



# Draft amendments to the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009

## Exposure Draft – Explanatory Document

The aim of this explanatory document is to provide the background to, and a summary of, proposed amendments to the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (Environment Regulations). It supplements the Exposure Draft of the amending Regulations.

The Department of Industry, Innovation and Science (the department) is responsible for implementing the amendments to the Environment Regulations discussed in this explanatory document. The document was developed by the department, in consultation with the offshore petroleum regulator, the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), and outlines the objectives and policy intention for the proposed amendments.

The Exposure Draft and explanatory document do not represent the final regulatory amendments.

## Background

### [Review of the consultation and transparency requirements under the Environment Regulations](#)

In 2016, the department commenced a process to review and reform the consultation and transparency requirements under the Environment Regulations. To ensure that industry's consultation practices represent leading practice and meet community expectations, the department has been considering options to improve consultation and transparency requirements and reinforce community confidence in the offshore petroleum and greenhouse gas storage regime and regulatory decision-making processes.

The department released an issues paper in March 2016; and held public consultation sessions in Darwin, Melbourne, Adelaide and Perth in April 2016 that were attended by industry, environmental groups, members of the fishing industry and State and Territory government officials. The department received 26 written submissions from a range of stakeholders and has considered the submissions and issues raised. The broad outcomes of the public consultation process are summarised below.

The Environment Regulations require a titleholder to have an accepted environment plan in place prior to commencing a petroleum or greenhouse gas activity, which sets out the risks and impacts of the activity and the titleholder's proposed measures to reduce the risks and impacts to as low as reasonably practicable and an acceptable level. The Environment Regulations include a formal process for consultation with 'relevant persons' (persons or organisations whose functions, interests or activities may be affected by the activities to be carried out under an environment plan) during development of the plan.

However, the lack of a broader public comment mechanism was raised as a key concern for non-industry stakeholders seeking to have access to information about proposed activities, and input to environmental management decision-making processes. Community stakeholders consistently raised the need for more involvement from a broader group of stakeholders at all stages of the process. A formal public comment process is a feature of other environmental management decision-making frameworks both domestically and internationally.

There was general agreement amongst stakeholders that more environmental management information should be made publicly available earlier in the process, particularly before a decision is made by the Regulator. This would ensure stakeholders can see how their comments are represented to the Regulator and how they have been addressed by titleholders. Stakeholders see the release of more information, including full environment plan publication, as a way to build community confidence that titleholders are able to meet accepted environmental performance outcomes.

Based on the feedback received through public consultation the department determined that improvements to the consultation and transparency requirements could be made.

### Ministerial announcement

In November 2017, the Minister for Resources and Northern Australia, Senator the Hon Matt Canavan, announced a series of regulatory reforms to improve consultation and increase the transparency of Australia's offshore oil and gas regime. The key changes announced were a new requirement for full publication of environment plans, and the introduction of a public comment period for environment plans for offshore exploration activities.

It is important that the community has confidence in the regulatory process as a matter of good practice and to ensure the industry has a 'social licence to operate'. The regulatory reforms will ensure that the environmental planning and assessment process for offshore petroleum and greenhouse gas activities is transparent, leading practice and meets the expectations of the community.

The reforms will address the key issues raised during consultation, including:

- the need for the public release of environmental information about proposed petroleum and greenhouse gas activities earlier in the assessment process
- greater transparency of the assessment process of the regulator, NOPSEMA
- greater certainty about assessment timeframes
- more public involvement and knowledge of the process for assessing petroleum and greenhouse gas activities, at all stages.

## Proposed amendments

The department is proposing to introduce a regulatory requirement that all environment plans are published on both submission by the titleholder and acceptance by the Regulator. The Regulator will be required to publish environment plans on its website. Publication is intended to provide transparency and clarity to community members about the information contained in environment plans, including the arrangements in place in the event of a major offshore petroleum incident.

The proposed amendments will also formalise a public comment period for environment plans for certain exploration activities ('exploratory seismic or drilling activities'). An environment plan for an exploratory seismic or drilling activity refers to a plan where one or more of the activities relates to:

- drilling (including drilling undertaken on an appraisal basis) for the purposes of exploration for petroleum, exploration for a potential greenhouse gas storage formation, or exploration for a potential greenhouse gas injection site; or
- a seismic survey.

Further information on the definition of an 'exploratory seismic or drilling activity' for the purposes of public comment is included in the 'Public comment period – exploratory seismic or drilling activity' section on page 5 of this document.

The public comment period will not apply to environment plans for petroleum development, production, construction or infrastructure activities, as these activities are already subject to public comment during the preparation of an offshore project proposal.

As per the current regulatory requirements, a titleholder will still be required to undertake consultation with relevant persons during the development of an environment plan. The proposed amendments to formalise a public comment period for environment plans for exploratory seismic or drilling activities are not intended to alter or replace this existing requirement.

The remainder of this section sets out further detail about how the amendments will operate.

## Submission of an environment plan – completeness check

The Environment Regulations require a titleholder to submit an environment plan for every proposed petroleum or greenhouse gas activity to the Regulator, and have the plan accepted before commencing the activity. Currently, when an environment plan is submitted to the Regulator, only high level information about the environment plan and proposed activity is published, as prescribed by the Environment Regulations (refer current regulation 9(8)). This informs the public about the receipt of an environment plan, and ensures the public are aware of the proposed activities under the plan.

In order to improve transparency and ensure stakeholders are aware of the information in an environment plan, it is proposed that all environment plans submitted to the Regulator will be published on the Regulator's website.

Prior to publication, the Regulator will be required to undertake a completeness check within five business days of receiving the environment plan. The completeness check is not intended to constitute an assessment of the environment plan for quality, appropriateness or suitability of the information provided in relation to the criteria for the acceptance of an environment plan. The purpose of the check is exclusively to determine whether the broad content requirements of the Environment Regulations have been in some way addressed and the environment plan submission represents a complete submission. The Regulator will not publish the environment plan unless it provisionally determines that the plan includes material apparently addressing each of the content requirements of the Environment Regulations.

If the Regulator does not consider that the environment plan includes material apparently addressing each of the content requirements, the Regulator must inform the titleholder of its decision and the provisions of the Regulations that appear not to have been addressed. The plan will not be subject to assessment by the Regulator. The titleholder will be able to modify the plan and resubmit in a format suitable for publication. There will be no limit to the number of times a titleholder may submit an environment plan for a particular activity to undergo a completeness check with the Regulator. Each time an environment plan is submitted for a completeness check, the Regulator will have five business days to undertake this check.

Under the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003*, a levy is imposed on the submission of an environment plan. It is proposed that levy will continue to be only imposed on the initial submission of the environment plan. Should the environment plan not be suitable for publication, subsequent submissions for review will not trigger an additional levy.

## Publication of environment plans on submission

Once the Regulator provisionally determines that the environment plan constitutes a complete environment plan, it is proposed that the Regulator will publish a copy of the environment plan on its website, as soon as practicable.

In line with Minister Canavan's announcement, publication is intended to improve transparency by ensuring stakeholders are aware of the information in the environment plan. The published environment plan will also be the basis for public comment on proposed exploratory seismic or drilling activities.

All information in the environment plan will be published, with the exception of copies of full correspondence and transcripts of consultation conducted with relevant persons prior to the environment plan submission; any information that has been identified as inappropriate to publish by a relevant person during the development of the environment plan; and any personal information. This information will still be required to be provided to the Regulator as a confidential attachment to the environment plan.

To protect sensitive information, the Exposure Draft includes a requirement for a titleholder, in developing an environment plan, to provide all relevant persons with the opportunity to indicate whether there is any sensitive information that should not be published within the information that has been provided to the titleholder.

## Public comment period – exploratory seismic or drilling activities

Currently, there is no clear mechanism for the public to provide comments to the Regulator regarding proposed exploration activities.

To address this, for exploratory seismic or drilling activities, the publication of an environment plan on the Regulator's website following the completeness check of the plan will commence a proposed 30 calendar day public comment period. A formalised period for submitting comments to the Regulator will give the public the opportunity to make comments directly to the Regulator on the content of the environment plan, with respect to the content requirements of a plan set out in the Environment Regulations, rather than only through the titleholder. It is also intended to provide certainty of assessment timeframes throughout the assessment period.

To facilitate the public comment period, a definition of an 'exploratory seismic or drilling activity' is proposed to be included in the Environment Regulations. The definition includes a prescriptive list of activities and will include any submission in which one or more of the proposed petroleum or greenhouse gas activities includes exploration drilling, drilling on an appraisal basis or a seismic survey.

Currently some small scale activities (including geotechnical and other surveys) are not proposed to be included in the definition of an exploratory seismic or drilling activity for the

purpose of public comment on an environment plan. The department welcomes further comments on the proposed definition, or alternative options for defining exploration activities that should be subject to public comment.

Where an environment plan includes multiple activities, if one or more of the activities is an exploratory seismic or drilling activity, the environment plan will be subject to the public comment period.

The Regulator will publish a notice on its website inviting the public to provide comments, within 30 days, on the content of an environment plan for an exploratory seismic or drilling activity, with respect to the content requirements of a plan set out in the Environment Regulations. When providing comments to the Regulator, commenters may indicate sensitive information that should not be published. As soon as practicable after receiving a comment, the Regulator must provide the comments to the titleholder for consideration, to enable the titleholder to start reviewing the comments.

#### Consideration of public comments - titleholder

Following the commencement of the comment period, the titleholder may alter the contents of an environment plan for an exploratory seismic or drilling activity, including in response to comments received. Once the public comment period has ended, the titleholder will be required to submit to the Regulator another copy of the plan for assessment, whether altered or not. A levy will not be imposed on submission of the plan following the public comment period.

The titleholder must also provide the Regulator a statement of their response to comments received during the comment period, including reference(s) to modifications (if any) made to the plan as a result of comments. The intention is that comments may be grouped based on common issues raised, and may include a reference to the section of the plan which has been modified to demonstrate the changes made. A detailed summary of the comments received will not be required, as the Regulator will also have a copy of the public comments.

As the statement of response to comments will be published, the statement must not include any information that has been identified as inappropriate to publish by a commenter, or personal information.

There is no requirement for a titleholder to engage directly or on an ongoing basis with a commenter during or after the comment period. The titleholder will have discretion as to whether to respond to commenters directly.

Within five business days of receiving the plan for assessment, the Regulator must publish on its website both the plan and the titleholder's statement of response to comments received. Publication of this information is intended to improve the overall transparency and accessibility of the environment plan process. In particular, parties that have made

comments during the comment period will have the opportunity to review the titleholder's response and any revisions made to the plan.

In order to provide certainty to both the Regulator and the titleholder, only comments related to the content of the environment plan, with respect to the content requirements of a plan set out in the Environment Regulations, and received during the comment period, are to be taken into account by the titleholder, and by the Regulator in assessing the environment plan. The Regulator and titleholder will not be required to consider comments on other matters, or comments received outside the comment period.

### Assessment of an environment plan by the Regulator

Under the current Regulations, the Regulator has 30 calendar days after receiving an environment plan to make a decision in relation to the plan. The Regulator may accept the plan, provide an opportunity to modify and resubmit the plan, or give notice to the titleholder that it is unable to make a decision within the 30 day period and set out a proposed timetable for consideration of the plan.

Under the Regulations as proposed to be amended, the 30 day assessment period for the Regulator will commence:

- for an environment plan for an exploratory seismic or drilling activity – on the day the Regulator receives both the environment plan and the statement of response to comments received during the comment period
- for all other environment plans – on the day the Regulator publishes the environment plan on its website following the completeness check.

There will be no changes to the content requirements of an environment plan (including an environment plan subject to the comment period) or the acceptance criteria the Regulator must apply in assessing an environment plan. However, in assessing an environment plan for an exploratory seismic or drilling activity against the acceptance criteria, the Regulator will be required to take into account any comments received during the comment period that relate to the content of the environment plan.

Amendments made to the Environment Regulations in 2014 provided flexibility for the Regulator to request additional information from the titleholder during the assessment of an environment plan (regulation 9A). Currently, this information may be provided to the Regulator as a supplement to the environment plan, rather than in the form of an amended plan. Under the proposed amendments, if an environment plan is subject to a request for further written information during the assessment period, the titleholder will be required to submit an amended environment plan with the information incorporated, whether or not the titleholder also provides the information separately. This will ensure the Regulator has a full copy of the most up-to-date version of the environment plan which, if accepted, will be suitable for immediate publication.

The 2014 amendments to the Environment Regulations also enabled a titleholder to comply with a requirement to give the Regulator information, or include information in a document, by referring to information previously given to the Regulator (regulation 31). To ensure transparency on publication of an environment plan, the proposed amendments will provide that a titleholder can only include information in an environment plan by referring to information previously given to the Regulator if that information is publicly available, and the plan includes a link or reference to where the information is available.

### Significant modification of an environment plan prior to acceptance

If, during the assessment process and prior to acceptance by the Regulator, a titleholder significantly modifies an environment plan for an exploratory seismic or drilling activity (i.e. by significantly modifying a proposed exploratory seismic or drilling activity, adding a new exploratory seismic or drilling activity or adding a new stage to a proposed exploratory seismic or drilling activity) that was not provided for in the environment plan available for public comment, the titleholder will be required to provide the Regulator with another copy of the environment plan that includes the changes.

Re-submission of an environment plan under this circumstance will re-commence the 30 day public comment period on publication of the amended plan. The processes and requirements set out in this document relating to publication and public comment will apply to the altered environment plan that has been re-released for public comment. The Regulator will not continue its assessment of the plan, and will commence the assessment process again once the amended plan has been subject to public comment and resubmitted by the titleholder along with the required report on comments received as described above. This will ensure there is transparency in the assessment process and ensure that the public has an opportunity to comment on the whole of the proposed activity.

### Publication of an environment plan on acceptance

Currently, if the Regulator accepts an environment plan (whether in full, in part or subject to the imposition of limitations or conditions), the titleholder is required to submit a summary of the accepted plan for public disclosure. The summary must include specific information as set out in the Environment Regulations, including arrangements for monitoring and oil spill response.

To improve transparency in the environment plan process, amendments are proposed to require the publication of the full environment plan on acceptance by the Regulator. The final version of the environment plan must be made publicly available on the Regulator's website as soon as practicable after acceptance. The entire environment plan will be published subject to the exceptions outlined under 'Publication of environment plans on submission'.

The requirement to provide an environment plan summary is proposed to be removed from the Environment Regulations, as the full environment plan will be published on acceptance.



To promote public confidence in the decision-making of the Regulator and improve transparency, it is proposed that the Regulator will be required to prepare a statement detailing how it has taken into account any comments received during the public comment period (if applicable). The statement will be required to be published on the Regulator's website at the same time as it publishes an accepted environment plan. The statement must not include personal information, or information that was indicated as inappropriate to publish.

### Acceptance of an environment plan in part

Under the Environment Regulations, the Regulator may accept an environment plan in part for a particular stage of an activity (Regulation 10(6)).

Should the Regulator accept an environment plan in part, under the proposed amendments the full environment plan will be published (subject to the exceptions outlined under 'Publication of environment plans on submission'), with a statement describing that the acceptance only provides for a particular stage of the activity.

### Proposed revision of an environment plan

The processes and requirements discussed above for publication of environment plans, and public comment on environment plans for exploratory seismic or drilling activities, will also apply to proposed revisions of environment plans submitted under regulation 17, 18 or 19 of the Environment Regulations.

Currently, a proposed revision of an environment plan may be in the form of a revised part of an environment plan (regulation 20). However, submission and publication of only a revised part of a plan will not enable the public to view and consider the revised part in the context of the overall plan. The amendments will therefore remove the provision for submission of a revised part of a plan.

## Transitional Provisions

The department has developed a series of arrangements to minimise regulatory burden during transition to the new requirements (see item 24 in the Exposure Draft):

- Environment plans in force prior to the commencement of the amendments will continue in force and will not be subject to the new requirements.
- Environment plans that are subsequently revised under regulation 17, 18 or 19 after the amendments come into force will be subject to the publication and public comment requirements.
- Environment plans that have been submitted to the Regulator for assessment prior to the commencement of the amendments, where the titleholder has not been given

notice of a decision by the Regulator, will continue to be assessed in accordance with the requirements previously in force.

- The amendments will come into force on a pre-determined date to avoid delay to environment plans currently under development, one month after the amendment regulations are registered. This period has been set at one month to allow the Regulator to update its systems to transition to the new regulatory arrangements and manage the burden on industry, while ensuring there is minimal delay in the new arrangements coming into effect.

## Next Steps

The Exposure Draft will be available for public comment from 8 October to 16 November 2018. Following the consultation period, the department will revise the proposed amendments, taking into account comments received.

The revised amendments will be submitted by the department to the Minister for Resources for consideration and approval, before submission to the Federal Executive Council for approval. Amendments to the Environment Regulations are expected to be finalised in early 2019.

## Making a Submission

Written submissions are encouraged. Submissions may be lodged electronically (preferred) or by mail. Submissions will be published on the department's website unless marked in part or whole as confidential.

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### **CLOSING DATE FOR SUBMISSIONS: 16 November 2018**

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