

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 318

Subject - *Petroleum (Submerged Lands) Act 1967*
Petroleum (Submerged Lands) (Management of Environment)
Amendment Regulations 2005 (No. 1)

Subsection 157(1) of the *Petroleum (Submerged Lands) Act 1967* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that by the Act are required or permitted to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The relevant State and Northern Territory Ministers are currently responsible for the day-to-day administration and enforcement of all provisions of the Act and its subordinate regulations in the coastal and offshore waters adjacent to each State and the Northern Territory.

The *Petroleum (Submerged Lands) (Management of Environment) Regulations 1999* (the Principal Regulations) seek to ensure that petroleum activities are carried out in accordance with the principles of sustainable development. They require the preparation of an Environment Plan (EP) that includes performance objectives and measurement criteria for petroleum activities and determines whether those objectives have been met.

The Principal Regulations were made in October 1999. The associated Regulation Impact Statement committed the Department of Industry, Tourism and Resources to a comprehensive review of the Principal Regulations after five years. The review was undertaken during 2004-05 and examined the effectiveness and efficiency of the operation of the Principal Regulations, identified significant problems in the Principal Regulations, considered remedies or alternate means of achieving objective based regulations for the identified problems and examined mechanisms for achieving increased efficiencies.

The purpose of the Regulations is to amend the Principal Regulations primarily to achieve increased efficiencies and flexibility and to ensure consistency with other regulations under the Act. In particular, the Regulations:

- provide flexibility within the remaining prescriptive elements (e.g. Regulation 29 - discharge of produced formation water);
- ensure effective consultation between operators of activities and other stakeholders;
- provide for public disclosure of summary environment plans after acceptance;
- achieve both environmental outcomes and overall efficiency of process by adopting a risk based approach to reporting incidents;
- give flexibility to the operator to submit an EP for a specific activity in one or more identified locations;
- ensure consistency with the Australian Standard for environmental management systems (AS/NZS ISO 14001); and
- ensure terms and definitions are harmonised with other regulations under the Act.

The Regulations have been developed in consultation with State/Northern Territory Designated Authorities, the Department of the Environment and Heritage, the National Oceans Office, the Australian Petroleum Production and Exploration Association, other industry representatives and environmental non-government organisations. The Regulations have also been endorsed out-of-session by the Standing Committee of Officials for the Ministerial Council on Mineral and Petroleum Resources.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

Details of the Regulations are set out in the [Attachment](#).

The Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments and are legislative instruments for the purposes of the *Legislative Instruments Act 2003*.

Details of the *Petroleum (Submerged Lands) (Management of Environment) Amendment Regulations 2005 (No. 1)*

Regulation 1 - Name of Regulations

This regulation provides that the Regulations are the *Petroleum (Submerged Lands) (Management of Environment) Amendment Regulations 2005 (No. 1)*.

Regulation 2 - Commencement

Regulation 2 specifies that the Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Regulation 3 – Amendment of *Petroleum (Submerged Lands) (Management of Environment) Regulations 1999*

This regulation provides for Schedule 1 to amend the *Petroleum (Submerged Lands) (Management of Environment) Regulations 1999* (the Principal Regulations).

Regulation 4 – Transitional

Regulation 4 specifies the amendments made by Schedule 1 apply in relation to an environment plan that is submitted on or after the commencement of the Regulations.

Schedule 1 – Amendments to the Principal Regulations

Item [1] - Subregulation 4(1)

Add the words “unless the contrary intention appears” after the words “In these Regulations,”

Item [2] - Subregulation 4(1)

Add a new definition of “accepted” to harmonise terms, definitions and timing to ensure consistency with other regulations under the *Petroleum (Submerged Lands) Act 1967* (the Act)¹, in particular the *Petroleum (Submerged Lands)(Management of Well Operations) Regulations 2004*.

¹ The former Australian and New Zealand Minerals and Energy Council (ANZMEC) agreed to progressively move away from a prescriptive regime for regulating petroleum activities in Commonwealth offshore waters to a more objective based system. Therefore, the ‘*Schedule of Specific Requirements as to Offshore Petroleum Exploration and Production in Waters Under Commonwealth Jurisdiction*’ (the Schedule) issued under section 101 of the *Petroleum (Submerged Lands) Act 1967* (the Act) has gradually been replaced by activity focussed objective based regulations, such as pipeline, environment and safety regulations. The Act is composed of several regulations, each written at different times and each using different terminology. Amendments have been suggested in an attempt to harmonise the Principal Regulations with other regulations made under the Act.

Item [3] - Subregulation 4(1)

Delete the current definition “consent to construct and install” to reflect that these consents are no longer defined under the *Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996*.

Delete the current definition “consent to use” to reflect that these consents are no longer defined under the *Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996*.

Amend the definition of “environment” to ensure it is broadly consistent with that used in the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Add the definition of “environmental impact” to be consistent with terms and definitions under ISO14001².

Add the definition of “environmental performance” to be consistent with terms and definitions under ISO14001.

Add the definition of “environmental performance objective” to be consistent with terms and definitions under ISO14001.

Add the definition of “environmental performance standard” to harmonise terms and definitions to be consistent with other regulations under the Act, in particular the *Petroleum (Submerged Lands)(Management of Safety on Offshore Facilities) Regulations 1996*.

Rename the definition of “environment plan in force for the activity” to “environment plan” and restructure the text to improve readability.

Item [4] - Subregulation 4(1)

Amend the definition of “operator”. The current definition only captures activities conducted under a petroleum instrument. The reworded definition takes account of any petroleum activity that might be conducted which has an effect on the environment (e.g. preliminary survey activity that may not necessarily be covered by a petroleum instrument).

Item [5] - Subregulation 4(1)

Amend the definition of “petroleum activity or activity”. The current definition does not take account of preliminary activities not subject to a petroleum instrument. The reworded definition takes account of any petroleum activity that might be conducted which has an effect on the environment.

² The current format of the required Environment Plan (EP) and some of the terminology used in the Regulations is not consistent with the Australian Standard for Environmental Management Systems (EMS) AS/NZS ISO14001. Amendments have been suggested to the Regulations to minimise differences in terminology and improve compatibility between the ISO14001 EMS and EPs.

Item [6] - Subregulation 4(1)

Add the definition of “recordable incident” and amend the definition of “reportable incident”. The current regulatory requirement of reporting any incident within two hours has been amended to facilitate a risk based approach to reporting. The amendments provide clear guidance defining both recordable and reportable incidents and the timeframes for the reporting of those events. Differentiation has been made between the events that have to be reported to the Designated Authority (DA), and those that merely have to be recorded by the operator.

Item [7] - Subregulation 6(2)

Amend the words of subregulation 6(2) to clarify that this regulation does not affect any requirements under other regulations under the Act in relation to consent to construct, install or use.

Item [8] - Regulation 8

Amend the title of regulation 8 to read “Operations must not continue if new or increased environmental risk identified” for improved clarity.

Item [9] - Subregulation 9(3)

Add new subregulation 9(3) to give flexibility to the operator to submit an Environment Plan (EP) to the satisfaction of the regulator for a specific activity in one or more identified locations.

Item [10] - Subregulation 10(1)

Replace the words “28 days” with “30 days” to harmonise terms and definitions to be consistent with other regulations under the Act.

Item [11] – Paragraph 11(1)(a)

Add the words “or proposed use” after the words “of the activity” to harmonise terms and definitions to be consistent with other regulations under the Act.

Item [12] – Paragraph 11(1)(f)

Add paragraph 11(1)(f) to demonstrate that an appropriate level of consultation has been undertaken before an EP is accepted is accepted by the regulator. The process of requiring companies to conduct consultation with interested parties means that approval of projects may be easier as much of the preparatory work would have been completed prior to the EP being submitted for assessment. Renumber former paragraph (f) to become paragraph (g).

Item [13] - Subregulations 11(7) and 11(8)

Add new subregulation 11(7) relating to acceptance of an EP and preparation of a summary EP for public disclosure post acceptance.

Add new subregulation 11(8) confirming that a summary EP should only draw on information provided in the original accepted EP to the satisfaction of the DA.

Item [14] – Paragraph 13(1)(c)

Replace the words “proposed operations” with “operational details of the activity” to be consistent with other terminology under the Principal Regulations.

Item [15] – Paragraph 13(2)(b)

Replace the word “identify” with “include details of” to be consistent with terminology in ISO14001.

Item [16] - Subregulations 13(3), 13(3A), 13(4) and 13(5)

Amend wording of subregulation 13(3) to simplify for improved clarity and readability.

Add new subregulation 13(3A) to ensure that the evaluation mentioned in paragraph 13(3)(b) must evaluate all significant impacts and risks arising from all operations and potential emergency conditions.

Add new subregulation 13(4) noting that applicable legislation and other controls required to manage environmental aspects of the activity must be included in an EP. This would be added to ensure that relevant legislative control requirements are included as part of performance objectives and measures. The remaining subregulations are renumbered accordingly.

Add new subregulation 13(5) noting the EP must list all relevant legal and other requirements that may apply to the activity. This new subregulation is former paragraph 16(c) – and has also been reworded. This is required to demonstrate that legal requirements have been considered during the development of an EP.

Item [17] - Subregulation 14(3)

Replace current paragraph with the words “The implementation strategy must identify the specific systems, practices and procedures to be used to ensure that the environmental impacts and risks of the activity are reduced to as low as reasonably practicable and that the environmental performance objectives and standards in the environmental plan are met”. This becomes one paragraph by combining subpoints (a) and (b) to simplify the subregulation for improved clarity and readability.

Item [18] - Subregulation 14(5)

Replace the words “environment and has the appropriate skills” with “environment plan and has the appropriate competencies” to be consistent with requirements under ISO14001.

Item [19] - Subregulation 14(6)

Add the words “management of non-conformance” after the word “audit,” to be consistent with requirements under ISO14001.

Item [20] - Subregulation 14(8)

Add the words “establish and” after the words “implementation strategy must”.

Item [21] - Subregulation 14(8)

Add new subregulation 14(8A) to reference the testing of response arrangements. This would be required for consistency with requirements under ISO14001 and to ensure the EP implementation strategy outlines appropriate emergency response arrangements are established and tested regularly (including when they are introduced and/or significantly amended).

Item [22] – Paragraph 16(b)

Replace the word "any" with "all" to promote transparency of all levels of consultation undertaken.

Item [23] – Paragraph 16(c)

Replace current paragraph 16(c) (which was moved to become subregulation 13(5)) with new paragraph 16(c) requiring operators to outline definitions of all reportable incidents relevant to the proposed activity.

Item [24] - Subregulation 24(2)

Replace the words "1 month's" with "30 days" to harmonise terms and definitions to be consistent with other regulations under the Act.

Item [25] - Regulations 26, 26A and 26B

Several amendments to regulation 26 relate to reportable and recordable incidents. The current regulatory requirement of reporting any incident within two hours has been amended to facilitate a risk based approach to reporting. The amendments provide clear guidance defining both recordable and reportable incidents and the time frame for the reporting of those events has been developed. Differentiation has been made between events that have to be reported to the DA, and those that merely have to be recorded by the operator.

New regulation 26A has been added to detail the requirements for reporting a reportable incident to the DA. New regulation 26B has been added to detail the new requirements for reporting a recordable incident to the DA.

Item [26] – Paragraph 27(2)(f)

Amend paragraph 27(2)(f) to reflect requirements under reworded regulation 26 and new subregulations 26A and 26B.

Item [27] - Regulations 29 and 29A

Amendments to regulation 29 relate to discharge of produced formation water (PFW) which is the natural aqueous fluid recovered from a petroleum reservoir in association with the petroleum. Regulation 29 has been amended to achieve flexibility and consideration made to other issues such as rewording to a more objective based regulation, monitoring of the dissolved oil fraction, approval of equipment and procedures and the role of international agreements.

Another emerging issue related to the monitoring of remotely controlled platforms. To ensure that the equipment and procedures used to determine PFW are appropriate, subregulation 29(3) has been amended to require the approval of equipment and procedures used to determine the quantity and composition of petroleum and water.

New regulation 29A has been added to detail requirements for testing and reporting of discharges of PFW by an operator.

Item [28] - Regulation 30

Add the words “name and” before the word “address”.

Item [29] - Division 4.4

This Division relates to former transitional provisions and has been deleted.

Item [30] – Further Amendments

- Subregulation 7(3): Replace the word “effect” with “impact” to be consistent with terminology under ISO14001.
- Subparagraph 8(1)(a)(i) - Replace the words “effect” with “impact” to be consistent with terminology under ISO14001.
- Subparagraph 8(1)(a)(ii) (note) - Replace the word “effect” with “impact” to be consistent with terminology under ISO14001.
- Paragraph 8(1)(b) - Replace the word “effect” with “impact” to be consistent with terminology under ISO14001.
- Subregulation 8(2) (note) - Replace the words “effects” with “impacts” to be consistent with terminology in ISO14001.
- Paragraph 11(1)(b) - Replace the words “effects” with “impacts” to be consistent with terminology in ISO14001.
- Paragraph 11(1)(c) - Replace the words “effects” with “impact” to be consistent with terms in ISO14001.
- Paragraph 13(1)(d) - Replace the word “effect” with “impact” to be consistent with terminology in ISO14001.
- Paragraph 17(2)(b) - Replace the word “effect” with “impact” to be consistent with terms in ISO14001.