

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 254

Offshore Petroleum and Greenhouse Gas Storage Act 2006

Offshore Petroleum and Greenhouse Gas Storage (Safety) Amendment Regulations 2011 (No. 1)

(Circulated by authority of the Minister for Resources and Energy,
the Honourable Martin Ferguson AM MP)

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.

The Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Act 2011 (the NRA Act), which received Royal Assent on 15 October 2011, amends the OPGGS Act to give effect to the Government's upstream petroleum regulatory reform policy. The NRA Act amends the OPGGS Act to establish a new National Offshore Petroleum Titles Administrator (NOPTA) and expand the functions of the existing National Offshore Petroleum Safety Authority (the Safety Authority) to become the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA).

The amendments to the OPGGS Act to establish NOPTA and NOPSEMA (contained in Part 1 of Schedule 2 to the NRA Act) commence by Proclamation on 1 January 2012.

The *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* (the Safety Regulations) are regulations made under the OPGGS Act that, among other things, set out requirements relating to safety cases, ensure that facility operations are undertaken only in accordance with an accepted safety case, and ensure that risks to the health and safety of persons at or near petroleum facilities are reduced to a level that is as low as reasonably practicable. As the regulator for occupational health and safety for petroleum operations in offshore waters, the Safety Authority currently exercises functions and powers set out in the Principal Regulations.

The purpose of the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2011* (the Regulations) is to amend the Safety Regulations to reflect the legislative arrangements outlined above by ensuring that the full range of regulatory functions and powers currently exercised by the Safety Authority under the Safety Regulations can continue to be exercised by the expanded NOPSEMA when it commences operations on 1 January 2012. Minor machinery amendments therefore replace references to the 'Safety Authority' in the Safety Regulations with references to 'NOPSEMA'.

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

The regulatory reforms relating to the upstream petroleum sector have been the subject of extensive consultations and numerous workshops with stakeholders, including other Australian Government agencies, State and Territory governments, the petroleum industry, environmental non-government organisations and interested individuals over an extended period of time from 2009 to 2011. The process commenced as a result of the Government's response to the 2009 Productivity Commission

(PC) Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector and the recommendations of the June 2010 Report of the Montara Commission of Inquiry. The regulations reflect the machinery changes that are required as part of the abovementioned reform process.

The Office of Best Practice Regulation was also consulted regarding the regulatory reforms to the upstream petroleum sector.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on the commencement of Parts 1 and 2 of Schedule 2 to the NRA Act (1 January 2012).

ATTACHMENT

NOTES ON INDIVIDUAL CLAUSES

Regulation 1 - Name of Regulations

Regulation 1 provides for the title of the Regulations to be the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Amendment Regulations 2011 (No. 1)*.

Regulation 2 - Commencement

Regulation 2 provides for the Regulations to commence on the commencement of Part 1 of Schedule 2 to the *Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Act 2011* – which is on a day to be fixed by Proclamation. This ensures that the amendments commence at the same time as NOPSEMA commences to exercise regulatory functions and powers under the OPGGS Act.

Regulation 3 – Amendment of *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009*

Regulation 3 provides that Schedule 1 to the Regulations amends the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* (the Safety Regulations).

SCHEDULE 1 Amendments

Item [1] Subregulation 1.5(1), definition of *accepted DSMS*

Item 1 substitutes the definition and omits paragraph 1.5(1)(b) as it references regulation 5.7 which is now a spent provision.

Item [2] Subregulation 1.5(1), definition of *Safety Authority*, including the note

Item 2 omits the definition of ‘Safety Authority’, to reflect that the term will no longer be applicable, apart from its use in the transitional provisions (a new definition is provided for this purpose – see item 11).

Item [3] Subregulation 1.5(1), definition of *Safety Authority waters*

Item 3 omits the definition of ‘Safety Authority waters’, to reflect that the term is no longer be applicable.

Items [4] to [10] - Regulations 2.24, 2.25, 2.31, 2.33, 2.39, 4.13, 4.14 - headings

These items alter the headings to these regulations by substituting the term ‘Safety Authority’ or ‘the Safety Authority’ with the term ‘NOPSEMA’.

Item [11] Regulation 5.1

Item 11 corrects a drafting error by replacing the reference to ‘In this Part:’ with ‘In this Chapter:’.

Item [12] Regulation 5.1, after definition of *former Pipelines Regulations*

Item 12 inserts a definition for ‘Safety Authority’ for transitional purposes which has the same meaning as it has in the OPGGS Act before the commencement of the NRA Act.

Item [13] Regulation 5.2

Item 13 provides transitional arrangements to continue in effect the registration of operators of facilities on the register of operators kept by the Safety Authority under regulation 2.4 of the Safety Regulations, which will be kept by NOPSEMA from 1 January 2012.

This ensures that persons who were registered on the register of operators under former regulations prior to 1 January 2010 (when the Safety Regulations commenced), and whose name was not subsequently removed by the Safety Authority prior to 1 January 2012, continue to be registered as operators following the transition to NOPSEMA.

Items [14], [17], [19], [21], [23], [24], [26], [27] - Regulations 5.3, 5.5, 5.7, 5.9, 5.11, 5.12, and 5.16; and Chapter 5, Part 6

These items remove these provisions. The transitional arrangements effected by these provisions have been completed, and these provisions are now spent.

Item [15] Paragraph 5.4(1)(b)

Item 15 replaces the term ‘is’ with the term ‘was’ to clarify that a safety case that was previously accepted under former regulations and *was* in force prior to 1 January 2010 (when the Principal Regulations commenced) continued in force as a safety case that had been accepted by the Safety Authority with effect from the date on which it had been accepted under the former regulations.

All safety cases that were accepted, or taken to be accepted, by the Safety Authority, which is continued in existence as NOPSEMA, continue in force from 1 January 2012. Therefore, a safety case that was kept in force by this transitional provision, and which is still in force immediately before 1 January 2012, also remains in force following the transition to NOPSEMA.

Item [16] Subregulation 5.4(1), note

This item omits the note.

Item [18] Subregulation 5.6(1), note

This item omits the note.

Item [20] Regulation 5.8

Item 20 provides transitional arrangements to continue in effect the registration of operators of facilities that are pipelines on the register of operators kept by the Safety Authority under regulation 2.4 of the Safety Regulations, which will be kept by NOPSEMA from 1 January 2012.

This ensures that persons who were registered under former Pipelines Regulations prior to 1 January 2010 (when the Safety Regulations commenced), and whose name was not subsequently removed by the Safety Authority prior to 1 January 2012, continue to be registered as operators following the transition to NOPSEMA.

Item [22] Paragraph 5.10(b)

Item 22 replaces the term ‘is’ with the term ‘was’ to clarify that a diving safety management system (DSMS) that was previously accepted under former regulations and *was* in force prior to 1 January 2010 (when the Safety Regulations commenced) continued in force as a DSMS that had been accepted by the Safety Authority with effect from the date on which it had been accepted under the former regulations.

All DSMSs that were accepted, or taken to be accepted, by the Safety Authority, which is continued in existence as NOPSEMA, continue in force from 1 January 2012. Therefore, a DSMS that was kept in force by this transitional provision, and which is still in force immediately before 1 January 2012, also remains in force following the transition to NOPSEMA.

Item [25] Paragraph 5.13(b)

Item 25 replaces the term ‘is’ with the term ‘was’ to clarify that a diving project plan that was previously accepted under former regulations and *was* in force prior to 1 January 2010 (when the Safety Regulations commenced) continues in force as a diving project plan that had been accepted by the Safety Authority with effect from the date on which it had been accepted under the former regulations.

All diving project plans that were accepted, or taken to be accepted, by the Safety Authority, which is continued in existence as NOPSEMA, continue in force from 1 January 2012. Therefore, a diving project plan that was kept in force by this transitional provision, and which is still in force immediately before 1 January 2012, also remains in force following the transition to NOPSEMA.

Item [28] Further amendments – NOPSEMA

Item 28 provides that machinery amendments be made in the listed provisions omitting the terms ‘the Safety Authority’ or ‘The Safety Authority’ and replacing them with the term ‘NOPSEMA’, to reflect the change in name and expansion of the Safety Authority to become NOPSEMA from 1 January 2012.