

## **EXPLANATORY STATEMENT**

**Issued by the Authority of the Minister for Resources, Water and Northern Australia,  
the Hon Keith Pitt MP**

*Offshore Petroleum and Greenhouse Gas Storage Act 2006*

*Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Cross-boundary  
Greenhouse Gas Storage) Regulations 2020*

### **Purpose and operation**

The *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act) provides the legal framework for the exploration for and recovery of petroleum, and for the injection and storage of greenhouse gas substances, in offshore areas.

The *Offshore Petroleum and Greenhouse Gas Storage (Greenhouse Gas Injection and Storage) Regulations 2011* (the GHG Regulations) provide for regulation of matters relating to approval of greenhouse gas injection and storage activities under the OPGGS Act. The GHG Regulations deal specifically with injection and safe storage of greenhouse gas substances into the reservoir, plus provide the mechanism for dealing with interactions with other users, including offshore petroleum titleholders.

The *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* (the RMA Regulations) provide for regulation of matters relating to resource management, data collection and management, and maintenance of the integrity of offshore petroleum and greenhouse gas wells.

The *Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Cross-boundary Greenhouse Gas Storage) Regulations 2020* (the Amendment Regulations) make consequential amendments to the GHG Regulations and the RMA Regulations to enable effective regulation and administration of greenhouse gas storage formations that straddle the boundary between Commonwealth waters and State/Northern Territory coastal waters. The Amendment Regulations fully implement amendments to the OPGGS Act in the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Cross-boundary Greenhouse Gas Titles and Other Measures) Act 2020* (the Cross-boundary Greenhouse Gas Titles Act).

Administration of cross-boundary greenhouse gas titles is undertaken by the National Offshore Petroleum Titles Administrator (the Titles Administrator). The Titles Administrator is fully cost-recovered through fees and levies imposed on the offshore petroleum and greenhouse gas storage industries. The Amendment Regulations include amendments to the RMA Regulations to prescribe fees for certain applications relating to cross-boundary greenhouse gas titles.

The prescribed fees are set at \$7,500, in accordance with the flat fee structure established in the Titles Administrator's cost recovery implementation statement (CRIS) for all applications under the OPGGS Act. The flat fee is charged on the basis that similar effort is required to assess the different types of applications. This represents the average cost of assessing each application type submitted to the Titles Administrator. The fee amounts are not such as to amount to taxation. The Titles Administrator has revised its CRIS to reflect

the new application types, and completed a Charging Risk Assessment in accordance with Department of Finance requirements.

As a result of the amendments to the OPGGS Act in the Cross-boundary Greenhouse Gas Titles Act, the definitions of “greenhouse gas assessment permit”, “greenhouse gas holding lease” and “greenhouse gas injection licence” include a cross-boundary greenhouse gas assessment permit, a cross-boundary greenhouse gas holding lease and a cross-boundary greenhouse gas injection licence respectively. As a result, unless specifically indicated otherwise, a reference to a greenhouse gas assessment permit, a greenhouse gas holding lease or a greenhouse gas injection licence includes a reference to a cross-boundary greenhouse gas assessment permit, a cross-boundary greenhouse gas holding lease or a cross-boundary greenhouse gas injection licence in all of the regulations under the OPGGS Act (including regulations that are not otherwise amended by the Amendment Regulations). All of the regulations under the OPGGS Act apply to cross-boundary greenhouse gas titles in an equivalent manner to their application to “ordinary” greenhouse gas titles.

Further, new sections of the OPGGS Act, inserted by the Cross-boundary Greenhouse Gas Titles Act, provide for the title area of a cross-boundary greenhouse gas assessment permit (section 295B), cross-boundary greenhouse gas holding lease (section 323B) and a cross-boundary greenhouse gas injection licence (section 360A) to be taken to be included in the Commonwealth offshore area for all purposes of the OPGGS Act and regulations, so far as they relate to exploring for a potential greenhouse gas storage formation or injection site, or injection or storage of a greenhouse gas substance. A reference to an “offshore area” in any such regulation therefore includes the entirety of the title area of a cross-boundary greenhouse gas title, including the part of the title area that is otherwise ordinarily located in State or Northern Territory coastal waters.

### **Authority**

Section 781 of 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.

### **Consultation**

The policy proposal to provide for the grant and administration of cross-boundary titles was developed jointly with the Victorian Government Department of Jobs, Precincts and Regions (DJPR). The relevant policy area of DJPR and CarbonNet were also consulted on a draft of the Amendment Regulations. The CarbonNet project is investigating the potential for establishing a commercial-scale carbon capture and storage network, including injection of carbon dioxide into deep underground offshore storage sites. The proposal would enable the CarbonNet project to proceed with its proposed project site in the Gippsland Basin, offshore Victoria. CarbonNet’s preferred storage formation straddles the boundary between Commonwealth waters and Victorian coastal waters.

Other States and the Northern Territory were informed of the measure that is implemented by the Amendment Regulations through the Upstream Petroleum Resources Working Group of the Council of Australian Governments Energy Council. It is voluntary for any jurisdiction to participate under the cross-boundary titles framework.

Consultation was also undertaken with the Titles Administrator, who will administer the cross-boundary titles framework. The Titles Administrator was consulted to determine the amendments required to fully and effectively implement the framework, and on a draft of the Amendment Regulations.

In May 2020, the Titles Administrator consulted with CarbonNet, as the sole greenhouse gas titleholder in Commonwealth waters, on the application fees proposed to be prescribed in relation to cross-boundary greenhouse gas titles. CarbonNet did not raise any concerns.

### **Regulatory Impact**

The Office of Best Practice Regulation (OBPR) has confirmed that a Regulation Impact Statement is not required for the Amendment Regulations. The OBPR reference is ID 24169.

### **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.

## **Details of the *Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Cross-boundary Greenhouse Gas Storage) Regulations 2020***

### **Section 1 – Name**

This section provides that the title of the Regulations is the *Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Cross-boundary Greenhouse Gas Storage) Regulations 2020*.

### **Section 2 – Commencement**

This section provides for the commencement date for the provisions of the *Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Cross-boundary Greenhouse Gas Storage) Regulations 2020* (the Amendment Regulations).

Sections 1 to 4 of the Amendment Regulations commence on the day after the Amendment Regulations are registered.

Schedule 1 to the Amendment Regulations commences at the same time as the commencement of Part 1 of Schedule 1 to the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Cross-boundary Greenhouse Gas Titles and Other Measures) Act 2020* (Cross-boundary Greenhouse Gas Titles Act). The amendments in Schedule 1 to the Amendment Regulations are consequential to the amendments in Part 1 of Schedule 1 to the Cross-boundary Greenhouse Gas Titles Act to allow effective title administration and regulation of a greenhouse gas storage formation that straddles the boundary between Commonwealth waters and State/Northern Territory coastal waters. Part 1 of Schedule 1 to the Cross-boundary Greenhouse Gas Titles Act commences by Proclamation on 1 October 2020.

Schedule 2 to the Amendment Regulations commences at the same time as the commencement of Part 2 of Schedule 4 to the Cross-boundary Greenhouse Gas Titles Act. The amendments in that Schedule to the Amendment Regulations implement the amendments in Part 2 of Schedule 4 to the Cross-boundary Greenhouse Gas Titles Act to future-proof references in provisions of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act) to the names of regulations made under the OPGGS Act. Part 2 of Schedule 4 to the Cross-boundary Greenhouse Gas Titles Act commences by Proclamation on 1 October 2020.

### **Section 3 – Authority**

This section provides that the Amendment Regulations are made under the OPGGS Act.

### **Section 4 – Schedules**

This section is a machinery clause that enables the Schedules to the Amendment Regulations to operate according to their terms.

### **Schedule 1 – Main amendments**

*Offshore Petroleum and Greenhouse Gas Storage (Greenhouse Gas Injection and Storage) Regulations 2011*

#### Items 1 to 3 – Paragraph 1.4(1)(a); Subregulation 1.4(1) (note); Subregulation 1.4(5)

Regulation 1.4 of the *Offshore Petroleum and Greenhouse Gas Storage (Greenhouse Gas Injection and Storage) Regulations 2011* (the GHG Regulations) sets out the information required for assessing whether there is a significant risk of a significant adverse impact for the purposes of various provisions relating to grants of licences and approvals of operations under the OPGGS Act.

Subregulations 1.4(1) and (5) include references to subsections 27(1) and 28(1) of the OPGGS Act, which respectively relate to approval of key greenhouse gas operations and grant of greenhouse gas injection licences. The Cross-boundary Greenhouse Gas Titles Act inserted new sections 27A and 28A, which are equivalent to sections 27 and 28, but relate respectively to approval of key greenhouse gas operations under cross-boundary titles and grant of cross-boundary greenhouse gas injection licences. These items amend paragraph 1.4(1)(a), the note to subregulation 1.4(1) and subregulation 1.4(5) to include references to subsections 27A(1) and 28A(1).

#### Item 4 – After Subregulation 1.4(5)

Regulation 1.4 of the GHG Regulations sets out the information required for assessing whether there is a significant risk of a significant adverse impact for the purposes of various provisions relating to grants of licences and approvals of operations under the OPGGS Act. Subregulation 1.4(5) enables the responsible Commonwealth Minister to request information from the registered holder of a Commonwealth petroleum production licence, if the area in which an operation is proposed to be carried out under a greenhouse gas title overlaps in whole or in part with an area in which an operation is being, or could be, carried on under the production licence.

In the case of a cross-boundary greenhouse gas title, an operation may also overlap in whole or in part with an area in which an operation is being, or could be, carried on under a State/Territory petroleum production title.

This item inserts a new subregulation 1.4(5A) to allow the responsible Commonwealth Minister to request information from the holder of a State/Territory petroleum production title for the purposes of subsections 27A(1) and 28A(1) of the OPGGS Act, which relate respectively to approval of key greenhouse gas operations under cross-boundary titles and grant of cross-boundary greenhouse gas injection licences. For further information on sections 27A and 28A see discussion on items 1 to 3.

#### Items 5 to 8 – Paragraph 1.5(1)(a); Subregulation 1.5(1) (note); Subregulation 1.5(7) (table item 6); Subregulation 1.5(7) (table item 7)

Regulation 1.5 of the GHG Regulations sets out the manner of assessing whether there is a significant risk of a significant adverse impact for the purposes of various provisions relating to grants of licences and approvals of operations under the OPGGS Act. These items amend regulation 1.5 to include references to sections 27A and 28A of the OPGGS Act. For further information on sections 27A and 28A see discussion on items 1 to 3.

#### Item 9 – Paragraph 1.6(1)(a)

Regulation 1.6 of the GHG Regulations sets out the threshold amounts to be used when assessing whether there is a significant risk of a significant adverse impact for the purposes of various provisions relating to grants of licences and approvals of operations under the OPGGS Act.

This item amends paragraph 1.6(1)(a) to include reference to subsections 27A(6) and 28A(6), which respectively relate to assessing whether key greenhouse gas operations under a cross-boundary greenhouse title, or operations under a cross-boundary greenhouse gas injection licence, have a significant risk of having a significant adverse impact on petroleum operations. For further information on sections 27A and 28A see discussion on items 1 to 3.

#### Items 10 and 11 – Subregulation 1.7(1); Subregulation 1.7(2) (note)

Regulation 1.7 of the GHG Regulations relates to required notifications by the responsible Commonwealth Minister after making a determination under subregulation 1.4(7) that there is a significant risk of a significant adverse impact, for the purposes of various provisions relating to grants of licences and approvals of operations under the OPGGS Act. These items amend subregulation 1.7(1) and the note to subregulation 1.7(2) to include references to subsections 27A(1) and 28A(1), which relate respectively to approval of key greenhouse gas operations under cross-boundary titles and grant of cross-boundary greenhouse gas injection licences. For further information on sections 27A and 28A see discussion on items 1 to 3.

#### Item 12 – Subregulation 1.7(3) (note)

Subregulation 1.7(3) of the GHG Regulations requires the responsible Commonwealth Minister, after making a determination under subregulation 1.4(7) that there is a significant risk of a significant adverse impact for the purposes of various provisions of the OPGGS Act relating to grants of licences and approvals of operations, to notify each titleholder that would be affected by the significant risk. The Note to subregulation 1.7(3) specifies who is a ‘titleholder’ for the purposes of the subregulation.

This item amends paragraph (a) of the note to include references to the holder of a greenhouse gas assessment permit or a greenhouse gas holding lease. Under sections 25 and 26 of the OPGGS Act, the holders of these titles may also be affected by a significant risk of a significant adverse impact from a key petroleum operation or operations under a petroleum production licence respectively.

This item also inserts a new paragraph (c) to the note to specify who is a titleholder for the purposes of new sections 27A and 28A of the OPGGS Act, which relate respectively to approval of key greenhouse gas operations under cross-boundary titles and grant of cross-boundary greenhouse gas injection licences. Given the cross-boundary nature of these titles, the holder of Commonwealth petroleum titles and/or State/Territory petroleum titles may be affected by a significant risk of a significant adverse impact from a greenhouse gas operation. For further information on sections 27A and 28A see discussion on items 1 to 3.

#### Items 13 and 14 – Subregulation 1.8(1); Subregulation 1.8(2) (note)

Regulation 1.8 of the GHG Regulations requires the responsible Commonwealth Minister, after making a determination under subregulation 1.4(7) that there is not a significant risk of a

significant adverse impact for the purposes of various sections of the OPGGS Act, to notify the person to whose operations the determination relates.

These items amend subregulation 1.8(1) and the note to subregulation 1.8(2) to include references to subsections 27A(1) and 28A(1), which relate respectively to approval of key greenhouse gas operations under cross-boundary titles and grant of cross-boundary greenhouse gas injection licences. For further information on sections 27A and 28A see discussion on items 1 to 3.

#### Item 15 – Subregulation 1.8(3) (note)

Subregulation 1.8(3) of the GHG Regulations requires the responsible Commonwealth Minister, after making a determination under subregulation 1.4(7) that there is not a significant risk of a significant adverse impact for the purposes of various sections of the OPGGS Act, to notify each titleholder that would have been affected if there was a significant risk. The Note to subregulation 1.8(3) specifies who is a ‘titleholder’ for the purposes of the subregulation.

This item amends paragraph (a) of the note to include references to the holder of a greenhouse gas assessment permit or a greenhouse gas holding lease. Under sections 25 and 26 of the OPGGS Act, the holders of these titles may also be affected by a significant risk of a significant adverse impact from a key petroleum operation or operations under a petroleum production licence respectively.

This item also inserts a new paragraph (c) to the note to specify who is a titleholder for the purposes of new sections 27A and 28A of the OPGGS Act, which relate respectively to approval of key greenhouse gas operations under cross-boundary titles and grant of cross-boundary greenhouse gas injection licences. Given the cross-boundary nature of these titles, the holder of Commonwealth petroleum titles and/or State/Territory petroleum titles may be affected by a significant risk of a significant adverse impact from a greenhouse gas operation. For further information on sections 27A and 28A see discussion on items 1 to 3.

#### Item 16 – Regulation 2.1

Part 2 of the GHG Regulations makes provision in relation to applications for the declaration of a part of a geological formation as an identified greenhouse gas storage formation under section 312 of the OPGGS Act. The Cross-boundary Greenhouse Gas Titles Act amended the OPGGS Act to insert new section 312A, which is equivalent to section 312, and provides for an application for declaration of a part of a geological formation within a cross-boundary greenhouse gas assessment permit area as an identified greenhouse gas storage formation.

Regulation 2.1 relates to the power granted under paragraph 312(3)(c) of the OPGGS Act to make regulations that specify what other information, in addition to that listed under section 312, is required in an application for declaration of an identified greenhouse gas storage formation. New paragraph 312A(3)(c) includes an equivalent regulation-making power. This item amends regulation 2.1 to provide for applications under section 312A.

#### Item 17 – Subregulation 2.2(1)

Regulation 2.2 of the GHG Regulations sets out how the responsible Commonwealth Minister handles an application for a declaration of an identified greenhouse gas storage formation received under section 312 of the OPGGS Act.

This item amends subregulation 2.2(1) to provide for applications under new section 312A. For further information on section 312A see discussion on item 16.

#### Item 18 – Subregulation 3.5(3)

Part 3 of the GHG Regulations makes provision in relation to site plans, which are required to be in force before a greenhouse gas injection licensee, including a cross-boundary greenhouse gas injection licensee, undertakes any operation in relation to an identified greenhouse gas storage formation.

Subregulation 3.5(3) provides that Part B of a site plan must not be inconsistent with the declaration under section 312 of the OPGGS Act of the identified greenhouse gas storage formation.

This item amends subregulation 3.5(3) to ensure that this subregulation would also include a reference to a declaration under new section 312A. For further information on section 312A see discussion on item 16.

#### Item 19 – Paragraph 3.9(1)(a)

Paragraph 3.9(1)(a) of the GHG Regulations provides that the responsible Commonwealth Minister may withdraw approval of a site plan if a declaration of an identified greenhouse gas storage formation under section 314 of the OPGGS Act has been revoked. However, a declaration is made under section 312 or new section 312A of the OPGGS Act. Section 314 provides for the revocation of a declaration made under either section 312 or 312A.

This item repeals and substitutes a new paragraph 3.9(1)(a) to provide that the Minister may withdraw approval of a site plan if a declaration under section 312 or 312A has been revoked under section 314. For further information on section 312A see discussion on item 16.

#### Item 20 – Paragraph 3.10(3)(b)

Paragraph 3.10(3)(b) of the GHG Regulations provides that the responsible Commonwealth Minister may request a greenhouse gas injection licensee to review an approved site plan if the licensee applies for a variation of the licence under section 374 of the OPGGS Act. The Cross-boundary Greenhouse Gas Titles Act amended the OPGGS Act to insert a new section 374A, which is the equivalent of section 374, and provides for variation of matters specified in a cross-boundary greenhouse gas injection licence.

This item amends paragraph 3.10(3)(b) to provide for the Minister to request a cross-boundary greenhouse gas injection licensee to review an approved site plan if the licensee applies for a variation of the licence under section 374A.



#### Item 21 – Regulation 4.2 (heading)

Division 1 of Part 4 of the GHG Regulations provides for notification and reporting of reportable incidents, as defined in regulation 4.1. Regulation 4.2 requires that in the event of a reportable incident, the titleholder must provide an oral or written notification to the responsible Commonwealth Minister.

This item amends the heading of regulation 4.2 to reflect that a new provision has been inserted to also require a titleholder to notify the relevant State or Northern Territory in the event of a reportable incident – see item 23.

#### Item 22 – Subregulation 4.2(2)

This item replaces the incorrect reference to an “operator” in subregulation 4.2(2) with a reference to a “titleholder”.

#### Item 23 – After subregulation 4.2

Division 1 of Part 4 of the GHG Regulations provides for notification and reporting of reportable incidents, as defined in regulation 4.1. Regulation 4.2 requires that in the event of a reportable incident, the titleholder must provide an oral or written notification to the responsible Commonwealth Minister.

To ensure transparency, a State or the Northern Territory should also be informed of the incident if it occurred in the offshore area of that State or Northern Territory. This would be particularly important in a case where a reportable incident happens during operations under a cross-boundary greenhouse gas title.

This item inserts a new regulation 4.2A, under which there is a requirement for a titleholder that has provided an oral notification to the responsible Commonwealth Minister under regulation 4.2 to give a written record of the details of the oral notification to the Department of the responsible State Minister or the Department of the responsible Northern Territory Minister (as applicable). If the titleholder notified the responsible Commonwealth Minister under regulation 4.2 in writing, the titleholder is required to provide a copy of the written notification to the Department of the responsible State Minister or the Department of the responsible Northern Territory Minister. The written record or copy of a notification is required to be given no later than three days after notifying the responsible Commonwealth Minister.

A penalty of 40 penalty units applies if regulation 4.2A is not complied with.

#### Item 24 – After subregulation 4.3(1)

Subregulation 4.3(1) of the GHG Regulations requires a titleholder to provide a written report of a reportable incident to the responsible Commonwealth Minister.

To ensure transparency, a State or the Northern Territory should be provided with a copy of a written report of the incident if it occurred in the offshore area of the State or Northern Territory. This would be particularly important in a case where a reportable incident happens during operations under a cross-boundary greenhouse gas title.

This item inserts a new subregulation 4.3(1A), under which a titleholder is required to give a copy of the written report of a reportable incident to the Department of the responsible State Minister or the Department of the responsible Northern Territory Minister, as applicable, within seven days after giving the report to the responsible Commonwealth Minister. A penalty of 40 penalty units applies if subregulation 4.3(1A) is not complied with.

#### Item 25 – Subregulation 4.3(2)

This item replaces the incorrect reference to an “operator” in subregulation 4.3(2) with a reference to a “titleholder”.

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

#### Items 26 to 30 – Paragraph 1.06(3)(h); Paragraph 1.06(3)(i); Paragraph 1.06(3)(j); Paragraph 1.06(3)(k); Paragraph 1.06(3)(l)

Regulation 1.06 of the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* (the RMA Regulations) sets out the meaning of ‘excluded information’. Subregulation 1.06(3) sets out types of documents, the information within which is ‘excluded information’ for the purposes of being classified as ‘permanently confidential information’ under subregulation 8.02(2) and 10.02(2).

Technical amendments to paragraphs 1.06(h) to (l) are required in order to include references to new sections that are inserted into the OPGGS Act by the Cross-boundary Greenhouse Gas Titles Act.

New section 302A provides for an application for a consolidated work-bid greenhouse gas assessment permit. New section 307A provides for an application for a cross-boundary greenhouse gas assessment permit. Item 26 amends paragraph 1.06(3)(h) to include a reference to new sections 302A and 307A.

New section 311A provides for an application for renewal of a cross-boundary greenhouse gas assessment permit. Item 27 amends paragraph 1.06(3)(i) to include a reference to the new section 311A.

New section 329A provides for an application for a cross-boundary greenhouse gas holding lease by the holder of a cross-boundary greenhouse gas assessment permit. New section 335A provides for an application for a cross-boundary greenhouse gas holding lease by the holder of a cross-boundary greenhouse gas injection licence. New section 342A provides for an application for a special cross-boundary greenhouse gas holding lease by an unsuccessful applicant for a cross-boundary greenhouse gas injection licence. Item 28 amends paragraph 1.06(3)(j) to include a reference to new sections 329A, 335A and 342A.

New section 350A provides for an application for renewal of a cross-boundary greenhouse gas holding lease. Item 29 amends paragraph 1.06(3)(k) to include a reference to the new section 350A.

New section 368A provides for an application for a cross-boundary greenhouse gas injection licence by the holder of a cross-boundary greenhouse gas assessment permit or a cross-

boundary greenhouse gas holding lease. Item 30 amends paragraph 1.06(3)(1) to include a reference to the new section 368A.

#### Item 31 – At the end of Division 2 of Part 2

Part 2 of the RMA Regulations outlines the requirements for reporting of discoveries of petroleum in a title area. Division 2 of Part 2 applies to greenhouse gas titleholders that notify the responsible Commonwealth Minister of incidental discoveries of petroleum under section 452 of the OPGGS Act.

This item inserts a new regulation 2.07 to allow the responsible Commonwealth Minister to make information in a report of the discovery of petroleum by the holder of a cross-boundary greenhouse gas title available to the responsible State Minister or responsible Northern Territory Minister (as applicable).

Due to the application of paragraph 1.06(3)(m), information in a report on the discovery of petroleum under Part 2 of the RMA Regulations is ‘excluded information’, and is therefore ‘permanently confidential information’ under subregulations 8.02(2) and 10.02(2). However, where petroleum is discovered in the part of a cross-boundary title area that is ordinarily in State or Northern Territory coastal waters, it is desirable that relevant information in a report on the discovery of the petroleum can be shared with the applicable State or Northern Territory. Despite the grant of a cross-boundary greenhouse gas title under the Commonwealth OPGGS Act, any petroleum discovered within State or Northern Territory coastal waters remains subject to the jurisdiction of that State or the Northern Territory.

Subregulation 2.07(2) excludes the application of subregulations 8.02(2) and 10.02(2) to information in a report of a discovery of petroleum provided by the holder of a cross-boundary greenhouse gas title, and allows the responsible State Minister or responsible Northern Territory Minister to be provided with information included in the report. The information would be shared for the purpose of enabling or assisting the responsible State Minister or the responsible Northern Territory Minister to perform their functions or exercise powers under State or Northern Territory offshore petroleum legislation.

#### Item 32 – After regulation 11A.02

Regulation 11A.02 of the RMA Regulations provides for the giving of documents to the Joint Authority. The regulation provides that a document that is required or permitted, by the OPGGS Act or a legislative instrument under the OPGGS Act, to be given to the Joint Authority is taken to have been given to the Joint Authority if it is given to the National Offshore Petroleum Titles Administrator (the Titles Administrator) or a delegate of the Titles Administrator.

The Cross-boundary Greenhouse Gas Titles Act amended the OPGGS Act to create a Cross-boundary Authority to make key title decisions in relation to cross-boundary greenhouse gas titles, similar to the role of the Joint Authority in relation to petroleum titles. Titles administration is also undertaken by the Titles Administrator. New section 76H of the OPGGS Act provides that all communications to or by a Cross-boundary Authority are to be made through the Titles Administrator. This is equivalent to section 63 for the Joint Authority.

This item inserts a new regulation 11A.02A, which is equivalent to regulation 11A.02, but provides that a document required or permitted to be given to the Cross-boundary Authority is taken to have been given to the Cross-boundary Authority if it is given to the Titles Administrator or a delegate of the Titles Administrator.

Items 33 and 34 – Clause 3 of Schedule 6 (table item 121, column headed “Type of application, request or nomination”); Clause 3 of Schedule 6 (after table item 124)

Schedule 6 to the RMA Regulations sets out application fees payable under certain sections of the OPGGS Act. Division 3 of Part 1 of Schedule 6 sets out fees payable to the Titles Administrator under section 695L of the OPGGS Act.

Table item 121 sets out the fee for an application for a declaration of a part of a geological formation as an identified greenhouse gas storage formation under section 312 of the OPGGS Act. The Cross-boundary Greenhouse Gas Titles Act inserts new section 312A, which provides for an application for a declaration of a part of a geological formation within a cross-boundary greenhouse gas assessment permit area as an identified greenhouse gas storage formation.

Item 33 amends table item 121 to include a reference to section 312A.

Table item 124 sets out the fee for various applications under table item 1 of subsection 436(1) of the OPGGS Act. The Cross-boundary Greenhouse Gas Titles Act inserts new section 439A, which is equivalent to section 436 but provides specifically for cross-boundary greenhouse gas titles.

Item 34 inserts a new table item 124A, which is the equivalent of table item 124, but provides for fees payable for applications listed under table item 1 of subsection 439A(1) relating to cross-boundary greenhouse gas titles. Consistent with other fees prescribed in the RMA Regulations, the fee is \$7,500.

Item 35 – Clause 4 of Schedule 6 (after table item 201)

Schedule 6 to the RMA Regulations sets out application fees payable under certain sections of the OPGGS Act. Part 2 of Schedule 6 sets out fees for greenhouse gas applications payable under section 427 of the OPGGS Act. Under section 427, an application fee is payable for an application for the grant of a greenhouse gas assessment permit. As a result of amendments to the OPGGS Act made by the Cross-boundary Greenhouse Gas Titles Act, the definition of “greenhouse gas assessment permit” in section 7 includes a cross-boundary greenhouse gas assessment permit.

Table item 201 sets out the fee payable for an application for a work-bid greenhouse gas assessment permit. However, the definition of “work-bid greenhouse gas assessment permit” does not include a cross-boundary greenhouse gas assessment permit.

This item inserts a new table item 201A to provide for the fee for an application for a cross-boundary greenhouse gas assessment permit. Consistent with other fees prescribed in the RMA Regulations, the fee is \$7,500.

## Schedule 2 – Amendments relating to environment plans

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

Items 1 and 2 – Regulation 11B.01 (after table item 8); Regulation 11B.01 (after table item 20)

Part 1 of Schedule 4 to the Cross-boundary Greenhouse Gas Titles Act inserted provisions into the OPGGS Act that include specific reference to the full name of the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (the Environment Regulations).

As regulations are legislative instruments that are subject to sunset provisions, and are required to be remade to continue in effect, this will mean that the Environment Regulations when remade in the future will no longer have ‘2009’ in its name. Therefore, there is a risk that references to the specific name of the Environment Regulations in the OPGGS Act will become invalid and ineffective.

To address this, previous amendments to the OPGGS Act have provided for the full name of regulations that were specified in the OPGGS Act to instead be prescribed in regulations under the OPGGS Act. The names of regulations are specified in regulation 11B.01 of the RMA Regulations. To ensure that references to the names of regulations do not become invalid or ineffective, regulation 11B.01 can be amended at the same time as remaking a set of regulations. The process to amend or update legislative instruments is more streamlined than that of amending an Act.

Similar to those previous amendments, Part 2 of Schedule 4 to the Cross-boundary Greenhouse Gas Titles Act provides for the name of the regulations, or a provision of the regulations, referenced in provisions inserted by Part 1 of Schedule 4 to the Cross-boundary Greenhouse Gas Titles Act to be prescribed in regulations made under the OPGGS Act.

Items 1 and 2 insert table items 8A, 20A and 20B under regulation 11B.01 to prescribe the name of the Environment Regulations for the purposes of the provisions inserted into the OPGGS Act.

Part 2 of Schedule 4 to the Cross-boundary Greenhouse Gas Titles Act purported to amend section 790C and subsections 790D(2) and (3) to provide for the name of regulations, or a provision of regulations, referenced in those provisions to be prescribed by regulation. However, the amendments were misdescribed. Section 790C and subsections 790D(2) and (3) will be amended in a forthcoming Bill. References to the Environment Regulations will be prescribed for those provisions following Royal Assent to that Bill.

## **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 Amendment (Cross-boundary Greenhouse Gas Storage) Regulations 2020*

These Regulations are consistent 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 Amendment (Cross-boundary Greenhouse Gas Storage) Regulations 2020* (the Amendment Regulations) are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amendment Regulations make consequential amendments to the *Offshore Petroleum and Greenhouse Gas Storage (Greenhouse Gas Injection and Storage) Regulations 2011* and the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* to fully implement measures in the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Cross-boundary Greenhouse Gas Titles and Other Measures) Act 2020* (the Cross-boundary Greenhouse Gas Titles Act).

The Amendment Regulations implement measures in the Cross-boundary Greenhouse Gas Titles Act to provide for effective regulation and administration of greenhouse gas storage formations that straddle the boundary between Commonwealth waters and State/Northern Territory coastal waters and to future-proof references to regulations made under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

### **Human rights implications**

The Amendment Regulations make consequential technical amendments only and do not engage any of the applicable rights or freedoms.

### **Conclusion**

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

**The Hon Keith Pitt MP**  
**Minister for Resources, Water and Northern Australia**