

EXPLANATORY STATEMENT

**Issued by the Authority of the Minister for Resources and Northern Australia,
Senator the Hon Matt Canavan**

Offshore Minerals (Mining Licence Fees) Act 1981

Offshore Minerals (Mining Licence Fees) Regulations 2018

Purpose and Operation

The *Offshore Minerals (Mining Licence Fees) Act 1981* (the Act) imposes annual fees in respect of mining licences granted under the *Offshore Minerals Act 1994* (the OM Act). The purpose of the fee is to compensate the Designated Authorities (state and Northern Territory governments) for the costs of day-to-day administration of the Offshore Minerals legislation on behalf of the Commonwealth.

Section 7 of the Act provides that the Governor-General may make regulations prescribing matters either required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 4(1) of the Act provides that a mining licence holder must pay a fee to the Designated Authority in respect of each year of the term of the licence. Subsection 4(2) provides that the amount of the fee is to be calculated in accordance with the regulations. Subsection 4(3) provides that the fee is not to exceed \$1,000 per block covered by the licence at the beginning of the year.

The *Offshore Minerals (Mining Licence Fees) Regulations* (the sunseting Regulations), which are due to sunset on 1 October 2018, prescribe an annual fee of \$200 for each block covered by the licence.

The Department of Industry, Innovation and Science (the department) has conducted a review of the sunseting Regulations and determined that they should be remade without substantive change. To date, only a few licences have been granted under the OM Act. It is not proposed to increase the mining licence fees as the states and the Northern Territory currently incur negligible costs in administering mining activities in Commonwealth offshore areas.

A review of the current fee has determined that a lower amount would not be sufficient to appropriately compensate the Designated Authorities for their activities in the event that a mining licence is granted in future, noting that the fee would need to cover ongoing regulatory activities in relation to the licence, such as monitoring and enforcement. At the same time, the amount is considered not to be onerous for mining licence holders in the context of overall costs incurred in offshore mining activities, and noting that the Act enables a fee of up to \$1,000 for each block covered by the licence to be charged.

The purpose of the *Offshore Minerals (Mining Licence Fees) Regulations 2018* (the 2018 Regulations) is to remake the sunseting Regulations in substantially the same form with amendments to ensure consistency with current drafting practices, including simplifying language and correcting references where necessary.

Subsection 33(3) of the *Acts Interpretation Act 1901* relevantly provides that where an Act confers a power to make an instrument of a legislative character (including regulations), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions to repeal, rescind, revoke, amend, or vary any such instrument. The 2018 Regulations also repeal the sunseting Regulations.

A provision-by-provision description of the 2018 Regulations is set out at [Attachment A](#).

Consultation

State and Northern Territory governments were consulted during the drafting of the 2018 Regulations. Jurisdictions were advised of the proposal to remake the sunseting Regulations with no substantive change at the March 2018 meeting of the Upstream Petroleum Resources Working Group of the Council of Australian Governments' Energy Council, with comments sought by 11 April 2018. No comments were received.

The offshore minerals industry in Australia is relatively small. In order to consult with the industry, and ensure broader awareness of the proposal to remake the sunseting Regulations, information about the proposal and an invitation to comment were published on the department's Consultation Hub. Interested stakeholders were also advised through an issue of Australian Petroleum News. Comments in relation to the proposal were sought by 13 April 2018. One submission was received; however, the content of the submission related to matters outside the scope of the sunseting Regulations.

Regulatory Impact

The Office of Best Practice Regulation (OBPR) has confirmed that a Regulation Impact Statement is not required for the 2018 Regulations. The OBPR reference is ID 22729.

Statement of Compatibility with Human Rights

Subsection 9(1) 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 Minerals (Mining Licence Fees) Regulations 2018*

Section 1 – Name

This section provides that the name of the instrument is the *Offshore Minerals (Mining Licence Fees) Regulations 2018* (the 2018 Regulations).

Section 2 – Commencement

This section provides that the 2018 Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the 2018 Regulations are made under the *Offshore Minerals (Mining Licence Fees) Act 1981* (the Act). The applicable provisions that provide authority are subsection 4(2) and section 7 of the Act.

Section 4 – Schedules

This section is a machinery provision that enables the Schedule to the 2018 Regulations to operate according to its terms.

Section 5 – Definitions

This section provides for the definitions of terms used in the 2018 Regulations.

Section 6 – Amount of mining licence fee

This section provides that, for the purposes of subsection 4(2) of the Act, the prescribed annual fee is \$200 for each block covered by the mining licence.

Schedule 1 – Repeals

This Schedule provides that the whole of the sunsetting *Offshore Minerals (Mining Licence Fees) Regulations* is repealed.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Offshore Minerals (Mining Licence Fees) Regulations 2018

These Regulations are 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 Minerals (Mining Licence Fees) Regulations 2018* (the 2018 Regulations) are a legislative instrument for the purposes of the *Legislation Act 2003*.

The 2018 Regulations are prepared under subsection 4(2) and section 7 of the *Offshore Minerals (Mining Licence Fees) Act 1981*, and repeal and remake the *Offshore Minerals (Mining Licence Fees) Regulations* (the sunseting Regulations), due to sunset on 1 October 2018.

The sunseting Regulations prescribe the annual fee amount payable by licence holders in respect of mining licences granted under the *Offshore Minerals Act 1994*. A review of the sunseting Regulations determined that the Regulations are still required. The 2018 Regulations remake the sunseting Regulations without substantive change.

Human rights implications

The 2018 Regulations do not engage any of the applicable rights or freedoms.

Conclusion

The 2018 Regulations are compatible with human rights, as they do not raise any human rights issues.

Senator the Hon Matt Canavan

Minister for Resources and Northern Australia