

***Legislation (Deferral of Sunsetting—Offshore Petroleum and Greenhouse Gas Storage Instruments) Certificate 2022***

**EXPLANATORY STATEMENT**

Issued by the Attorney-General in compliance with  
section 15G of the *Legislation Act 2003*

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**INTRODUCTION**

The *Legislation (Deferral of Sunsetting—Offshore Petroleum and Greenhouse Gas Storage Instruments) Certificate 2022* (the Certificate) is made under paragraph 51(1)(c) of the *Legislation Act 2003* (Cth) (the Legislation Act). It is a legislative instrument for the purposes of the Legislation Act and must be registered on the Federal Register of Legislation. The Certificate will be subjected to the disallowance provisions of the Legislation Act as the deferred sunsetting day specified in the certificate is after the first anniversary of the originally scheduled sunsetting day, which means that subsection 51(4) of that Act (which provides an exemption from disallowance for deferrals of 12 months or less) does not apply.

**OUTLINE**

Sunsetting is the automatic repeal of legislative instruments after a fixed period. The Australian Government's sunsetting framework is established under Part 4 of Chapter 3 of the Legislation Act. The purpose of the sunsetting framework is to ensure that legislative instruments are kept up to date and only remain in force for so long as they are needed.

Subsection 50(1) of the Legislation Act provides that a legislative instrument is automatically repealed on the 1 April or 1 October immediately on or following the tenth anniversary of its registration. Under paragraph 51(1)(c) of the Legislation Act the Attorney-General can issue a certificate to defer the sunsetting day of an instrument for a period of either 6, 12, 18 or 24 months. The instrument will then be repealed on the day specified in the certificate instead of the previously scheduled sunsetting day.

This allows instruments to continue to be in force for a further but limited period of time when they would otherwise sunset. This removes the administrative burden of remaking instruments which would have a limited duration prior to their repeal and potential replacement, or where circumstances prevent the making of replacement instruments prior to the sunsetting day.

The Certificate defers the sunsetting date of the following instruments by 24 months from 1 April 2024 to 1 April 2026 (together the 'Offshore Petroleum and Greenhouse Gas Storage Regulations'):

- (a) the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* (Cth) (the RMA Regulations); and
- (b) the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* (Cth) (the Safety Regulations).

## **PROCESS BEFORE CERTIFICATE WAS MADE**

### **Regulatory impact analysis**

Certificates of deferral of sunseting are machinery of government instruments, and are therefore not subject to the regulatory impact assessment requirements set out by the Office of Best Practice Regulation (OBPR). The OBPR reference for this standing exemption is ID19633.

### **Consultation before making**

Before the Certificate was issued, the Attorney-General considered the general obligation to consult imposed by section 17 of the Legislation Act.

The Department of Industry, Science and Resources (DISR) consulted with the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) and the National Offshore Petroleum Titles Administrator (NOPTA) of the intention to seek a deferral of sunseting dates of the Offshore Petroleum and Greenhouse Gas Storage Regulations to 1 April 2026. NOPSEMA and NOPTA exercise powers and functions under the OPGGS Act and regulations. NOPSEMA and NOPTA had no concerns about seeking a deferral of sunseting dates.

Certificates of deferral are machinery in nature, and enable legislative instruments that would otherwise sunset to remain in force for a further, but strictly limited, period of time. This will minimise the administrative burden on stakeholders associated with consultation on the deferral. Any replacement instruments will be subject to further consultation and parliamentary oversight, including oversight of whether adequate consultation occurred with persons likely to be affected by the replacement instruments. As such, the Certificate is consistent with the policy intent of the sunseting regime.

### **Statutory preconditions relevant to the Certificate**

If the statutory conditions in section 51 of the Legislation Act are met, an instrument's sunseting day can be deferred for 6, 12, 18 or 24 months by means of a certificate made under that section. In terms of process, the Legislation Act requires:

- (a) the responsible rule-maker to apply to the Attorney-General in writing, and
- (b) the Attorney-General to be satisfied that:
  - (i) the instrument would (apart from the operation of the sunseting provisions) be likely to cease to be in force within 24 months after its sunseting day
  - (ii) the proposed replacement instrument will not be able to be completed before the sunseting day for reasons that the rule-maker could not have foreseen and avoided
  - (iii) the dissolution or expiration of the House of Representatives or the prorogation of the Parliament renders it inappropriate to make a replacement instrument before a new government is formed, or
  - (iv) the Attorney-General has approved Part 4 of Chapter 3 of the Legislation Act (Sunsetting) not applying to that instrument, and
- (c) the Attorney-General to issue a certificate. The explanatory statement for the certificate must include a statement of reasons for the issue of the certificate.

The rule-maker for the Offshore Petroleum and Greenhouse Gas Storage Regulations, the Minister for Resources and the Minister for Northern Australia, the Hon Madeleine King MP, provided a written application to the Attorney-General seeking a certificate of deferral of sunseting for the Offshore Petroleum and Greenhouse Gas Storage Regulations. On the basis of the information contained in the statement of reasons below, the Attorney-General is satisfied that the Offshore Petroleum and Greenhouse Gas Storage Regulations would, apart from the operation of Part 4 of Chapter 3 of the Legislation Act, be likely to cease to be in force within 24 months after their sunseting day. As such, the criterion in subparagraph 51(1)(b)(i) of the Legislation Act is met.

### **Statement of Reasons for issuing of the Certificate**

For the purposes of subsection 51(5) of the Legislation Act this section sets out the statement of the reasons for issuing the Certificate.

The Certificate defers the sunseting dates for the Offshore Petroleum and Greenhouse Gas Storage Regulations to enable DISR to implement the recommendations of a number of thematic reviews of the instruments. The Offshore Petroleum and Greenhouse Gas Storage Regulations are made under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) (the OPGGS Act). The OPGGS Act and associated regulations, including the Offshore Petroleum and Greenhouse Gas Storage Regulations, provides the legal and regulatory framework for the exploration and recovery of petroleum and greenhouse gas activities in Commonwealth waters.

#### *The RMA Regulations*

DISR has recently undertaken two reviews of the RMA Regulations. In 2020, ACIL Allen was engaged to conduct a comprehensive review of Parts 7–10 and Schedules 1–5 of the RMA Regulations, which relate to data management. In undertaking this review, ACIL Allen consulted with a wide range of stakeholders, including NOPTA, NOPSEMA, Geoscience Australia, relevant state government agencies, industry peak bodies (petroleum and geophysical services), titleholders and geophysical service providers. Informed by this review, DISR intends to reform these parts of the RMA Regulations to ensure the management, submission and protection of data reflect the operating realities of a modern oil and gas industry, and strike the appropriate balance between stimulating further investment and allowing for its use and public communication by government to effectively manage Australia’s oil and gas resources. DISR has identified that these reforms will require further consultation with industry, including initial consultation on a discussion paper outlining proposed policy changes to the RMA Regulations and consultation on an Exposure Draft of the remake of the RMA Regulations.

A review into the remaining parts of the RMA Regulations was completed in 2021. The review found that the RMA Regulations (excluding Parts 7-10 and Schedules 1-5) remain fit for purpose and could reasonably be remade with minor policy change and updates to drafting. DISR held workshops with NOPTA and NOPSEMA to consider the operation of the current RMA Regulations and identified where provisions could operate more effectively and efficiently. Industry will be consulted on the whole of the proposed remade RMA Regulations through the discussion paper and Exposure Draft referenced above.

A 24-month deferral will allow sufficient time for further consultation prior to the replacement instrument being made. The deferral will also avoid the need to remake the RMA Regulations in their

current form for the short period of time before they are repealed and replacement instruments made, minimising costs and the regulatory impact on industry. As such, deferral of the sunseting date of the RMA Regulations is consistent with the policy intent of the sunseting regime – that legislative instruments should be kept up to date and only remain in force so long as they are needed – and does not significantly alter existing arrangements.

### *The Safety Regulations*

DISR is currently progressing amendments to the OPGGS Act to implement the outcomes of the Offshore Oil and Gas Safety Review (April 2021) (the Safety Review). The Safety Review evaluated the Safety Regulations and the OPGGS Act to ensure that they are fit for purpose and made a number of recommendations, including proposed amendments to the Safety Regulations. As part of the review, DISR consulted with a number of stakeholders, including the offshore workforce, industry, government agencies and unions. DISR anticipates introduction of the Offshore Petroleum and Greenhouse Gas Storage Amendment (Safety and Other Measures) Bill in the Autumn 2023 sittings of Parliament at the earliest, as the final policy measures for inclusion in the Bill are under consideration by the government. Provisions of the Bill will have a delayed commencement to allow for outcomes of the Safety Review to be fully implemented as part of the remake of the Safety Regulations. Some measures in the Safety Regulations will rely on regulation-making powers that will be included in the Bill, so that the Safety Regulations cannot be remade until the Bill has passed.

DISR will seek to progress drafting of the replacement instrument while the Bill is under development and before Parliament, to minimise the timeframe between passage of the Bill and remake of the Safety Regulations to the extent possible. However, it is expected to take at least a few months to finalise the remake of the Safety Regulations and complete documentation for submission to the Federal Executive Council following passage of the Bill. It is also proposed to delay commencement of the remake of the Safety Regulations to enable time for NOPSEMA and industry to prepare for the updated requirements (e.g. through system and guidance updates). It is uncertain whether the Bill would achieve passage in time for the Safety Regulations to be made, with a delayed commencement, prior to sunseting on 1 April 2024.

A 24-month deferral will allow sufficient time for the amendments to the OPGGS Act to commence prior to the replacement instruments being made. The deferral will avoid the need to remake the Safety Regulations in their current form for the short period of time before they are repealed and replacement instruments made. The contemporaneous progressing of recommendations of the Safety Review would also minimise costs and the regulatory impact on industry. As such, deferral of the sunseting date of the Safety Regulations is consistent with the policy intent of the sunseting regime – that legislative instruments should be kept up to date and only remain in force so long as they are needed – and does not significantly alter existing arrangements.

### **More information**

Further details on the provisions of the Certificate are provided in [Attachment A](#).

The Offshore Petroleum and Greenhouse Gas Storage Regulations which are subject to the Certificate, and which will now sunset at a later day as specified in the Certificate, are available on the Federal Register of Legislation.

Further information may be requested from the Attorney-General's Department about the operation of the Certificate, and from the Department of Industry, Science and Resources about the Offshore Petroleum and Greenhouse Gas Storage Regulations to which the Certificate applies.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The *Legislation (Deferral of Sunsetting—Offshore Petroleum and Greenhouse Gas Storage Instruments) Certificate 2022* (the Certificate) is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (the Human Rights Act).

### Overview of the Certificate

This Certificate is made under paragraph 51(1)(c) of the *Legislation Act 2003*. Under that paragraph the Attorney-General can issue a certificate to defer the sunsetting day of an instrument for a period of either 6, 12, 18 or 24 months. The instrument will then be repealed on the day specified in the Certificate instead of the originally scheduled sunsetting day. The instruments specified in this Certificate are (together, the 'Offshore Petroleum and Greenhouse Gas Storage Regulations'):

- (a) the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* (Cth) (the RMA Regulations); and
- (b) the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* (Cth) (the Safety Regulations).

The Offshore Petroleum and Greenhouse Gas Storage Regulations are expected to be repealed and replaced within 24 months of their scheduled sunsetting date as part of the implementation of recommendations from a number of reviews into the Offshore Petroleum and Greenhouse Gas Storage Regulations and the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) (the OPGGS Act) more broadly. The Certificate allows the Offshore Petroleum and Greenhouse Gas Storage Regulations to continue to be in force for a further, but limited, period of time when they would otherwise sunset. This removes the administrative burden of remaking instruments which would have a limited duration prior to their repeal and potential replacement, or where circumstances prevent the making of replacement instruments prior to the sunsetting day.

### Human rights implications

A certificate of deferral of sunsetting extends the operation of the instrument but does not change or affect the rights engaged under the original instrument. The Offshore Petroleum and Greenhouse Gas Storage Regulations engage certain rights and freedoms declared by the international instruments set out in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, including:

- the right to work (as contained in article 7 of the International Convention on Economic, Social and Cultural Rights (ICESCR)), and
- the presumption of innocence (as contained in article 14(2) of the International Covenant on Civil and Political Rights (ICCPR)).

### *Right to work*

Broadly, the Safety Regulations ensure that the risks to the health and safety of persons at facilities and who carry out diving under the OPGGS Act are reduced to a level that is as low as reasonably practicable. It does so by providing that facilities are designed, constructed, installed, operated, modified and decommissioned in Commonwealth waters only in accordance with safety cases and that have been accepted by NOPSEMA, and that diving to which the Act relates is carried out in Commonwealth waters only in accordance with diving safety management systems that have been accepted by NOPSEMA. In doing so, the Safety Regulations reduce the capacity for harm in regulated workplaces and promote safe and healthy working conditions in offshore petroleum and greenhouse gas storage operations. The Safety Regulations therefore support the right to life (Article 6 of the International Covenant on Civil and Political Rights (the ICCPR)), and the right to just and favourable working conditions (Article 7 of the International Convention on Economic, Social and Cultural Rights (ICESCR)).

### *The presumption of innocence*

The Offshore Petroleum and Greenhouse Gas Storage Regulations both include strict liability offences. Article 14(2) imposes on the prosecution the burden of proving the charge and guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt. However, this right may be subject to permissible limitations where those limitations are provided by law and non-arbitrary. In order for limitations to be non-arbitrary, they must be aimed at a legitimate objective and be reasonable, necessary and proportionate to that objective.

### Legitimate objective

As stated, the Safety Regulations aim to ensure that offshore petroleum and greenhouse gas storage operations are carried out in a manner which reduces work health and safety risks to as low as reasonably practicable. Strict liability is applied to offence provisions to enhance the effectiveness of the provisions in deterring certain conduct, and thereby reduce the likelihood of non-compliance which could have potentially severe health and safety consequences.

The RMA Regulations enable the effective administration of numerous aspects of the offshore regime, particularly in relation to management of the Commonwealth's offshore oil and gas resources.

### Reasonable, necessary and proportionate response

Given the nature of offshore petroleum and greenhouse gas storage operations, there is a risk of potentially severe consequences if operators fail to comply with their regulatory obligations. In addition, the remote and complex nature of offshore operations makes it extremely difficult to prove intent. Application of strict liability to the relevant offence provisions is therefore necessary to ensure that the relevant regulations can be enforced more effectively, and thereby improve compliance with the regulatory regime. This is consistent with the principles outlined in the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, which include that the punishment of offences not involving fault may be appropriate where it is likely to significantly enhance the effectiveness of the enforcement regime in deterring certain conduct.

The Offshore Petroleum and Greenhouse Gas Storage Regulations therefore adheres to the presumption of innocence (Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR)).

The rights engaged under the Offshore Petroleum and Greenhouse Gas Storage Regulations are not substantially changed or affected by the issuing of the Certificate. The deferral of the sunset date

of the Offshore Petroleum and Greenhouse Gas Storage Regulations does not affect their operation, and therefore does not change the effect on human rights.

Before issuing the Certificate, the Attorney-General was satisfied that the Offshore Petroleum and Greenhouse Gas Storage Regulations would, apart from the operation of the sunset provisions, cease to be in force within 24 months of their sunset date. Issuing a certificate of deferral therefore avoids the need to replace the Offshore Petroleum and Greenhouse Gas Storage Regulations in their current form for a short period of time before they are expected to be repealed and replaced.

Instruments that are replaced will be subject to parliamentary scrutiny and oversight through the disallowance processes unless otherwise exempt. The human rights impact of the Offshore Petroleum and Greenhouse Gas Storage Regulations will be assessed at the time any replacement instruments are made, including through the requirement to prepare a further Statement of Compatibility with Human Rights.

### **Conclusion**

This Certificate is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights Act, as it does not raise any human rights issues, and ensures that any proposal to make a replacement instrument will be subject to parliamentary oversight and scrutiny.

## **ATTACHMENT A**

### **NOTES ON THE CERTIFICATE**

#### **Section 1      Name**

This section provides that the Certificate is named the *Legislation (Deferral of Sunsetting—Offshore Petroleum and Greenhouse Gas Storage Instruments) Certificate 2022*. The Certificate may be cited by this name.

#### **Section 2      Commencement**

This section provides for the Certificate to commence on the day after it is registered.

#### **Section 3      Authority**

This section provides that the Certificate is made under paragraph 51(1)(c) of the *Legislation Act 2003*.

#### **Section 4      Deferral of sunseting**

This section provides that the following instruments, for which the sunseting day is 1 April 2024, are repealed by section 51 of the *Legislation Act 2003* on 1 April 2026:

- the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* (Cth); and
- the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* (Cth).

#### **Section 5      Repeal of this instrument**

This section provides that the Certificate is repealed at the start of 2 April 2026.