroleum development, production, construction or infrastructure activities, as these activities are already subject to public comment during the preparation of an offshore project proposal.

It is important that the community has confidence in the regulatory process as a matter of good practice and to ensure the industry has a "social licence to operate". The regulatory reforms will ensure that the environmental planning and assessment process for offshore petroleum and greenhouse gas activities is transparent, leading practice and meets the expectations of the community.

The Amendment Regulations commence on the day after the end of the period of one month beginning on the day the Amendment Regulations are registered. Details of the Amendment Regulations are set out in [Attachment A](#).

Consultation

In conducting the review, the Australian Government released an issues paper for public consultation from 22 March to 30 April 2016. Public consultation sessions were held in Darwin, Melbourne, Adelaide and Perth in April 2016 that were attended by industry, environmental groups, members of the fishing industry and state and territory government officials. The purpose of the paper was to identify issues that could impact the effectiveness of the consultation requirements under the Environment Regulations, and invite comments

on proposed options, including on their potential impacts to industry and other stakeholders. Twenty-six written submissions were received from a range of stakeholders, which were considered in determining the outcomes of the review and regulatory reforms required.

The Environment Regulations already include a formal process for consultation with “relevant persons” (persons or organisations whose functions, interests or activities may be affected by the activities to be carried out under an environment plan) during development of the plan. However, the lack of a broader public comment mechanism was raised as a key concern for non-industry stakeholders seeking to have access to information about proposed activities, and input to environmental management decision-making processes. Community stakeholders consistently raised the need for more involvement from a broader group of stakeholders at all stages of the process. A formal public comment process is a feature of other environmental management decision-making frameworks both domestically and internationally.

There was general agreement amongst stakeholders that more environmental management information should be made publicly available earlier in the process, particularly before a decision is made by the Regulator. This would ensure stakeholders can see how their comments are represented to the Regulator and how they have been addressed by titleholders. Stakeholders see the release of more information, including full environment plan publication, as a way to build community confidence that titleholders are able to meet environmental performance outcomes.

The Australian Government also consulted on an exposure draft of the Amendment Regulations from 8 October to 16 November 2018, and held consultation forums in Perth, Adelaide and Melbourne between 30 October and 2 November 2018. The sessions were attended by a range of stakeholders representing government, companies, industry associations, the fishing sector, and environmental groups. The department received fifteen submissions on the exposure draft and the submissions were taken into account in finalising the Amendment Regulations.

Regulatory Impact

The Office of Best Practice Regulation (OBPR) has confirmed that a Regulation Impact Statement is not required for the Amendment Regulations. The OBPR reference is ID 24141.

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 B](#).

Details of the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Amendment (Consultation and Transparency) Regulations 2019*

Section 1 – Name

This section provides that the name of the instrument is the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Amendment (Consultation and Transparency) Regulations 2019* (the Amendment Regulations).

Section 2 – Commencement

This section provides that the Amendment Regulations commence on the day after the end of the period of one month beginning on the day the Amendment Regulations are registered. The purpose of delayed commencement is to avoid delay to environment plans currently under development and allow the Regulator to update its systems to transition to the new regulatory arrangements, while ensuring there is minimal deferral in the new arrangements coming into effect.

Section 3 – Authority

This section provides that the Amendment 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 the Amendment Regulations to operate according to its terms.

Schedule 1 – Amendments

Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009

Item 1 – Regulation 4

This item inserts several new definitions for the purposes of the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (the Principal Regulations).

“Seismic or exploratory drilling activity” and “seismic or exploratory drilling environment plan”

A definition of ***seismic or exploratory drilling activity*** and ***seismic or exploratory drilling environment plan*** is included to specify the environment plans to which a period of public comment will apply prior to assessment by the Regulator.

If an environment plan is for one or more seismic or exploratory drilling activities, the plan will be subject to public comment. This will be the case even if the plan includes one or more other activities (e.g. a development activity).

The definition captures seismic surveys, exploration drilling and drilling on an appraisal basis. It is not relevant what type of title the activity is carried out under, e.g. exploration activities carried out under a petroleum production licence will be captured.

Reference to these specific activities ensures that lower risk exploration activities, such as geotechnical surveys, and geophysical surveys undertaken only for the purpose of facility or infrastructure placement (which are not intended to be captured by the term ‘seismic survey’), are excluded from the requirement for public comment, while activities which attract public interest are included.

“Sensitive information” and “sensitive information part”

A definition of **sensitive information** and **sensitive information part** is included to specify the information that will not be published as part of an environment plan.

The definition of sensitive information captures personal information (within the meaning of the *Privacy Act 1988*) about an individual that is contained in information given by:

- (a) a relevant person in consultation under regulation 11A of the Principal Regulations during development of an environment plan or
- (b) any person during public comment on a seismic or exploratory drilling environment plan.

Personal information includes names, addresses, email addresses and telephone numbers of individuals.

The definition also captures information that was given by a relevant person during consultation in the course of preparing an environment plan, or by a person during the public comment period, which the giver has requested not be published. It is envisaged that the type of information that a person may request not be published would include sensitive or confidential matters relating to the functions, interests or activities of the relevant person or person who has provided a public comment, such as commercially sensitive fishing data (e.g. specific location and amounts of fish catch) or culturally sensitive information about a particular location.

It is important to note that not every person or entity consulted during the development of an environment plan is a “relevant person” for the purposes of regulation 11A of the Principal Regulations. Regulation 11A includes a definition of a “relevant person”, including Commonwealth and state/NT departments to which the activities to be carried out under the plan may be relevant, and a person or organisation whose functions, interests or activities may be affected by the activities to be carried out. Relevant persons do not include a related body corporate of a titleholder, or a person who will carry out operations in connection with the exercise of the titleholder’s rights or obligations under a contract, arrangement or understanding with the titleholder. Such persons may provide details relating to the activity to be undertaken, impacts and risks of the activity, and/or environmental management of the activity, including information used to demonstrate that impacts and risks are being managed to as low as reasonably practicable and an acceptable level, but are not relevant persons for

the purposes of regulation 11A. The policy intent of the amendments is to ensure that all such information is published.

The Amendment Regulations require the titleholder to tell each relevant person that the titleholder consults under regulation 11A during development of an environment plan that the relevant person may request that particular information the person provides in the consultation not be published (see new subregulation 11A(4)). Similarly, when the Regulator publishes an invitation for any person to provide comments on a seismic or exploratory drilling environment plan, the Regulator must state that the person may request that particular information in the comments not be published (see new paragraph 11B(1)(b)).

The Amendment Regulations provide for sensitive information, and the full text of any response by a relevant person to consultation under regulation 11A in the course of preparation of an environment plan, to be included in the sensitive information part of the plan, which will be excluded from publication. See new subregulation 9(8), and paragraphs 9AB(a) and 11B(5)(a).

The definition of *sensitive information* also applies in relation to statements by the Regulator as to how the Regulator took public comments into account in deciding to accept an environment plan for a seismic or exploratory drilling activity (see new subregulation 11(4)), and statements by the titleholder as to how they responded to public comments (see new subregulation 11B(4)). Such statements are published, and therefore must not include sensitive information.

Item 2 – Paragraph 9(2)(b)

This item amends paragraph 9(2)(b) to insert a reference to new Division 2.2B of the Principal Regulations (inserted by item 14 of the Amendment Regulations). Division 2.2B, which provides for public comment on a seismic or exploratory drilling environment plan, will apply in relation to an environment plan for a seismic survey submitted by an applicant for a petroleum access authority, petroleum special prospecting authority, greenhouse gas search authority or greenhouse gas special authority. The applicant is taken to be a titleholder for this purpose.

The authorities listed above do not give the holder of the authority the right to drill a well. Seismic or exploratory drilling activities cannot be undertaken under a pipeline licence.

Item 3 - Subregulations 9(8), (9) and (10)

This item repeals subregulations 9(8), (9) and (10) of the Principal Regulations.

Subregulation 9(8) provided for the Regulator to publish certain information on submission of an environment plan to the Regulator. With the exception of the information required to be published under paragraph 9(8)(f), this requirement has been moved to new regulation 9AB (inserted by item 4 of the Amendment Regulations). The information will be published at the same time as the Regulator publishes an environment plan that has been submitted by a titleholder.

The requirement in paragraph 9(8)(f) for the Regulator to publish the decision made by the Regulator in relation to the environment plan has been moved to new paragraph 11(3)(a) (inserted by item 9 of the Amendment Regulations). A description of the Regulator's decision to accept an environment plan, refuse to accept a plan, or accept a plan in part will be published by the Regulator as soon as practicable after giving notice of the decision to the titleholder.

Subregulations 9(9) and (10) provided for withdrawal of a submitted environment plan. These provisions have been moved to new regulation 11AA (inserted by item 11 of the Amendment Regulations) to enable a more logical flow of the regulations relating to what to do with a submitted environment plan.

This item also inserts a new subregulation 9(8). New subregulation 9(8) requires a titleholder to include all sensitive information, and the full text of any response by a relevant person to consultation under regulation 11A of the Principal Regulations (see subparagraph 16(b)(iv) of the Principal Regulations), in a separate part of an environment plan (referred to as the "sensitive information part"). The requirement facilitates publication of an environment plan by the Regulator with any sensitive information and full texts of responses omitted, to safeguard the privacy and commercial interests of relevant persons. The information will still be taken into account by the Regulator during its assessment of an environment plan.

A definition of "sensitive information" is inserted by item 1 of the Amendment Regulations – see discussion at page 5.

Item 4 – After regulation 9

This item inserts new regulations 9AA, 9AB and 9AC.

New regulation 9AA applies when an environment plan is submitted to the Regulator under regulation 9, resubmitted in response to an invitation under new regulation 9AC (discussed below), or resubmitted under new subregulation 11C(2) (i.e. when a seismic or exploratory drilling environment plan is significantly modified). Within five business days, the Regulator must decide provisionally whether the plan includes material apparently addressing all of the provisions of Division 2.3 of the Principal Regulations (which sets out the content requirements for an environment plan).

All environment plans submitted to the Regulator for assessment will be published on the Regulator's website. Further, environment plans for a seismic or exploratory drilling activity will be subject to a period of public comment prior to assessment by the Regulator. Before publishing an environment plan, it is therefore necessary for the Regulator to provisionally determine whether the plan includes sufficient information to address each of the content requirements of the Principal Regulations. To support transparency, it is important that published environment plans, including environment plans that are subject to public comment, include content relating to all the content requirement for a plan.

The Regulator will not publish the environment plan unless the Regulator provisionally determines that the plan includes material apparently addressing each of the content requirements of the Principal Regulations – see new regulation 9AB (discussed below).

The initial completeness check is not intended to be an assessment of the appropriateness, quality or adequacy of the environment plan, including the degree to which the plan meets the criteria for acceptance in regulation 10A of the Principal Regulations. The Regulator is only required to determine that there is some information included in the plan to address each of the content requirements. This is not a reviewable decision, as it is preliminary in nature.

As part of the completeness check, the Regulator will review the sensitive information part of the environment plan. The plan will not pass the completeness check if the Regulator considers that it includes information that is not required to be included in the sensitive information part, e.g. information given by a person who is not either a relevant person or a person who has provided comment during the period for comment on a seismic or exploratory drilling environment plan.

The Regulator is required to make a provisional decision within five business days of submission of the environment plan. The five business day period is a maximum timeframe, i.e. the Regulator can make a decision at any time within the period. It is open to the person who is making the provisional decision to measure the days according to that person's location. For example, if the person making the decision is located in Western Australia, the person could make the decision within five Western Australian business days.

New regulation 9AB applies if the Regulator makes a provisional decision under new regulation 9AA that an environment plan includes material apparently addressing each of the content requirements of the Principal Regulations. As soon as practicable, the Regulator must publish the environment plan with the sensitive information part removed – see discussion regarding the sensitive information part of an environment plan on page 5 (new definitions of “sensitive information” and “sensitive information part”) and page 6 (new subregulation 9(8)).

The Regulator must also publish certain high-level information in relation to the titleholder and the activity or activities to which the plan relates (previously required to be published under subregulation 9(8) – see discussion at page 5 with respect to item 3 of the Amendment Regulations).

New regulation 9AC applies if the Regulator makes a provisional decision under new regulation 9AA that an environment plan does not include material apparently addressing each of the content requirements of the Principal Regulations. The Regulator must inform the titleholder by written notice of the decision and the provisions of Division 2.3 of the Principal Regulations that appear not to be addressed by the plan. The notice must also invite the titleholder to modify the plan and resubmit it to the Regulator. When the titleholder resubmits a modified plan, the Regulator will have five business days to undertake a completeness check of the modified plan under regulation 9AA.

The titleholder may submit a modified plan at any time after receiving a written notice from the Regulator. There will be no limit to the number of times a titleholder may submit a plan for a particular activity for a completeness check by the Regulator; i.e. the titleholder may continue to submit modified plans until the Regulator has made a provisional decision that

the plan includes material apparently addressing each of the content requirements of the Principal Regulations.

Under the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* (the Regulatory Levies Act), an environment plan levy is imposed on submission of an environment plan to the Regulator under regulation 9 of the Principal Regulations. As a modified plan submitted in response to a written notice from the Regulator is submitted under new regulation 9AC, levy is not imposed on submission of the modified plan. The levy continues to only be imposed on the initial submission of an environment plan.

Item 5 – Subregulation 9A(3)

This item repeals subregulation 9A(3) of the Principal Regulations, and substitutes new subregulations 9A(3) and (4).

Under regulation 9A, if a titleholder submits an environment plan, the Regulator may request the titleholder to provide further written information about any matter required by the Principal Regulations to be included in an environment plan. Under the repealed subregulation 9A(3), if a titleholder received a request, and provided the information requested, the information became part of the environment plan, and the Regulator was required to have regard to the information as if it had been included in the submitted environment plan.

Allowing a titleholder to submit further information as a supplement to an environment plan, rather than in the form of an amended plan, could create potential complexities and confusion if the plan is subsequently accepted, and the accepted plan published on the Regulator's website. For example, information could be considered out of context, or a person may read the plan without realising that supplementary information has been provided.

New subregulation 9A(3) therefore requires a titleholder, when providing information requested by the Regulator under regulation 9A, to resubmit to the Regulator the environment plan with the information incorporated, whether or not the titleholder also provides the information separately. This ensures that, if the plan is subsequently accepted, the published plan reflects the plan as it has been accepted.

New subregulation 9A(4) retains the requirement in repealed subregulation 9A(3) for the Regulator to have regard to information requested that has been provided by the titleholder (in a resubmitted plan) within the period specified in the request, or a longer period agreed to by the Regulator. If the titleholder does not provide the information within the period specified or a longer period agreed to by the Regulator, the Regulator may make a decision on the basis of the version of the plan in relation to which further information had been requested.

Items 6 and 7 – Subregulation 10(1); After subregulation 10(1)

These items amend subregulation 10(1) and insert new subregulation 10(1A) as a consequence of the amendments made by the Amendment Regulations.

Previously, subregulation 10(1) provided that, within 30 days after a titleholder submitted an environment plan, the Regulator must either accept the plan, give a notice to the titleholder providing an opportunity to modify and resubmit the plan, or give a notice to the titleholder that the Regulator is unable to make a decision within 30 days and setting out a proposed timetable for consideration of the plan. However, with the new requirements for a completeness check on submission of an environment plan, publication of a submitted plan, and a public comment period for seismic or exploratory drilling environment plans, the Regulator's assessment process will no longer immediately commence on submission of an environment plan.

Item 6 amends subregulation 10(1) to remove the reference to 30 days after a titleholder submits an environment plan, and instead provides for NOPSEMA to take an action in relation to the plan within 30 days after the day described in new subregulation 10(1A).

New subregulation 10(1A) (inserted by item 7) provides that the relevant day for a seismic or exploratory drilling environment plan is the day the Regulator receives a resubmitted plan under new paragraph 11B(3)(b) and, if applicable, a statement of response to comments under new paragraph 11B(3)(c), following the public comment period. Commencing the assessment period for a seismic or exploratory drilling environment plan only once the Regulator has received both the plan and the statement of response to comments ensures there is incentive for the titleholder to comply with the requirement to provide the statement of response.

For all other environment plans, the relevant day is the day on which the Regulator publishes the plan under new regulation 9AB (inserted by item 4).

Items 8 and 9 – Regulation 11 (heading); After subregulation 11(2)

Item 9 amends regulation 11 of the Principal Regulations to provide for publication of an environment plan that has been accepted by the Regulator. To promote transparency it is important that, if an environment plan is accepted by the Regulator, the final version of the plan is made publicly available. For example, the plan may have been modified as a result of the Regulator giving the titleholder one or more opportunities to modify and resubmit the plan under regulation 10 of the Principal Regulations. New paragraph 11(2A)(b) provides that if the Regulator accepts an environment plan, either in whole or in part, the plan must be published on the Regulator's website, as soon as practicable after notice of the decision is given to the titleholder, with the sensitive information part removed – see discussion regarding the sensitive information part of an environment plan on page 5 (definitions of “sensitive information” and “sensitive information part”) and page 6 (new subregulation 9(8)). The entire plan (minus the sensitive information part) must be published, regardless of whether the plan is accepted in whole or in part.

It is intended in practice that all versions of an environment plan that are published on the Regulator’s website (i.e. on submission, after the end of a public comment period (if applicable), and on acceptance) will be retained on the Regulator’s website on an ongoing basis. This will enable comparison between each version of the environment plan.

Although an environment plan will be published on acceptance, the requirement to submit and publish a separate summary of an accepted environment plan in subregulations 11(3) and (4) in the Principal Regulations has been retained. The summary does not need to repeat large portions of text from the environment plan. Rather, the summary can provide links to the parts of the environment plan that deal with the matters that are required to be included in a summary. The summary will therefore provide a useful reference point for persons interested in particular aspects of a plan.

New paragraph 11(2A)(c) applies if the Regulator has made a decision to accept (in whole or in part) a seismic or exploratory drilling environment plan on which one or more comments were received during the public comment period – see new regulation 11B (inserted by item 14). To promote public confidence in the decision-making of the Regulator and improve transparency, when publishing the accepted plan the Regulator is also required to publish a statement by the Regulator as to how the Regulator took comments into account in making the decision. Given that the statement is published, new subregulation 11(2B) prohibits the Regulator from including sensitive information in the statement – see discussion regarding the definition of “sensitive information” on page 5.

There are restrictions on the comments that the Regulator is to take into account in making a decision – see discussion in relation to new subregulation 11B(6).

The requirement that was previously in paragraph 9(8)(f) for the Regulator to publish decisions made by the Regulator in relation to an environment plan has also been moved to new paragraph 11(2A)(a). This co-locates the requirement to publish a description of the decision with the requirement to give notice of the decision to the titleholder. The description of the decision will state whether the plan has been accepted in whole or in part, accepted subject to limitations or conditions, or whether the Regulator refused to accept the plan, and is not required to include any further information. The description is to be published as soon as practicable after giving notice of the decision to the titleholder, along with the environment plan (if accepted) and the statement by the Regulator of how it took public comments into account (if relevant).

The requirement for the Regulator to publish a description of the final decision in relation to an environment plan does not prevent the Regulator publishing interim decisions made during the assessment of an environment plan. For example, the Regulator may publish a notice advising that the Regulator is unable to make a decision within 30 days, in accordance with paragraph 10(1)(c) or 10(4)(c), or advising that the Regulator has given the titleholder a reasonable opportunity to modify and resubmit a plan, in accordance with subregulation 10(2).

Item 8 makes a consequential amendment to the heading of regulation 11.

Item 10 – At the end of regulation 11

This item inserts new subregulation 11(5), to clarify that the Regulator must publish a summary of an accepted environment plan as soon as practicable after the summary has been submitted by the titleholder in accordance with subregulations 11(3) and (4).

Item 11 – At the end of Division 2.2

This item inserts new regulation 11AA to provide for a titleholder to withdraw an environment plan before the Regulator has made a decision to accept or refuse to accept the plan. This replaces the previous provisions in subregulations 9(9) and (10), which have been repealed by item 3. Moving the provisions to new regulation 11AA enables a more logical flow of the regulations relating to what to do with a submitted environment plan.

For the purposes of transparency, new subregulation 11AA(2) ensures that, if the Regulator had published the environment plan before the plan was withdrawn by the titleholder, the Regulator must publish notice of the withdrawal on the Regulator’s website.

Item 12 - Division 2.2A (at the end of the heading)

This item amends the heading to Division 2.2A of the Principal Regulations to reflect that the requirement for consultation with relevant persons in Division 2.2A applies during preparation of an environment plan, prior to submission to the Regulator. This is to clearly differentiate Division 2.2A from requirements for public comment on a submitted seismic or exploratory drilling environment plan in new Division 2.2B, inserted by item 14.

Item 13 – At the end of regulation 11A

This item adds a new subregulation 11A(4) to require titleholders to advise each relevant person that the titleholder consults under regulation 11A that the relevant person may request that particular information the person provides in the consultation not be published, and that such information will not be published under the Principal Regulations. This ensures that all relevant persons are aware of the restrictions around publication of sensitive information, and given a specific opportunity to request that particular information not be published (e.g. commercially sensitive information about fishing).

Information that a relevant person requests not be published is included in the definition of “sensitive information”, and therefore is only able to be included in the “sensitive information part” of an environment plan. The sensitive information part of an environment plan is required to be omitted in published versions of an environment plan. See discussion regarding the sensitive information part of an environment plan on page 5 (definitions of “sensitive information” and “sensitive information part”) and page 6 (subregulation 9(8)).

Item 14 – After Division 2.2A

This item inserts a new Division 2.2B, to provide for public comment on submitted seismic or exploratory drilling environment plans prior to assessment by the Regulator. A definition

of “seismic or exploratory drilling environment plan” is inserted by item 1 – see discussion at pages 4 to 5.

A public comment period for seismic or exploratory drilling environment plans will increase transparency, and provide members of the public with opportunities to comment on proposed environmental management arrangements for activities (seismic surveys and exploration drilling) that have become the subject of increased public focus over the last few years.

Inclusion of a public comment period is considered appropriate given that members of the general public are not currently required to be consulted on exploration activities. Titleholders are required to make reasonable efforts to consult with a range of different categories of relevant persons about the potential impacts and risks of an activity, during development of an environment plan, under Division 2.2A of the Principal Regulations. The purpose of this consultation is to inform the management of the impacts and risks of the planned activity, as well as to ensure that those entities that may be involved in an emergency response are aware of the activity and are prepared for performing their role.

It is not reasonable to expect that a titleholder will be able to consult directly with any member of the public who may be interested in a particular activity. The public comment period therefore allows interested members of the public to provide their input on environmental management of seismic or exploratory drilling activities.

The proposed amendments to formalise a public comment period for seismic or exploratory drilling activities do not replace or alter the existing requirement for consultation with relevant persons during development of an environment plan under Division 2.2A of the Principal Regulations. The requirement for consultation with relevant persons ensures that persons whose functions, interests or activities will or may be directly affected by an activity have the opportunity to comment on proposed environmental management arrangements for the activity, and the titleholder can take comments into account during development of the plan. To this end, consultation should be undertaken in good faith between titleholders and relevant persons, with a free and open exchange of information to inform appropriate environmental impact assessment.

Environment plans for development activities are not subject to a public comment period, as the public already has the opportunity to comment on offshore project proposals for development activities under Part 1A of the Principal Regulations.

New subregulation 11B(1) applies when the Regulator publishes a seismic or exploratory drilling environment plan under new regulation 9AB (inserted by item 4 – see discussion at pages 7 to 8), following satisfaction of an initial completeness check. At the same time, the Regulator is also required to publish an invitation for any person to give the Regulator written comments on the matters described in Division 2.3 of the Principal Regulations in relation to the plan. Division 2.3 sets out the content requirements for an environment plan. Comments are required to be provided within 30 days of publication of the invitation.

The invitation will also invite persons to request that particular information in the comments not be published. Information subject to such a request is included in the definition of “sensitive information”, and therefore is only able to be included in the “sensitive information

part” of an environment plan. The sensitive information part of an environment plan is required to be omitted in published versions of an environment plan. See discussion regarding the sensitive information part of an environment plan on page 5 (definitions of “sensitive information” and “sensitive information part”) and page 6 (subregulation 9(8)).

Further, “sensitive information” must not be included in a statement by the titleholder of how they have responded to comments (see new paragraph 11B(3)(c), discussed below), and a statement by the Regulator of how they have taken comments into account in making a decision (paragraph 11(3)(c), inserted by item 9 – see discussion at page 10). Both of these statements are required to be published.

New subregulation 11B(2) requires the Regulator to give a copy of comments received during the 30 day period to the titleholder, as soon as practicable after receiving the comments. Requiring the Regulator to provide comments to the titleholder as soon as practicable, rather than requiring provision of all comments at the end of the 30 day period, enables titleholders to consider comments as they are received, increasing efficiency and minimising overall process timeframes. Comments received during the public comment period will not be published.

New subregulation 11B(3) provides for what the titleholder must do at the end of the 30 day public comment period. After the end of the period, the titleholder may (at its discretion) modify the plan, and must resubmit the plan within 12 months, whether modified or not. It is not mandatory for the titleholder to modify the plan. The titleholder may not elect to make any changes, either because no comments were received during the public comment period, or because the titleholder does not wish to modify the plan in response to comments. If the titleholder does decide to modify the plan, this could be as a result of comments received and/or for any other reason.

Requiring resubmission of the plan, either as it has been modified or with no change, ensures that the Regulator has confirmation from the titleholder they consider the plan is ready to be assessed, and that the Regulator has the most up-to-date version of the plan. Resubmission of the plan, along with a statement required by new paragraph 11B(3)(c) if applicable (discussed below), also triggers the start of the Regulator’s environment plan assessment process – see amendment to subregulation 10(1) and new subregulation 10(1A) (items 6 and 7 respectively).

Under the Regulatory Levies Act, an environment plan levy is imposed on submission of an environment plan to the Regulator under regulation 9 of the Principal Regulations. As a plan submitted after the end of a public comment period is submitted under new subregulation 11B(3), a levy is not imposed on this submission of the plan. The levy continues to only be imposed on the initial submission of an environment plan.

New paragraph 11B(3)(c) applies if a titleholder receives comments during the public comment period, and requires the titleholder, when resubmitting a plan, to also give the Regulator a written statement responding in general terms to the comments received. The statement is also required to include information about whether any modifications were made to the plan in response to the comments (subparagraph 11B(3)(c)(ii)), to ensure it is clear whether the plan has been modified or not in response to comments. If the plan was modified

in response to comments, the statement should refer to where those modifications have been made (subparagraph 11B(3)(c)(iii)). The purpose of the statement, which will be published (see new paragraph 11B(5)(b)), is to enhance transparency, in particular for persons who provide comments during the public comment period.

The intention is that comments may be grouped based on common issues raised, and may include a reference to the section of the plan which has been modified to demonstrate the changes made. A detailed summary of the comments is not required, as the Regulator will also have a copy of the public comments that it can take into account during assessment of the environment plan.

Given that the statement is published, new subregulation 11B(4) prohibits the titleholder from including sensitive information in the statement – see discussion regarding the definition of “sensitive information” on page 5.

There is no requirement for a titleholder to engage directly or on an ongoing basis with a commenter during or after the comment period. The titleholder has discretion as to whether to respond to commenters directly. However, if a new relevant person (as defined in regulation 11A of the Principal Regulations) is identified during the public comment period, the current ongoing consultation requirements in relation to relevant persons apply.

New subregulation 11B(5) requires the Regulator, within five business days of receiving the environment plan (whether modified or not), to publish the plan on its website, with the sensitive information part removed – see discussion regarding the sensitive information part of an environment plan on page 5 (definitions of “sensitive information” and “sensitive information part”) and page 6 (subregulation 9(8)). If the Regulator receives a statement of response to comments from the titleholder, the Regulator must also publish the statement on its website.

The five business day period is a maximum timeframe, i.e. the Regulator is able to publish the plan and statement (if applicable) at any time within the period. It is open to the person who is publishing the documentation to measure the days according to that person’s location. For example, if the person publishing the documentation is located in Western Australia, the person could do so within five Western Australian business days.

Publishing both the environment plan and the titleholder’s response to comments ensures that the public is able to view both the response and any revisions made to the environment plan as a result, providing greater clarity and transparency than may be provided if only the response were required to be published.

New subregulation 11B(6) provides that, in making a decision in relation to an environment plan under regulation 10 of the Principal Regulations (e.g. to accept the plan, reject the plan, or provide an opportunity to modify and resubmit the plan), the Regulator is required to consider the comments described in subregulation 11B(2). The comments described in subregulation 11B(2) are those that meet both of the following criteria:

- (a) the comment was received during the 30 day public comment period (i.e. the period mentioned in subregulation 11B(1));

- (b) the comment relates to the content of the plan as it relates to the content requirements in Division 2.3 of the Principal Regulations (i.e. comments described in subregulation 11B(1)).

Any other comments are not able to be taken into account by the Regulator, e.g. comments received outside the 30 day period, and/or comments that do not relate to the content of the plan as it relates to the content requirements of the Principal Regulations. This provision in effect also means that, in deciding whether or not to modify its environment plan in response to comments, the titleholder is only required to take into account comments received within the 30 day period and that relate to the content of the plan as it relates to the content requirements of the Principal Regulations.

It is possible in practice that a range of comments could be received during the public comment period, potentially including comments that are not related to the environmental management of the particular activity. Restricting the comments to be taken into account to only include those received during the 30 day public comment period, and that are relevant to the content of the plan as it relates to the content requirements of the Principal Regulations, provides certainty for the titleholder when deciding whether to revise its environment plan, and the Regulator when assessing the plan.

New subregulation 11B(7) provides for the consequences if a titleholder does not resubmit a plan (whether modified or not) within 12 months after the end of the public comment period. The titleholder is taken to have withdrawn its environment plan under subregulation 11AA(1) at the end of the 12 month period. The Regulator will not assess the plan, and if the titleholder still proposes to undertake the activity, they will need to submit a new environment plan under regulation 9 and commence the full process again, including a period of public comment for the new plan.

The plan is taken to have been withdrawn after 12 months as, if there is a particularly lengthy timeframe between the public comment period and resubmission of an environment plan, circumstances may have changed and, to ensure transparency, stakeholders should have the opportunity to comment again on the environmental management matters set out in the plan.

As the plan is taken to have been withdrawn under subregulation 11AA(1), the requirement in subregulation 11AA(2) applies for the Regulator to publish notice of withdrawal of the plan on its website.

The plan is taken to be withdrawn for the purposes of both the Principal Regulations and the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004* (the Levies Regulations). The latter ensures that subregulations 59E(3) and 59I(3) of the Levies Regulations, as amended by items 26 and 27 of the proposed Regulations, apply so that instalments of the compliance amount of environment plans levies must be refunded or remitted to the titleholder.

As a result of the application of regulation 21 of the Principal Regulations (as amended by item 19 of the Amendment Regulations), new subregulation 11B(7) also applies to a proposed revision of a seismic or exploratory drilling environment plan, so that the proposed revision is taken to have been withdrawn by the titleholder if it is not resubmitted (whether

modified or not) within 12 months after the end of the public comment period. In this case, new subregulation 21(4) (inserted by item 23) clarifies that the provisions of the environment plan in force for the activity existing immediately before the proposed revision was submitted remain in force as if the revision had not been proposed.

New regulation 11C deals with situations where a seismic or exploratory drilling environment plan is significantly modified after the Regulator has published the plan under regulation 9AB (see discussion on page 7 to 8) or subregulation 11B(5) (see discussion on page 14), and before the Regulator makes a decision under regulation 10 of the Principal Regulations to accept, or refuse to accept, the plan.

The significant modifications covered by new regulation 11C are a significant modification or addition of a new stage of any of the seismic or exploratory drilling activities to which the plan previously related (new subparagraph 11C(1)(b)(i)), or inclusion in the plan of a new seismic or exploratory drilling activity (new subparagraph 11C(1)(b)(ii)). The wording of subparagraph 11C(1)(b)(i) mirrors the wording of current subregulation 17(5) of the Principal Regulations, and it is intended to apply in similar circumstances.

If a titleholder significantly modifies a seismic or exploratory drilling environment plan prior to a decision by the Regulator, particularly where this occurs after the period for public comment on the plan, this would impact the ability to achieve desired policy outcomes in relation to consultation and transparency. New regulation 11C therefore requires the titleholder to resubmit the plan, as modified, to the Regulator and commence a new 30 day public comment period. The new public comment period commences following a provisional decision by the Regulator that the plan includes material apparently addressing all of the content requirements for an environment plan (see regulations 9AA, 9AB and 9AC, inserted by item 4) and publication of the plan and an invitation to comment (see new subregulation 11B(1)).

On submission of a modified plan, the Regulator is required to cease its assessment of the previous version of the plan (if the assessment process has commenced), or cease acting under new Division 2.2B in relation to the previous version of the plan (if the process in new Division 2.2B is underway at the time of submission of the modified plan). A new assessment period begins when the plan is submitted, whether modified or not, after the end of the public comment period.

It is not intended that the proposed requirement to re-commence a 30 day public comment period will apply where there has been a reduction in the size or scale of a proposed activity. For example, if the environment plan was modified so that the area for a proposed seismic survey was reduced, a further 30 day public comment period is not required. The requirement to commence another public comment period is only intended to apply where there are changes to a proposed activity that increase the environmental risk profile for the activity.

Further, the provision does not relate to modifications of an environment plan in relation to significant new or significant increases in environmental impact or risk (equivalent to the circumstances set out in subregulation 17(6) of the Principal Regulations). These circumstances apply when an activity has already commenced and the titleholder identifies an unforeseen impact or risk, or unforeseen increase in an identified impact or risk.

Under the Regulatory Levies Act, an environment plan levy is imposed on submission of an environment plan to the Regulator under regulation 9 of the Principal Regulations. As a plan resubmitted to the Regulator following a significant modification is submitted under new subregulation 11C(2), levy is not imposed on submission of the plan.

Item 15 – Paragraph 16(b)

This item amends paragraph 16(b) of the Principal Regulations to update the drafting in line with current practice.

Item 16 – Paragraphs 19(1)(a) and (b)

This item amends paragraphs 19(1)(a) and (b) of the Principal Regulations to correct the reference to regulation 11 in those paragraphs. The paragraphs should refer to acceptance of an environment plan or a revised environment plan under regulation 10.

Item 17 – Regulation 20

This item amends regulation 20 of the Principal Regulations to remove the ability for a titleholder to submit a revised part of an environment plan. If a titleholder proposes or is required to revise an environment plan, the titleholder must submit the whole plan, as it has been revised.

If a titleholder submits only a revised part of an environment plan, this may cause complexity in relation to requirements to publish the environment plan and, in the case of a proposed revision of an environment plan for a seismic or exploratory drilling activity, invite public comment on the revised plan. For example, publishing only a revised part of a plan will not enable the public to consider the revised part in the context of the overall plan, or may result in confusion as to which part of a plans are applicable. Requiring the whole plan to be submitted, as it has been revised, ensures clarity and transparency for the purposes of publication of the plan and public comment on the proposed revision (if applicable).

Item 18 – Regulation 20A

This item repeals regulation 20A, which provided for the Regulator to publish certain information on submission of a proposed revision of an environment plan to the Regulator. With the exception of the information previously required to be published under paragraph 20A(g), the requirement to publish the information on submission of the proposed revision instead applies through new regulation 9AB (inserted by item 4 of the Amendment Regulations), as applied by regulation 21 as amended by the Amendment Regulations (see discussion in relation to items 19 to 23 below). The information is published at the same time as the Regulator publishes the proposed revision of the environment plan.

The requirement previously in paragraph 20A(g) for the Regulator to publish the decision made by the Regulator in relation to the revised environment plan applies through new paragraph 11(2A)(a) (inserted by item 9 of the Amendment Regulations), as applied by regulation 21 as amended by the Amendment Regulations (see discussion in relation to item

19 below). The statement describing the decision is published by the Regulator as soon as practicable after giving notice of the decision to the titleholder.

Items 19 to 23 – Regulation 21

These items amend regulation 21 to ensure that the requirements relating to publication of an environment plan and public comment on a seismic or exploratory drilling environment plan also apply in relation to proposed revisions of environment plans submitted under regulation 17, 18 or 19 of the Principal Regulations.

Regulation 21 previously provided that regulations 9A, 10, 10A, 11 and 11A of the Principal Regulations apply to a proposed revision as if a reference in those regulations to the submission, acceptance or non-acceptance of an environment plan were a reference to the submission, acceptance or non-acceptance of the proposed revision, and any other reference to the environment plan were a reference to the proposed revision.

Item 19

Item 19 amends regulation 21 so that new regulations 9AA (checking completeness of submitted environment plan), 9AB (publishing environment plan and associated information) and 9AC (action on incomplete environment plan) and, if relevant, new regulations 11B (public comments on seismic or exploratory drilling environment plan) and 11C (seismic or exploratory drilling environment plan to be resubmitted for fresh completeness check and public comments if significantly modified), also apply to a proposed revision in the same manner. Regulations 11B and 11C only apply to proposed revisions of seismic or exploratory drilling environment plans.

Regulations 9A, 10, 10A, 11 and 11A, as amended by the Amendment Regulations, also continue to apply to proposed revisions of environment plans. For example, new subregulation 11(2A) (inserted by item 9) will require the Regulator, as soon as practicable after making a decision to accept or refuse to accept a proposed revision of an environment plan, to publish a description of the decision and, if accepted, to publish the proposed revision with the sensitive information part removed. If a proposed revision of a seismic or exploratory drilling environment plan is accepted, and one or more comments were received during the public comment period with respect to the proposed revision, the Regulator is also required to publish a statement as to how the Regulator took the comments into account in making the decision.

Under the Regulatory Levies Act, environment plan levies are imposed on submission of a proposed revision of an environment plan under regulation 17, 18 or 19 of the Environment Regulations. As for a new environment plan submitted under regulation 9, levies will only be imposed on the initial submission of a proposed revision. Levies are not imposed on a modified proposed revision of a plan submitted in response to a written notice from the Regulator under new regulation 9AC, a proposed revision resubmitted (whether modified or not) after the end of a public comment period under new regulation 11B, or a proposed revision resubmitted following a significant modification under new regulation 11C, as it is submitted under a regulation other than regulation 17, 18 or 19.

Item 20

Item 20 ensures it is clear that, in the context of a proposed revision of an environment plan, the reference in new regulation 9AA to submission of an environment plan under regulation 9 is to be read as a reference to the submission of the proposed revision under regulation 17, 18 or 19 of the Principal Regulations.

Item 23

Item 23 inserts new subregulation 21(2) to ensure that, when acting under regulation 9AB to publish information on the Regulator's website with respect to a proposed revision of an environment plan, the Regulator must also publish the reason for the proposed revision (as previously required by paragraph 20A(g), which is repealed by item 18).

Item 23 also inserts new subregulation 21(3), which provides that new paragraph 10(1A)(b) and new regulations 11B and 11C (which relate to public comment on an environment plan) do not apply in the case of a proposed revision of a seismic or exploratory drilling environment plan submitted under subregulation 17(6) of the Principal Regulations.

Subregulation 17(6) requires a titleholder to submit a proposed revision of an environment plan for an activity before, or as soon as practicable after, the occurrence of any significant new or significant increase in an environmental impact or risk, or the occurrence of a series of new or series of increases in environmental impacts or risks that together amount to a significant new or significant increase in an environmental impact or risk, that is not provided for in the environment plan. The intent of subregulation 17(6) is to require revision of an environment plan when an activity has already commenced and the titleholder identifies an unforeseen impact or risk, or unforeseen increase in an identified impact or risk.

Under subregulation 8(1) of the Principal Regulations, a titleholder commits an offence if the titleholder undertakes an activity after the occurrence of any significant new or significant increase in an environmental impact or risk, if that new or increased impact or risk is not provided for in the environment plan in force for the activity. However, under subregulation 8(2), subregulation 8(1) does not apply in relation to an activity if the titleholder submits a proposed revision of the environment plan in accordance with subregulation 17(6), and the Regulator has not refused to accept the revision. As long as the titleholder has submitted a proposed revision, the titleholder may therefore continue the activity unless and until the Regulator refuses to accept the proposed revision.

Exploration activities, particularly seismic surveys, may be short-term. It is therefore possible that, if a proposed revision of a seismic or exploratory drilling environment plan was submitted under subregulation 17(6), and the proposed revision subject to a public comment period followed by a period of assessment by the Regulator, the seismic or exploratory drilling activity could be finished before either the public comment period or the Regulator's subsequent assessment is completed. It would be unhelpful and incongruous to undertake a public comment period, followed by assessment by the Regulator, in circumstances where an activity may be finished while either public comment or assessment is required to continue.

New subregulation 21(3) therefore ensures that the requirement for public comment on proposed revisions of seismic or exploratory drilling environment plans in regulations 11B and 11C, as applied by subregulation 21(1), does not apply to proposed revisions submitted under subregulation 17(6). The proposed revision is still required to be published under new regulation 9AB (inserted by item 4, and applied to proposed revisions by regulation 21 as amended by item 19 of the Amendment Regulations), prior to assessment by the Regulator. Further, the relevant activity or stage of the activity will already have been subject to a public comment period following the submission of the initial environment plan for the activity. Any changes to impacts or risks that may affect relevant persons will be addressed through requirements for ongoing consultation between the titleholder and relevant persons.

New paragraph 10(1A)(b) (inserted by item 7) also does not apply to a proposed revision of a seismic or exploratory drilling environment plan submitted under subregulation 17(6). This means that the Regulator's assessment of the proposed revision will commence in accordance with new paragraph 10(1A)(a); i.e. on the day the Regulator publishes the proposed revision under new regulation 9AB following a provisional decision that the proposed revision includes material apparently addressing all of the content requirements for an environment plan.

Proposed revisions of an environment plan that include an increase or change to the temporal or spatial extent of an activity are not covered by subregulation 17(6). Rather, subregulation 17(5) (which requires proposed revision of an environment plan before the commencement of any significant modification or new stage of an activity) applies to such proposed revisions. Therefore, for example, a proposed revision for a seismic survey to cover a larger geographical area, or to be undertaken for a longer time and/or at a different time, requires submission under subregulation 17(5). Subregulation 17(6) only covers a new impact or risk arising out of the activity as described in the environment plan. Proposed revisions of seismic or exploratory drilling environment plans submitted under subregulation 17(5) are required to be subject to a period of public comment under regulations 11B and 11C, as applied by regulation 21.

A proposed revision of an environment plan is only required under subregulation 17(5) before the commencement of a significant modification of an activity where that significant modification is not provided for in the environment plan as in force. A proposed revision is not required for a decrease in the scope of an activity, e.g. from six wells to five wells, or reducing the spatial extent of a seismic survey, as the environment plan should already provide for the wells or reduced spatial extent as part of the initial proposal for a larger scope of work.

Item 23 also inserts new subregulation 21(4), which applies if new regulation 11B applies to require a period of public comment in relation to a proposed revision of a seismic or exploratory drilling environment plan, and the titleholder does not resubmit the proposed revision (whether modified or not) within 12 months after the end of the public comment period. As a result of new subregulation 11B(7) (inserted by item 14), the proposed revision is taken to have been withdrawn by the titleholder at the end of the 12 months. New subregulation 21(4) clarifies that, in such a case, the provisions of the environment plan in force for the activity existing immediately before the proposed revision was submitted remain in force as if the revision had not been proposed.

Items 21 and 22

Items 21 and 22 make consequential amendments to the note to regulation 21.

Item 24 – After subregulation 31(2)

Regulation 31 of the Principal Regulations provides that, if a titleholder is required under the Principal Regulations to give the Regulator information or include information in a document, and that titleholder has previously given the same information to the Regulator for another purpose under the OPGGS Act or regulations, the titleholder may comply with the requirement by referring to the information they have previously given.

The provision was intended to remove duplication of process and increase efficiencies for industry. However, it is not conducive to the promotion of transparency through publication of environment plans if the information referred to is only available to the Regulator and is not otherwise publicly available.

This item therefore revises regulation 31 to provide that a titleholder may only include information in an environment plan by referring to information it has previously given to the Regulator for another purpose under the OPGGS Act or regulations if that information is publicly available, and the environment plan includes a link or reference to where the information is available.

For example, an environment plan for an activity in the same region as another activity, for which an accepted environment plan of the titleholder has previously been published on the Regulator's website, may include a similar oil pollution emergency plan. The environment plan for the new activity may therefore include a reference to the oil pollution emergency plan in the accepted environment plan that was previously published, rather than reproducing the oil pollution emergency plan in full.

Item 25 – In the appropriate position in Part 5

This item inserts transitional provisions relating to the Amendment Regulations.

The amendments made by the Amendment Regulations only apply to environment plans submitted under regulation 9 of the Principal Regulations after commencement of the Amendment Regulations. The amendments do not retrospectively apply to environment plans that were accepted prior to commencement of the Amendment Regulations, or environment plans that were submitted under regulation 9 prior to commencement, but for which a decision to accept or refuse to accept the plan had not yet been made by the Regulator at the time of commencement of the Amendment Regulations.

The amendments also only apply to proposed revisions of environment plans submitted under regulation 17, 18 or 19 of the Principal Regulations after commencement of the Amendment Regulations. This is the case for all proposed revisions, even if the revision is proposed to be made to an environment plan that was accepted or submitted prior to commencement of the Amendment Regulations.

The application of Division 2.4 as amended means that a proposed revision of a seismic or exploratory drilling environment plan submitted under subregulation 17(6) will not be subject to a period of public comment – see new subregulation 21(3). However, other provisions relating to the completeness check and publication of an environment plan will apply to the proposed revision.

Items 26 and 27 – Subregulation 59E(3); Subregulation 59I(3)

These items make consequential amendments to the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004* to reflect that the provision enabling titleholders to withdraw a submitted environment plan has been moved from subregulation 9(9) to subregulation 11AA(1) by the Amendment Regulations – see item 3.

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 (Environment) Amendment (Consultation and Transparency) Regulations 2019

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 Petroleum and Greenhouse Gas Storage (Environment) Amendment (Consultation and Transparency) Regulations 2019* (the Amendment Regulations) are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amendment Regulations amend the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (the Environment Regulations) to implement the outcomes of a review of consultation and transparency requirements for offshore petroleum and greenhouse gas activities.

In 2016, the Australian Government commenced a process to review and reform the consultation and transparency requirements under the Environment Regulations. To ensure that industry's consultation practices represent leading practice and meet community expectations, the Australian Government has considered options to improve consultation and transparency requirements and reinforce community confidence in the offshore petroleum and greenhouse gas storage regime and regulatory decision-making processes.

Based on the feedback received through public consultation, the Australian Government has determined that improvements to the consultation and transparency requirements could be made.

In November 2017, the Minister for Resources and Northern Australia, Senator the Hon Matt Canavan, announced a series of regulatory reforms to improve consultation and increase the transparency of Australia's offshore oil and gas regime. The key changes announced were:

- A new requirement for full publication of all environment plans. Publication of environment plans is intended to provide transparency and clarity to community members about the information contained in environment plans, including the arrangements in place in the event of a major offshore petroleum incident.
- The introduction of a public comment period for certain offshore exploration activities (seismic or exploratory drilling activities). A formalised public comment period for environment plans for seismic or exploratory drilling activities will give the public the opportunity to make comments directly to the Regulator on the content of the environment plan.

Human rights implications

The Amendment Regulations engage with the protection against arbitrary interference with privacy and reputation.

Article 17 of the International Convention on Civil and Political Rights prohibits arbitrary or unlawful interference with an individual's privacy, family, home or correspondence, and protects a person's honour and reputation from unlawful attacks. This right may be subject to permissible limitations where those limitations are provided by law and are non-arbitrary. In order for limitations not to be arbitrary, they must be aimed at a legitimate objective and be reasonable, necessary and proportionate to that objective.

Contact details of a titleholder's nominated liaison person

The Amendment Regulations provide for publication of environment plans for petroleum and greenhouse gas activities both at the time of submission and after having been accepted under the Environment Regulations.

An environment plan includes details of a titleholder's nominated liaison person, such as name, telephone number (if any) and email address (if any). This information will therefore be published on publication of the environment plan. Further, the Amendment Regulations will continue the existing requirement for the Regulator to separately publish on its website the details of the titleholder's nominated liaison person for the activity.

The purpose of provision and publication of details of a titleholder's nominated liaison person is to ensure that there is a specific person that the Regulator or members of the public can contact in relation to an activity that is to be, or is being, undertaken in an offshore area. In particular, it provides the Regulator with a person who may be contacted in the event of an emergency.

Publication of contact details will enable persons to engage with the titleholder in relation to an activity, in particular if they have questions about the activity. This will help to increase transparency in relation to operations undertaken in offshore areas.

The information that is required to be provided and published is business-related only. For example, a business address for the liaison person is required to be provided, rather than the person's residential address.

In addition, the use or disclosure of any information that is personal information is subject to the *Privacy Act 1988* (the Privacy Act). Accordingly, the requirement to provide and publish contact details of a titleholder's nominated liaison person is reasonable, necessary and proportionate in the circumstances.

Information to be excluded from publication

Certain information will be excluded from publication in an environment plan. To safeguard personal privacy, this will include personal information (within the meaning of the Privacy Act) about an individual that is contained in information given by:

- (a) a relevant person (e.g. a person whose functions, interests or activities may be affected by the activities to be carried out under an environment plan) in consultation during development of an environment plan; or
- (b) any person during public comment on a seismic or exploratory drilling environment plan.

Copies of the full text of any response by a relevant person in consultation during development of an environment plan will also be excluded from publication.

To ensure this information is omitted from publication, titleholders are required to include sensitive information (including personal information) and the full text of responses from relevant persons in a separate part of their environment plan (the “sensitive information part”). Following submission of an environment plan (including resubmission of a plan after the end of a public comment period), and as soon as practicable after an environment plan is accepted, the Regulator is required to publish the plan with the sensitive information part removed.

When resubmitting an environment plan for a seismic or exploratory drilling activity at the end of the public comment period, the titleholder must provide the Regulator a statement of their response to any comments received during the comment period. As the statement of response will be published, the Regulations specify that the statement must not include sensitive information (which includes personal information).

To promote public confidence in the decision-making of the Regulator and improve transparency, the Regulator will be required to prepare a statement detailing how it has taken into account any comments received during public comment on a seismic or exploratory drilling environment plan. The statement will be required to be published on the Regulator’s website at the same time as it publishes an accepted plan. The Regulations specify that the statement must not include sensitive information (which includes personal information).

Conclusion

The Amendment 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**