

EXPOSURE DRAFT



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Offshore Petroleum and Greenhouse Gas Storage (Environment) Amendment (Consultation and Transparency) Regulations 2018

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2018

Peter Cosgrove
Governor-General

By His Excellency's Command

Matt Canavan [**DRAFT ONLY—NOT FOR SIGNATURE**]
Minister for Resources and Northern Australia

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1 Name

This instrument is the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Amendment (Consultation and Transparency) Regulations 2018*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after the end of the period of 1 month beginning on the day this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1—Amendments

Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009

1 Regulation 4

Insert:

exploratory seismic or drilling activity means a seismic survey (for any purpose) or drilling for any of the following purposes:

- (a) exploring for petroleum;
- (b) recovering petroleum on an appraisal basis;
- (c) exploring for a potential greenhouse gas storage formation;
- (d) exploring for a potential greenhouse gas injection site;
- (e) injecting, on an appraisal basis, a greenhouse gas substance into a part of a geological formation;
- (f) storing, on an appraisal basis, a greenhouse gas substance in a part of a geological formation;
- (g) doing either of the following on an appraisal basis in connection with exploration for a potential greenhouse gas storage formation or a potential greenhouse gas injection site:
 - (i) injecting air, petroleum or water into a part of a geological formation;
 - (ii) storing air, petroleum or water in a part of a geological formation.

exploratory seismic or drilling environment plan means an environment plan for an exploratory seismic or drilling activity (whether or not the plan is also for another activity).

relevant person has the meaning given by subregulation 11A(1).

sensitive information in relation to an environment plan means:

- (a) personal information (within the meaning of the *Privacy Act 1988*) about an individual that:
 - (i) is contained either in information given by a relevant person in consultation under regulation 11A in the course of preparing the plan or in comments described in subregulation 11B(2) in connection with the plan; and
 - (ii) is not merely a reference to published material of which the individual was an author; and
 - (iii) is not merely the name or contact details of an individual to whom that information or those comments were given; or
- (b) information that:
 - (i) was given by a relevant person in consultation under regulation 11A in the course of preparing the plan or by a person in comments described in subregulation 11B(2) in connection with the plan; and
 - (ii) was indicated by the giver as information that the giver thought it was inappropriate to publish.

Note: Regulation 11A requires consultation of relevant persons in the course of preparing any environment plan. Subregulation 11B(2) describes comments made in accordance with an invitation for members of the public to comment on matters that must be included in an exploratory seismic or drilling environment plan.

sensitive information part of an environment plan means a discrete part of the plan that contains only one or more of the following and is clearly indicated as containing only one or more of the following:

- (a) sensitive information;
- (b) a copy of the full text of any response by a relevant person in consultation under regulation 11A in the course of preparing the plan.

2 Paragraph 9(2)(b)

After “Divisions 2.2A”, insert “, 2.2B”.

3 Subregulations 9(8), (9) and (10)

Repeal the subregulations, substitute:

- (8) All sensitive information (if any) in an environment plan, and the full text of any response by a relevant person to consultation under regulation 11A in the course of preparation of the plan, must be contained in the sensitive information part of the plan and not anywhere else in the plan.

Note: Subparagraph 16(b)(iv) requires the plan to contain a copy of the full text of any response by a relevant person to consultation under regulation 11A in the course of preparation of the plan.

4 After regulation 9

Insert:

9AA Checking completeness of submitted environment plan

Within 5 business days after an environment plan is submitted to the Regulator under regulation 9, resubmitted in response to an invitation under regulation 9AC or resubmitted under subregulation 11C(2), the Regulator must decide provisionally whether the plan includes material apparently addressing all the provisions of Division 2.3 (Contents of an environment plan).

Note: The provisional decision is not a decision whether to accept the plan.

9AB Publishing environment plan and associated information

If the Regulator’s provisional decision under regulation 9AA is that the environment plan includes material apparently addressing all the provisions of Division 2.3 (Contents of an environment plan), the Regulator must publish on the Regulator’s website as soon as practicable:

- (a) the plan with the sensitive information part removed; and
- (b) the name of the titleholder who submitted the plan; and
- (c) a description of the activity or stage of the activity to which the plan relates; and
- (d) the location of the activity; and
- (e) a link or other reference to the place where the accepted offshore project proposal (if any) is published; and

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Schedule 1 Amendments

(f) details of the titleholder’s nominated liaison person for the activity.

Note: If the plan is an exploratory seismic or drilling environment plan, the Regulator must also publish an invitation for public comment on the plan: see regulation 11B.

9AC Action on incomplete environment plan

If the Regulator’s provisional decision under regulation 9AA is that the environment plan does not include material apparently addressing all the provisions of Division 2.3 (Contents of an environment plan), the Regulator must give the titleholder who submitted the plan a written notice:

- (a) identifying the provisions of that Division that appear not to be addressed by the plan; and
- (b) inviting the titleholder to modify the environment plan and resubmit it to the Regulator.

5 Subregulation 9A(3)

Repeal the subregulation, substitute:

- (3) In providing information requested by the Regulator, the titleholder must resubmit to the Regulator the environment plan with the information incorporated, whether or not the titleholder also provides the information separately.
- (4) The Regulator must have regard to information that was requested by the Regulator, and provided by the titleholder in a resubmitted environment plan within the period specified or within a longer period agreed to by the Regulator.

6 Subregulation 10(1)

Omit “a titleholder submits an environment plan”, substitute “the day described in subregulation (1A) for an environment plan submitted by a titleholder”.

7 After subregulation 10(1)

Insert:

- (1A) For the purposes of subregulation (1), the day is:
 - (a) the day the Regulator publishes the plan (with the sensitive information part removed) under regulation 9AB; or
 - (b) if the environment plan is an exploratory seismic or drilling environment plan—the day the Regulator receives the documents described in paragraph 11B(3)(b) and, if relevant, paragraph 11B(3)(c).

Note: Those paragraphs are about documents that must be given to the Regulator after the end of a 30-day period for public comment on an exploratory seismic or drilling environment plan. Regulation 11B requires the Regulator to consider certain public comments on an exploratory seismic or drilling environment plan in making a decision to take action under this regulation.

8 Regulation 11 (heading)

Repeal the heading, substitute:

11 Notice of decision on environment plan and publication of accepted plan

Notice to titleholder

9 Subregulations 11(3) and (4)

Repeal the subregulations, substitute:

Publication of notice etc.

- (3) As soon as practicable after giving the notice of the decision to the titleholder, the Regulator must publish on the Regulator's website:
 - (a) a statement describing the decision; and
 - (b) if the decision was to accept the environment plan (in whole or in part)—the plan with the sensitive information part removed; and
 - (c) if:
 - (i) the environment plan is an exploratory seismic or drilling environment plan on which one or more comments described in subregulation 11B(2) were received (whether or not the plan was modified after the comments were made); and
 - (ii) the decision was to accept the plan (in whole or in part);a statement by the Regulator as to how the Regulator took the comments into account in making the decision.
- (4) The statement by the Regulator must not include sensitive information relating to the plan from the comments.

10 At the end of Division 2.2

Add:

11AA Withdrawal of environment plan before decision

- (1) Before the Regulator makes a decision to accept, or refuse to accept, an environment plan, the titleholder who submitted the plan may withdraw it by written notice given to the Regulator.
- (2) If the Regulator had published the plan (with the sensitive information part removed) before the plan was withdrawn, the Regulator must publish on the Regulator's website notice of withdrawal of the plan.

11 Division 2.2A (at the end of the heading)

Add "in preparing an environment plan".

12 At the end of regulation 11A

Add:

- (4) The titleholder must tell each relevant person the titleholder consults that:
 - (a) the relevant person may indicate to the titleholder that the relevant person thinks it is inappropriate to publish particular information the relevant person provides in the consultation; and

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- (b) information indicated by the relevant person in accordance with paragraph (a) is not to be published under this Part.

13 After Division 2.2A

Insert:

Division 2.2B—Public comment on a submitted exploratory seismic or drilling environment plan

11B Public comments on exploratory seismic or drilling environment plan

Regulator must invite comments from the public

- (1) When the Regulator publishes an exploratory seismic or drilling environment plan (with the sensitive information part removed) on the Regulator's website under regulation 9AB, the Regulator must also publish in the same place an invitation for any person:
 - (a) to give the Regulator, within 30 days, written comments on the matters described in Division 2.3 (Contents of an environment plan) in relation to the plan; and
 - (b) to indicate in the person's comments particular information in the comments that the person thinks it is inappropriate to publish.

Regulator must give titleholder copies of comments

- (2) As soon as practicable after receiving comments described in subregulation (1) within the period mentioned in that subregulation, the Regulator must give a copy of the comments to the titleholder who submitted the plan.

What titleholder must do after period for comments ends

- (3) As soon as practicable after the end of the period mentioned in subregulation (1), the titleholder:
 - (a) may modify the plan; and
 - (b) must (whether the titleholder modifies the plan or not) resubmit the plan (as modified, if relevant) to the Regulator; and
 - (c) if the titleholder received a copy of comments under subregulation (2)—must, when resubmitting the plan under paragraph (b), give the Regulator a written statement:
 - (i) responding in general terms to the comments; and
 - (ii) indicating whether any modifications of the plan were made in response to the comments; and
 - (iii) referring to any modifications made in response to the comments.
- (4) The statement must not include sensitive information relating to the plan.

Regulator must publish plan and statement within 5 business days

- (5) Within 5 business days after receiving the plan under paragraph (3)(b), the Regulator must:

- (a) publish it on the Regulator’s website with the sensitive information part removed; and
- (b) if the Regulator receives a statement under paragraph (3)(c) with the plan—publish the statement on the Regulator’s website.

Regulator must consider comments in acting under regulation 10

- (6) In making a decision to take an action under regulation 10 relating to the plan, the Regulator:
 - (a) must consider the comments (if any) described in subregulation (2) of this regulation; and
 - (b) must not consider other comments from members of the public relating to the plan.

11C Exploratory seismic or drilling environment plan to be resubmitted for fresh completeness check and public comments if significantly modified

- (1) This regulation applies if:
 - (a) the titleholder who submitted an exploratory seismic or drilling environment plan modifies it (under subregulation 11B(3) or otherwise); and
 - (b) the plan, as modified, relates to:
 - (i) a significant modification or new stage of any of the exploratory seismic or drilling activities to which the plan previously related; or
 - (ii) an exploratory seismic or drilling activity to which the plan did not previously relate; and
 - (c) the modification is made:
 - (i) after the Regulator published the plan (with the sensitive information part removed) under regulation 9AB or subregulation 11B(5); and
 - (ii) before the Regulator makes a decision under regulation 10 to accept, or refuse to accept, the plan.
- (2) The titleholder must resubmit the plan (as modified) to the Regulator.

Note: Under regulation 9AA the Regulator must decide provisionally whether the resubmitted plan includes material apparently addressing all the provisions of Division 2.3 (Contents of an environment plan). If the Regulator decides provisionally that the resubmitted plan does, the Regulator must publish the resubmitted plan and an invitation for anyone to comment on matters relating to the resubmitted plan: see regulations 9AB and 11B.

- (3) The Regulator must cease to act under Division 2.2 and this Division in relation to the plan as it existed before the modification.

14 Paragraph 16(b)

Omit “between the titleholder and any relevant person, for regulation 11A”, substitute “under regulation 11A of any relevant person by the titleholder”.

15 Paragraphs 19(1)(a) and (b)

Omit “regulation 11”, substitute “regulation 10”.

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Schedule 1 Amendments

16 Regulation 20

Omit “or, if the titleholder and the Regulator so agree, a revised part of the environment plan”.

17 Regulation 20A

Repeal the regulation.

18 Regulation 21

Omit “Regulations 9A, 10, 10A, 11 and 11A”, substitute “(1) Regulations 9AA, 9AB, 9AC, 9A, 10, 10A, 11 and 11A, and regulations 11B and 11C if relevant.”.

19 After paragraph 21(a)

Insert:

- (aa) the reference in regulation 9AA to submission of an environment plan under regulation 9 were a reference to the submission of the proposed revision under regulation 17, 18 or 19; and

20 Regulation 21 (note)

Omit “These regulations”, substitute “Regulations 9AA, 9AB, 9AC, 9A, 10, 10A, 11 and 11A”.

21 Regulation 21 (at the end of the note)

Add “Regulations 11B and 11C deal with public comment on an exploratory seismic or drilling environment plan.”.

22 At the end of regulation 21

Add:

- (2) When acting under regulation 9AB (as applying because of subregulation (1) of this regulation) to publish on the Regulator’s website information relating to the proposed revision, the Regulator must also publish in the same place the reason for the proposed revision.

23 After subregulation 31(2)

Insert:

- (2A) Subregulation (1) does not apply to a requirement to include information in an environment plan unless:
 - (a) the information is publicly available; and
 - (b) the plan includes a link or other reference to the place where the information is published.

24 In the appropriate position in Part 5

Insert:

Division 5.4—Transitional arrangements relating to the Offshore Petroleum and Greenhouse Gas Storage (Environment) Amendment (Consultation and Transparency) Regulations 2018

50 Definitions

In this Division:

amending regulations means the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Amendment (Consultation and Transparency) Regulations 2018*.

51 Application

- (1) Divisions 2.2, 2.2A, 2.2B and 4.1, as amended or inserted by the amending regulations, apply in relation to environment plans submitted under regulation 9 of these Regulations after the commencement of the amending regulations.
- (2) However:
 - (a) Division 2.4, as amended by the amending regulations; and
 - (b) Divisions 2.2, 2.2A, 2.2B and 4.1, as amended or inserted by the amending regulations and applying because of Division 2.4 of these Regulations;apply in relation to proposed revisions of environment plans submitted under regulation 17, 18 or 19 after the commencement of the amending regulations.

Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004

25 Subregulation 59E(3)

Omit “subregulation 9(9)”, substitute “subregulation 11AA(1)”.

26 Subregulation 59I(3)

Omit “subregulation 9(9)”, substitute “subregulation 11AA(1)”.