

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2011 No. 251**

*Offshore Petroleum and Greenhouse Gas Storage Act 2006*

#### **Offshore Petroleum and Greenhouse Gas Storage (Environment) 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 NR Act), which received Royal Assent on 14 October 2011, amended the OPGGS Act to give effect to the Government's upstream petroleum regulatory reform policy. The NR Act amended the OPGGS Act to establish a new National Offshore Petroleum Titles Administrator (the Titles Administrator) and to 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). As the name-change indicates, a principal addition to the Safety Authority's functions when it becomes NOPSEMA will be the regulation of environmental management of offshore petroleum operations.

The main purpose of the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Amendment Regulations 2011* (No. 1) (the Regulations) is to implement this institutional change. The amendments transfer the functions and powers of the regulator of environmental management for offshore petroleum operations from the Designated Authorities to NOPSEMA. (The Designated Authorities under the existing regime are the 'responsible State Minister' for each State and the 'responsible Northern Territory Minister'). This change requires machinery amendments in the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (the Environment Regulations) to provide that the Regulator, in relation to petroleum activities, is NOPSEMA. The amendments also include necessary transitional arrangements.

Another purpose of the Regulations is to deal with some of the practical consequences of removing the environmental regulatory role from State and Northern Territory resources departments. In a letter from the Commonwealth Minister for Resources and Energy to the Western Australian Minister for Mines and Petroleum, dated 20 August 2011, the Commonwealth Minister gave a number of undertakings, including with respect to amendments to the Environment Regulations, that will commence on 1 January 2012.

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

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 NR Act (on 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 (Environment) 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.

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

Regulation 3 provides for Schedules 1 and 2 to amend the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009*.

#### Regulation 4 – Application of amendments

Regulation 4 provides that the amendments made by Schedule 2 apply after a three month period from the commencement date of the Regulations.

### **SCHEDULE 1 Amendments**

#### Item [1] Subregulation 4(1), definition of Regulator, Paragraph (a)

Item 1 omits the term ‘Designated Authority’ in paragraph (a) of subregulation 4(1) and replaces it with the term ‘NOPSEMA’. This is the principal mechanism by which NOPSEMA becomes the regulator of environmental management of offshore petroleum operations.

#### Item [2] Subregulation 4(2), note

Item 2 omits the term ‘Designated Authority’ from the list of terms in the note to subregulation 4(2) that have the meaning given by section 7 of the OPGGS Act.

#### Item [3] Subregulation 4(2), note

Item 3 inserts the term ‘NOPSEMA’ into the note to subregulation 4(2) after the term ‘licensee’ in that same list of terms.

#### Item [4] Subregulation 14(8)

Item 4 replaces subregulation 14(8) to make clear that an implementation strategy must contain an oil spill contingency plan and provide for its maintenance. This ensures that the oil spill contingency plan is part of the implementation strategy and therefore part of the environment plan. The significance of this is that the Regulator must assess the oil spill contingency plan as part of its decision whether to accept the environment plan.

#### Item [5] Regulation 15

Item 5 omits the reference to ‘The environment plan’ in regulation 15 and replaces it with a reference to ‘(1) The environment plan’. In effect, this means that regulation 15 becomes subregulation 15(1), to provide for the insertion of a new subregulation 15(2) – see item 6.

Item [6] Regulation 15

Item 6 inserts a new subregulation 15(2) including a requirement that an environment plan include arrangements for the operator to notify the Department of the responsible State Minister or responsible Northern Territory Minister before the proposed date of commencement of drilling operations or seismic survey operations, if the operations would be so close inshore (although in Commonwealth waters) that there may be an effect on the local coastal community.

Item [7] Subregulation 18(6)

Item 7 substitutes a new subregulation 18(6) that contains a consequential amendment made necessary by the insertion of an alternative process in regulation 18 for Regulator-initiated revision of environment plans.

Item [8] After subregulation 18(6)

Item 8 inserts new subregulations 18(7) to (14) including new provisions relating to revision of an environment plan on request by the Regulator.

Regulation 18 of the Environment Regulations already enables the Regulator to request the operator to submit a proposed revision of an environment plan. The operator must comply with the request unless the request is withdrawn or varied. The existing provisions envisage that the request will set out 'the matters to be addressed by the revision' and the grounds for the request. This can be interpreted as requiring that the request be relatively specific with respect to the matters that the revision is to address. This is appropriate where the present Regulator has previously assessed and accepted the environment plan that is the subject of the request for revision.

Once NOPSEMA takes over as Regulator, however, there will be existing environment plans continued in force that were accepted by the Designated Authorities and that may not be due for a 5-yearly revision for some time. NOPSEMA will take on a level of regulatory responsibility for the adequacy of these existing environment plans. A mechanism is therefore needed to enable NOPSEMA, after a preliminary (internal) review of such a plan, to form the view that it is not satisfied in broad terms that the plan meets one or more particular criteria for acceptance in subregulation 11(1) of the Environment Regulations and to request a revision accordingly. The new process is intended to put the operator in the same position of having to satisfy the Regulator that the plan meets those particular acceptance criteria as is the case for all of the criteria when an initial environment plan, or a revision, is submitted in the normal way.

If, in due course, a revision is submitted under these new provisions, environment plan levy will be payable on the submission.

Item 8 inserts a new process in regulation 18 whereby the Regulator may request an operator to revise an environment plan. New subregulation (7) provides that the new process applies to an environment plan that was accepted by the Designated Authority before the commencement day (i.e. before NOPSEMA commences operations on 1 January 2012) and that is continued in force under new regulation 40. Subregulations 18(8) to (13) provide that the Regulator may request the revision if the Regulator is not satisfied that the environment plan meets one or more of the criteria in subregulation 11(1). The operator will have the opportunity, within 21 days (or a longer period allowed by the Regulator), to give reasons why the plan meets the specified criteria. The Regulator is then required to decide whether or not to accept the reasons and to notify the operator of the outcome, including giving reasons in the case of an adverse decision. The operator is required to comply with the original request if it is not withdrawn or varied.

Item [9] After regulation 26A

Item 9 inserts a new Regulation 26AA – Notification of reportable incidents. This regulation provides that if a titleholder provided a notification of a reportable incident in accordance with regulation 26 in writing, then a copy must be provided to the Titles Administrator and the Department of the responsible State Minister, or responsible Northern Territory Minister, as soon as practicable. It also provides that if the notification was provided orally then the titleholder is required to give a written record of the notification to NOPSEMA, the Titles Administrator and the Department of the responsible State Minister, or responsible Northern Territory Minister, as soon as practicable. This written record need not include anything that was not in the original oral notification. This provision relates only to the initial notification of an incident that is required to be given under regulation 26. The intention is to ensure that both the Titles Administrator and the responsible State Minister’s or responsible Northern Territory Minister’s Departments are made aware of the occurrence, but does not go beyond that initial notification.

Item [10] After Part 4

Item 10 inserts a new Part 5, titled “Transitional arrangements relating to *Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Act 2011*”, including new regulations 30 to 41.

**Regulation 38 Definitions for Part 5**

Regulation 38 provides a definition for ‘commencement day’ as being the day on which Part 1 of Schedule 2 to the *Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Act 2011* commences – which is on a day to be fixed by Proclamation.

**Regulation 39 Regulator may require operator to provide copy of environment plan.**

Regulation 39 enables NOPSEMA to require an operator of an activity to provide it with a copy of an environment plan that is in force for the activity. The purpose of this provision is to ensure that, if the relevant Designated Authority’s records are incomplete, so that not all current environment plans are provided to NOPSEMA on commencement, NOPSEMA can obtain a copy of the plan from the operator.

**Regulation 40 Environment plans accepted before commencement day**

Regulation 40 provides for the transitioning of existing environment plans. It provides that, if an environment plan was in force immediately before the commencement day, the plan continues in force under the amended Environment Regulations. For the purpose of determining when the 5-yearly revision is due, the plan is taken to have been accepted by NOPSEMA on the day it was accepted by the Designated Authority.

**Regulation 41 Environment plans submitted but not accepted before commencement day**

Regulation 41 provides that, if an environment plan had been submitted to a Designated Authority before the commencement day, but the Designated Authority had not completed the decision-making process by either accepting the plan or (finally) refusing to accept the plan, the plan is taken to have been submitted to NOPSEMA under regulation 9 on the commencement day. Environment plan levy is payable on that submission.

## **SCHEDULE 2 Further amendments which do not apply until 3 months after commencement**

### Item [1] Paragraph 11(1)(f)

Item 1 substitutes a new paragraph 11(1)(f) into the assessment criteria applied by the Regulator when deciding whether to accept an environment plan. The new paragraph 11(1)(f) clarifies the role of the Regulator in relation to the consultation process that the operator is required to carry out when preparing an environment plan. (There are expanded consultation requirements in new regulation 11A and paragraph 16(b).) Under the new paragraph 11(1)(f), the Regulator must have reasonable grounds for believing that the operator has carried out the consultations required by Division 2.2A (i.e. new regulation 11A) and that the measures, if any, that the operator has adopted, or proposes to adopt, as a result of the consultations are appropriate.

For the purpose of making that assessment of appropriateness, the Regulator will have before it the report prepared by the operator as required by an expanded paragraph 16(b).

### Item [2] After regulation 11

Item 2 inserts a new Division 2.2A which sets out the consultations required to be undertaken by an operator when preparing an environment plan.

### **Regulation 11A Consultation with relevant authorities, persons and organisations, etc**

Regulation 11A requires an operator to consult with a range of Commonwealth, State or Northern Territory Departments and agencies to which the activities to be carried out under the environment plan, or revision of the environment plan, may be relevant. Also to be consulted are persons or organisations whose functions, interests or activities may be affected by the activities. In addition, the operator is required to consult the Department of the responsible State Minister or responsible Northern Territory Minister, as applicable, and any other person or organisation that the operator considers relevant. The operator is required to give each such person ('relevant person') sufficient information to allow the person to make an informed assessment of the possible consequences of the activity on the functions, interests or activities of the person. (Note that NOPSEMA will have to make an assessment of the sufficiency of the information in each case.)

### Item [3] Paragraph 16(b)

Item 3 replaces the existing reporting requirement in paragraph 16(b) in relation to consultations with an expanded version that clarifies the role and purpose of the consultation requirements in new regulation 11A. The operator will have to prepare a report on consultations that summarises each response that has been received from a relevant person, that assesses the merits of any objection or claim about adverse impacts and that states the operator's response or proposed response, if any, to each objection or claim. The report must also attach a copy of each response that the operator has received from a relevant person. NOPSEMA is required by paragraph 11(1)(f) to assess whether the measures adopted, or proposed to be adopted, by the operator are appropriate. This requires NOPSEMA to consider whether it agrees with the operator's assessment of the merits of any objection or claim, having regard to the objects of the Environment Regulations and taking into account the rights and obligations of a titleholder under the OPGGS Act.

### Item [4] Regulation 21

Item 4 omits the cross-reference to regulations 10 and 11 and inserts a cross-reference to regulations 10, 11 and 11A, to reflect the insertion of new regulation 11A into the Environment Regulations – see item 2 of Schedule 2. Regulation 21 therefore applies regulations 10, 11 *and* 11A to a proposed revision of an environment plan.

Item [5] Regulation 21, note

Item 5 inserts a note indicating that regulation 11A deals with consultations with relevant authorities, persons and organisations.