

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Resources

Offshore Petroleum and Greenhouse Gas Storage Act 2006

Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003

Offshore Petroleum and Greenhouse Gas Storage Legislation (Repeal and Consequential Amendments) Regulations 2024

Purpose and Operation

The *Offshore Petroleum and Greenhouse Gas Storage Legislation (Repeal and Consequential Amendments) Regulations 2024* (the Regulations) repeal the former regulations, the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009*, and make consequential amendments to other regulations to support the commencement of the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2024* (the Safety Regulations).

Further details of the instrument are outlined in Attachment A.

Authority

Section 781 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (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.

Section 11 of Part 5 of the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* provides that the Governor-General may make regulations for the purposes of sections 5, 6, 7, 8, 9, 10, 10A, 10B, 10C, 10D, 10E, 10F and 10G.

Commencement

Sections 1 to 4, and anything in the Regulations not covered elsewhere by the commencement table, commence the day after the Regulations are registered. Schedules 1 and 2 commence at the same time as the Safety Regulations. Schedule 3 commences on the later of: the start of the day after the Regulations are registered; and immediately after the commencement of items 36 and 37 of Schedule 2 to the *Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Safety and Other Measures) Act 2024*. This commencement provision precludes any retrospectivity in relation to the commencement of Schedule 3.

Consultation

Due to the machinery and technical nature of the Regulations, consultation was not undertaken.

Regulatory Impact

The department consulted with the Office of Impact Analysis (OIA) on the remake of the Safety Regulations. OIA determined that a detailed impact analysis was not

required under the Australian Government's Policy Impact Analysis Framework. (OIA24-08115).

Statement of Compatibility with Human Rights

Subsection 9(1) of Part 3 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 Legislation
(Repeal and Consequential Amendments) Regulations 2024**

Section 1 - Name

This section provides for the title of the Regulations to be the *Offshore Petroleum and Greenhouse Gas Storage Legislation (Repeal and Consequential Amendments) Regulations 2024*.

Section 2 - Commencement

This section sets out in a table the commencement provisions for the Regulations:

Table item 1 provides that sections 1 to 4 and anything in the Regulations not covered elsewhere in the table are to commence the day after the Regulations are registered.

Table item 2 provides that Schedules 1 and 2 to the Regulations are to commence at the same time as the *Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Safety) Regulations 2024* (the Safety Regulations) commence. However, the provisions do not commence at all if that instrument does not commence.

Table item 3 provides that Schedule 3 to the Regulations is to commence on the later of: the start of the day after the Regulations are registered; and immediately after the commencement of items 36 and 37 of Schedule 2 to the *Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Safety and Other Measures) Act 2024*. This commencement provision precludes any retrospectivity in relation to the commencement of Schedule 3.

A note explains that the commencement table relates only to the provisions of the Regulations as made and will not be amended to deal with any later amendments of the Regulations.

Section 3 - Authority

This section provides that the instrument is made under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* and the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003*.

Section 4 - Schedules

This section is a machinery provision that gives effect to the repeals and amendments and in the Schedules by providing that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in that Schedule, and any other item in that Schedule has effect according to its terms.

Schedule 1—Repeals

Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009

Item 1 – The whole of the instrument

Item 1 of Schedule 1 to the instrument repeals the whole of the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009*.

Schedule 2—Amendments of certain instruments

Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2022

Item 1 – Section 4 (definition of disregarded facility)

Item 1 of Schedule 2 to the instrument repeals and replaces the definition of ‘**disregarded facility**’ in section 4 of the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2022* (the Regulatory Levies Regulations). This is a technical amendment consequential to the repeal of section 60 by item 4 of the instrument. The definition has been amended to remove references to that section.

Item 2 – Section 4 (definition of Safety Regulations)

Item 2 of Schedule 2 to the instrument amends the definition of ‘**Safety Regulations**’ in section 4 of the Regulatory Levies Regulations to omit the reference to the year ‘2009’ and replace this with the year ‘2024’. This is a technical amendment to ensure that the definition correctly refers to the remade *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2024* (the Safety Regulations).

Item 3 – Subsections 21(3) and 29(3)

Item 3 of Schedule 2 to the instrument repeals and substitutes subsections 21(3) and 29(3) of the Regulatory Levies Regulations. This is a technical amendment consequential to the repeal of section 60 by item 4 of the instrument. Subsections 21(3) and 29(3) of the Regulatory Levies Regulations relate to a proposed facility of a kind mentioned in paragraph 60(1)(b), which would be repealed and make subsections 21(3) and 29(3) redundant.

Item 4 – Section 60

Item 4 of Schedule 2 to the instrument repeals section 60 of the Regulatory Levies Regulations.

Section 60 of the Regulatory Levies Regulations enabled the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) to charge a fee to assess a safety case for a proposed facility. This was a voluntary process that essentially allowed for NOPSEMA’s early consideration of facility design. The safety case was usually withdrawn after this early consideration – rather than proceeding to full acceptance – because it was generally not at a stage where it was able to include all detail required for an accepted safety case. The new design notification process introduced by the Safety Regulations will replace this process and as such make section 60 of the Regulatory Levies Regulations redundant.

Item 5 – Paragraph 66(c)

Item 5 of Schedule 2 to the instrument amends paragraph 66(c) to omit the wording “(see section 60 of this instrument)”. This is a technical amendment consequential to the repeal of section 60 by item 4 of the instrument.

Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011

Item 6 – Regulation 11B.01 (table items 1, 2, 3, 8 and 9, column 2, paragraph (c))

Item 6 of Schedule 2 to the instrument amends regulation 11B.01 of the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* (the RMA Regulations) which prescribes regulations for particular provisions of the OPGGS Act) For paragraph (c) of column 2 to table items 1, 2, 3, 8 and 9, this item omits references to the year ‘2009’ and replaces them with the year ‘2024’. This is a technical amendment to ensure that these table items correctly refer to the remade Safety Regulations.

Item 7 – Regulation 11B.01 (table items 10, 16, 18, 23, 24 and 25, column 2)

Item 7 of Schedule 2 to the instrument amends regulation 11B.01 of the RMA Regulations at column 2 of table items 10, 16, 18, 23, 24 and 25 to omit references to the year ‘2009’ and replace these with the year ‘2024’. This is a technical amendment to ensure that these table items correctly refer to the remade Safety Regulations.

Item 8 – Regulation 11B.01 (after table item 17)

Item 8 of Schedule 2 to the instrument amends regulation 11B.01 of the RMA Regulations to insert a new table item 17AA after table item 17. This new table item provides that the Safety Regulations are prescribed for the purposes of subparagraph 646A(1)(e)(ii) of the OPGGS Act.

Item 9 – Regulation 11B.01 (cell at table item 26, column 1)

Item 9 of Schedule 2 to the instrument amends regulation 11B.01 of the RMA Regulations at column 1 of table item 26 to repeal the text in the cell for this column and replace it with the wording: ‘Paragraph (d) of the definition of ***titleholder’s safety-related obligations*** in clause 3 of Schedule 3.’ This proposed amendment reflects that the *Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Safety and Other Measures) Act 2024* inserts a new definition of ***titleholder’s safety-related obligations*** and repeals the previous definition of ***titleholder’s well-related obligations***.

Schedule 3—Other Amendments

Offshore Petroleum and Greenhouse Gas Storage (Greenhouse Gas Injection and Storage) Regulations 2023

Item 1 – Subclause 6(1) of Schedule 1

Item 1 of Schedule 3 to the instrument amends subclause 6(1) of Schedule 1 to the *Offshore Petroleum and Greenhouse Gas Storage (Greenhouse Gas Injection and Storage) Regulations 2023* to omit the wording: “, over the period mentioned in subsection 21(3) of the Act,”.

This amendment is consequential to the change made by item 36 in Part 4 of Schedule 2 to the *Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Safety and Other Measures) Act 2024* (the Safety and Other Measures Act), which deals with the meaning of ‘*spatial extent*’.

Prior to being amended subsection 21(3) of the OPGGS Act, attempted to provide for a period of time. This was not practical, as the actual migration of gases can take place over thousands of years. That is, the previous definition provided for the spatial extent of an eligible greenhouse gas storage formation to be determined by reference to the “notional site closing certificate time”. However, a stored greenhouse gas substance may continue to migrate and settle at a time that is much later than the notional site closing certificate time.

New subsection 21(3) defines the spatial extent of an eligible greenhouse gas storage formation as the expected migration pathway, or pathways, of the particular amount of the particular greenhouse gas substance referred to in paragraph 21(1)(a) or (b) of the OPGGS Act. This ensures that the spatial extent is determined by reference to the entirety of the expected migration pathway or pathways of the greenhouse gas substance, regardless of the length of time that the substance may take to settle.

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 Legislation (Repeal and Consequential Amendments) Regulations 2024

This Disallowable Legislative Instrument is 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 Legislation (Repeal and Consequential Amendments) Regulations 2024* repeal the former regulations, the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009*, and make consequential amendments to other regulations to support the commencement of the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2024*.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon Madeleine King MP
Minister for Resources