



# **Petroleum (Submerged Lands) (Management of Environment) Regulations 1999**

**Statutory Rules 1999 No. 228 as amended**

made under the

*Petroleum (Submerged Lands) Act 1967*

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**Part 1 Preliminary****1 Name of Regulations** [see Note 1]

These Regulations are the *Petroleum (Submerged Lands) (Management of Environment) Regulations 1999*.

**2 Commencement**

These Regulations commence on 1 October 1999.

**3 Object of Regulations**

The object of these Regulations is to ensure that any petroleum activity in an adjacent area is carried out in a way that is consistent with the principles of ecologically sustainable development, in accordance with an environment plan that has appropriate environmental performance objectives and standards as well as measurement criteria for determining whether the objectives and standards are met.

**4 Definitions**

- (1) In these Regulations, unless the contrary intention appears:

*accepted*, in relation to an environment plan, means a plan accepted by the Designated Authority under regulation 11.

*Act* means the *Petroleum (Submerged Lands) Act 1967*.

*activity* see the definition of *petroleum activity*.

*environment* means:

- (a) ecosystems and their constituent parts, including people and communities; and
  - (b) natural and physical resources; and
  - (c) the qualities and characteristics of locations, places and areas; and
  - (d) the heritage value of places;
- and includes

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- (e) the social, economic and cultural features of the matters mentioned in paragraphs (a), (b), (c) and (d).

***environmental impact*** means any change to the environment, whether adverse or beneficial, that wholly or partially results from a petroleum activity of an operator.

***environmental performance*** means the performance of an operator in relation to the environmental performance objectives and standards mentioned in an environment plan accepted under these Regulations.

***environmental performance objective*** means the goals of an operator that are mentioned in an environment plan accepted under these Regulations.

***environmental performance standard*** means a statement of performance required of a system, an item of equipment, a person or a procedure, that is used as a basis for managing environmental risk, for the duration of the activity in accordance with the objectives of the regulations, as set out in an environment plan accepted under these Regulations.

***environment plan***, in relation to an operator of a petroleum activity, means an environment plan submitted by the operator that is:

- (a) accepted and revised from time to time under these Regulations;
- but does not include:
- (b) if the environment plan is accepted in part — that part of the plan that is not accepted; or
- (c) an environment plan for which the acceptance has been withdrawn.

***facility*** includes a structure or installation of any kind.

***nominated address***, for an operator, means the address of the operator of which notice has been given under paragraph 32 (3) (a).

***operator***, for a petroleum activity, means:

- (a) if there is a person recorded by the Designated Authority as the operator of the activity under regulation 35 — that person; or
- (b) in any other case:

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- (i) if there is a petroleum instrument — the person responsible to the petroleum instrument holder for the overall management of operations of the activity (whether or not the operations have commenced); or
- (ii) if there is no petroleum instrument — the person performing the petroleum activity.

***petroleum activity or activity*** means:

- (a) any operations or works in an adjacent area carried out under a petroleum instrument, other authority or consent under the Act or the regulations; and
- (b) any activity relating to petroleum exploration or development which may have an impact on the environment;

and includes, for the avoidance of doubt, any of the following operations:

- (c) seismic or other surveys;
- (d) drilling;
- (e) construction and installation of a facility;
- (f) operation of a facility;
- (g) significant modification of a facility;
- (h) decommissioning, dismantling or removing a facility;
- (i) construction and installation of a pipeline;
- (j) operation of a pipeline;
- (k) significant modification of a pipeline;
- (l) decommissioning, dismantling or removing a pipeline;
- (m) storage, processing or transport of petroleum.

***petroleum instrument*** means an authority granted by instrument under the Act for the carrying out of a petroleum activity, and includes a permit, lease, licence, pipeline licence, access authority or special prospecting authority.

***petroleum instrument holder***, for a petroleum activity, means the registered holder of a petroleum instrument for the activity, and includes a permittee, lessee, licensee, pipeline licensee or registered holder of an access authority or special prospecting authority for the activity.

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***produced formation water*** means natural aqueous fluid recovered from a petroleum reservoir in association with the petroleum.

***recordable incident***, for an operator of a petroleum activity, means an incident arising from the activity that:

- (a) breaches a performance objective or standard in the environment plan that applies to the activity; and
- (b) is not a reportable incident.

***reportable incident***, for an operator of a petroleum activity, means an incident mentioned in the environment plan for the activity that has caused, or has the potential to result in, moderate to catastrophic environmental consequences as categorised by the risk assessment process undertaken as part of the preparation of the environment plan.

***revise***, for an environment plan, includes extend or modify.

***the regulations*** means regulations (including these Regulations) made under the Act.

- (2) A definition in these Regulations applies to each use of the word or expression in these Regulations unless the contrary intention appears.

*Note 1* The following terms used in these Regulations are defined by the Act:

<b><i>access authority</i></b>	<b><i>permit</i></b>
<b><i>adjacent area</i></b>	<b><i>permittee</i></b>
<b><i>construct</i></b>	<b><i>petroleum</i></b>
<b><i>document</i></b>	<b><i>pipeline</i></b>
<b><i>inspector</i></b>	<b><i>pipeline licence</i></b>
<b><i>lease</i></b>	<b><i>pipeline licensee</i></b>
<b><i>lessee</i></b>	<b><i>registered holder</i></b>
<b><i>licence</i></b>	<b><i>special prospecting authority</i></b>
<b><i>licensee</i></b>	<b><i>the Designated Authority.</i></b>

*Note 2* At the date of commencement of these Regulations, subs 5 (1) of the Act defines ***adjacent area*** as: ‘an adjacent area in respect of a State or Territory ascertained in accordance with section 5A’.

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**5 References to a petroleum activity**

A reference in these Regulations to a petroleum activity includes, where the context permits, a reference to:

- (a) a proposed activity; and
- (b) any stage of an activity.

## **Part 2 Environment plans**

### **Division 2.1 Requirement for an environment plan**

#### **6 Accepted environment plan required for a petroleum activity**

- (1) The operator of a petroleum activity is guilty of an offence if:
- (a) the operator carries out the activity; and
  - (b) there is no environment plan in force for the activity.

Penalty: 80 penalty units.

*Note 1* **Environment plan in force for the activity, operator and petroleum activity** are defined in regulation 4.

*Note 2* Subsection 4B (3) of the *Crimes Act 1914* allows a court to fine a body corporate up to 5 times the maximum amount the court could fine a natural person convicted of the same offence.

*Note 3* Offences under these Regulations are continuing offences and a fine may be imposed for each day during which the offence continues — see section 4K of the *Crimes Act 1914*.

- (1A) An offence against subregulation (1) is an offence of strict liability.

*Note* For **strict liability**, see section 6.1 of the *Criminal Code*.

- (2) This regulation does not affect any other requirement under the regulations for a consent to construct or install, or a consent to use, a facility.

*Note* The term ‘the regulations’ is defined in regulation 4 to mean ‘..regulations (including these Regulations) made under the Act’.

#### **7 Operations must comply with the accepted environment plan**

- (1) The operator of a petroleum activity must not carry out the activity in a way that is contrary to:
- (a) the environment plan in force for the activity; or

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- (b) any limitation or condition applying to operations for the activity under these Regulations.

Penalty: 80 penalty units.

- (1A) An offence against subregulation (1) is an offence of strict liability.

*Note* For **strict liability**, see section 6.1 of the *Criminal Code*.

- (2) Subregulation (1) does not apply to the operator if the operator has the consent in writing of the Designated Authority to carry out the activity in that way.
- (3) The Designated Authority must not give a consent under subregulation (2) unless there are reasonable grounds for believing that the way in which the activity is to be carried out will not result in the occurrence of any significant new environmental impact or risk, or significant increase in any existing environmental impact or risk.

**8 Operations must not continue if new or increased environmental risk identified**

- (1) The operator of a petroleum activity is guilty of an offence if:
- (a) the operator carries out the activity after the occurrence of:
- (i) any significant new environmental impact or risk arising from the activity; or
- (ii) any significant increase in an existing environmental impact or risk arising from the activity; and
- (b) the new impact or risk, or increase in the impact or risk, is not provided for in the environment plan in force for the activity.

Penalty: 80 penalty units.

- (1A) An offence against subregulation (1) is an offence of strict liability.

*Note* For **strict liability**, see section 6.1 of the *Criminal Code*.

- (2) Subregulation (1) does not apply to the operator if the operator submits a proposed revision of the environment plan in accordance with regulation 17 and the Designated Authority has not refused to accept the revision.

*Note* Under r 17 the operator is required to submit a proposed revision of the environment plan before, or as soon as practicable after, the occurrence of a significant new, or significantly increased, environmental impact or risk.

## **Division 2.2      Acceptance of an environment plan**

### **9            Submission of an environment plan**

- (1) Before commencing a petroleum activity the operator of the activity must submit an environment plan for the activity to the Designated Authority for the adjacent area.
- (2) An environment plan may be submitted for 1 or more stages of the activity if the operator and the Designated Authority so agree.
- (3) An environment plan:
- (a) must be in writing, or in a form accepted by the Designated Authority; and
  - (b) if the Designated Authority approves — may relate to a specified activity in one or more identified locations specified in the plan.

### **10          Time limit for accepting or not accepting an environment plan**

- (1) Within 30 days after an operator submits an environment plan, the Designated Authority must:
- (a) accept the plan under regulation 11; or
  - (b) refuse to accept the plan; or
  - (c) give notice in writing to the operator stating that the Designated Authority is unable to make a decision about the plan within the period of 30 days, and setting out a proposed timetable for consideration of the plan.

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- (2) A decision by the Designated Authority to accept, or refuse to accept, an environment plan is not invalid only because the Designated Authority did not comply with subregulation (1) in relation to the plan.
- (3) This regulation applies to an environment plan resubmitted under subregulation 11 (2) in the same way that it applies to the plan when first submitted.

**11 Acceptance of an environment plan**

- (1) The Designated Authority must accept the environment plan if there are reasonable grounds for believing that the plan:
  - (a) is appropriate for the nature and scale of the activity or proposed use; and
  - (b) demonstrates that the environmental impacts and risks of the activity will be reduced to as low as reasonably practicable; and
  - (c) demonstrates that the environmental impacts and risks of the activity will be of an acceptable level; and
  - (d) provides for appropriate environmental performance objectives, environmental performance standards and measurement criteria; and
  - (e) includes an appropriate implementation strategy and monitoring, recording and reporting arrangements; and
  - (f) for the requirement mentioned in paragraph 16 (b) — demonstrates that there has been an appropriate level of consultation with authorities, persons and organisations; and
  - (g) complies with the Act and the regulations.
- (2) If the Designated Authority is not reasonably satisfied that the environment plan when first submitted meets the criteria set out in subregulation (1), the Designated Authority must give the operator a reasonable opportunity to modify and resubmit the plan.
- (3) If, after the operator has had a reasonable opportunity to modify and resubmit the environment plan, the Designated Authority is still not reasonably satisfied that the plan meets the

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criteria set out in subregulation (1), the Designated Authority must refuse to accept the plan.

- (4) Despite subregulation (3), the designated Authority may do either or both of the following:
  - (a) accept the plan in part for a particular stage of the activity;
  - (b) impose limitations or conditions applying to operations for the activity.
- (5) The Designated Authority must give the operator notice in writing of a decision by the Designated Authority:
  - (a) to accept the environment plan; or
  - (b) not to accept the plan; or
  - (c) to accept the plan in part for a particular stage of the activity, or subject to the imposition of limitations or conditions.
- (6) A decision under paragraph (5) (b) or (c) must set out:
  - (a) the terms of the decision and the reasons for it; and
  - (b) if limitations or conditions are to apply to operations for the activity — those limitations or conditions; and
  - (c) if the activity is to be carried out in the adjacent area of a Territory mentioned in section 7 of the Act — a statement or summary of the right, under section 152 of the Act, of reconsideration or review of the decision.

*Note* The Designated Authority may decline to consider a submission unless certain details of the operator are given — see r 34.

- (7) Within 10 days after receiving a notification that the Designated Authority has accepted an environment plan under paragraph (5) (a), the operator must submit a summary of the plan to the Designated Authority for public disclosure.
- (8) A summary mentioned in subregulation (7):
  - (a) must include the following material from the environment plan:
    - (i) coordinates of the petroleum activity;
    - (ii) a description of the receiving environment;
    - (iii) a description of the action;
    - (iv) details of major environmental hazards and controls;

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- (v) a summary of the management approach;
  - (vi) details of consultation already undertaken, and plans for ongoing consultation;
  - (vii) contact details of the operator's nominated liaison personnel for the activity; and
- (b) must be to the satisfaction of the Designated Authority.

## **Division 2.3 Contents of an environment plan**

### **12 Contents of an environment plan**

An environment plan for a petroleum activity must include the matters set out in regulations 13, 14, 15 and 16.

### **13 Environmental assessment**

#### *Description of the activity*

- (1) The environment plan must contain a comprehensive description of the activity including the following:
- (a) the location or locations of the activity;
  - (b) general details of the construction and layout of any facility or other structure;
  - (c) an outline of the operational details of the activity (for example, seismic surveys, exploration drilling or production) and proposed timetables;
  - (d) any additional information relevant to consideration of environmental impacts and risks of the activity.

#### *Description of the environment*

- (2) The environment plan must:
- (a) describe the existing environment that may be affected by the activity, as well as any relevant cultural, social and economic aspects of the environment that may be affected; and
  - (b) include details of the particular relevant values and sensitivities (if any) of that environment.

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*Description of environmental impacts and risks*

- (3) The environment plan must include:
  - (a) details of the environmental impacts and risks for the activity; and
  - (b) an evaluation of all the impacts and risks.
- (3A) For the avoidance of doubt, the evaluation mentioned in paragraph (3) (b) must evaluate all the significant impacts and risks arising directly or indirectly from:
  - (a) all operations of the activity, including construction; and
  - (b) potential emergency conditions, whether resulting from accident or any other reason.

*Environmental performance objectives and standards*

- (4) The environment plan must include environmental performance objectives, environmental performance standards and measurement criteria that:
  - (a) address legislative and other controls that manage environmental features of the activity; and
  - (b) define the objectives, and set the standards, against which performance by the operator in protecting the environment is to be measured; and
  - (c) include measurement criteria for determining whether the objectives and standards have been met.

*Environmental requirements*

- (5) The environment plan must contain a list of all legal, environmental and other requirements that apply to the activity.

**14 Implementation strategy for the environment plan**

- (1) The environment plan must contain an implementation strategy for the activity in accordance with this regulation.
- (2) The implementation strategy must include measures to ensure that the environmental performance objectives and standards in the environment plan are met.

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- (3) The implementation strategy must identify the specific systems, practices and procedures to be used to ensure that the environmental impacts and risks of the activity are reduced to as low as reasonably practicable and that the environmental performance objectives and standards in the environment plan are met.
- (4) The implementation strategy must establish a clear chain of command, setting out the roles and responsibilities of personnel in relation to the implementation, management and review of the environment plan.
- (5) The implementation strategy must include measures to ensure that each employee or contractor working on, or in connection with, the activity is aware of his or her responsibilities in relation to the environment plan and has the appropriate competencies and training.
- (6) The implementation strategy must provide for the monitoring, audit, management of non-conformance and review of the operator's environmental performance and the implementation strategy.
- (7) The implementation strategy must provide for the maintenance of a quantitative record of emissions and discharges (whether occurring during normal operations or otherwise) to the air, marine, seabed and sub-seabed environment, that is accurate and can be monitored and audited against the environmental performance standards and measurement criteria.
- (8) The implementation strategy must establish and provide for the maintenance of an up-to-date emergency response manual (including an oil spill contingency plan) including detailed response arrangements.
- (8A) The response arrangements in the manual mentioned in subregulation (8) must be tested:
  - (a) when they are introduced; and
  - (b) when they are significantly amended; and
  - (c) not later than 12 months after the most recent test.

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- (9) The implementation strategy must provide for appropriate consultation with:
  - (a) relevant authorities of the Commonwealth, a State or Territory; and
  - (b) other relevant interested persons or organisations.
- (10) The implementation strategy must comply with the Act, the regulations and any other environmental legislation applying to the activity.

**15 Reporting etc arrangements**

The environment plan must include arrangements for:

- (a) recording, monitoring and reporting information about the activity (including information required to be recorded under the Act, the regulations and any other environmental legislation applying to the activity) sufficient to enable the Designated Authority to determine whether the environmental performance objectives and standards in the environment plan are met; and
- (b) reporting to the Designated Authority at intervals agreed with the Designated Authority, but not less often than annually.

**16 Other information in the environment plan**

The environment plan must contain the following:

- (a) a statement of the operator's corporate environmental policy;
- (b) a report on all consultations between the operator and relevant authorities, interested persons and organisations in the course of developing the environment plan;
- (c) details of all reportable incidents in relation to the proposed activity.

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**Division 2.4 Revision of an environment plan**

**17 Revision because of a change, or proposed change, of circumstances or operations**

- (1) The operator of a petroleum activity must submit to the Designated Authority a proposed revision of the environment plan before the commencement of any new activity, or any significant modification, change, or new stage of an existing activity, not provided for in the environment plan in force for the activity.
- (2) The operator must submit a proposed revision of the environment plan before, or as soon as practicable after:
  - (a) a change in the petroleum instrument holder for, or operator of, the activity; or
  - (b) the occurrence of any significant new environmental impact or risk, or significant increase in an existing environmental impact or risk, not provided for in the environment plan in force for the activity.

**18 Revision on request by the Designated Authority**

- (1) The operator of a petroleum activity must submit to the Designated Authority a proposed revision of the environment plan if the Designated Authority requests the operator to do so.
- (2) A request by the Designated Authority must be in writing and set out the following:
  - (a) the matters to be addressed by the revision;
  - (b) the proposed date of effect of the revision;
  - (c) the grounds for the request.
- (3) The operator may make a submission in writing to the Designated Authority stating the operator's reasons for 1 or more of the following matters:
  - (a) why the revision should not occur;
  - (b) why the revision should be in different terms from the proposed terms;

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- (c) whether or not the operator gives other reasons — why the revision should take effect on a date later than the proposed date.
- (4) A submission by the operator must be made within 21 days after receiving the request, or within any longer period that the Designated Authority in writing allows.
- (5) If a submission complies with subregulations (3) and (4), the Designated Authority must:
  - (a) decide whether to accept 1 or more of the reasons stated in the submission; and
  - (b) give the operator notice in writing of the decision; and
  - (c) to the extent (if any) that the Designated Authority accepts the reasons, give the operator notice in writing that varies or withdraws the request in accordance with the decision; and
  - (d) to the extent (if any) that the Designated Authority does not accept the reasons, give the operator notice in writing of the grounds for not accepting them.
- (6) An operator must comply with a request made by the Designated Authority under this regulation and not withdrawn, or with a request as varied under this regulation, as soon as practicable.

**19 Revision at the end of each 5 years**

The operator of a petroleum activity must submit to the Designated Authority a proposed revision of the environment plan (whether or not a proposal has been submitted under regulation 17 or 18) at the end of each period of 5 years, commencing on:

- (a) the date when the environment plan is first accepted under regulation 11 by the Designated Authority; or
- (b) the date of the most recent acceptance, by the Designated Authority, of a revision submitted under this regulation.

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**20 Form of proposed revision**

A proposed revision must be in the form of a revised environment plan or, if the operator and the Designated Authority so agree, a revised part of the environment plan.

**21 Consideration of proposed revision**

Regulations 10 and 11 apply to the proposed revision as if:

- (a) a reference in those regulations to the submission, acceptance or non-acceptance of the environment plan were a reference to the submission, acceptance or non-acceptance of the proposed revision; and
- (b) any other reference in those regulations to the environment plan were a reference to the plan as revised by the proposed revision.

*Note* Regulation 10 deals with the consideration by the Designated Authority of an environment plan. Regulation 11 deals with the acceptance of an environment plan.

**22 Effect of non-acceptance of proposed revision**

If a proposed revision is not accepted, the provisions of the environment plan in force for the activity existing immediately before the proposed revision was submitted remain in force, subject to the Act and these Regulations, (in particular, the provisions of Division 2.5), as if the revision had not been proposed.

**Division 2.5 Withdrawal of acceptance of an environment plan**

**23 Withdrawal of acceptance of environment plan**

- (1) The Designated Authority, by notice in writing to the operator of an activity, may withdraw the acceptance of the environment plan in force for the activity on any ground set out in subregulation (2).

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- (2) For subregulation (1), the grounds are that:
  - (a) the operator or petroleum instrument holder has not complied with a provision of the Act, or a direction given to the operator or petroleum instrument holder under section 101 of the Act; or
  - (b) the operator has not complied with regulation 7, 8, 17, 18 or 19; or
  - (c) the Designated Authority has refused to accept a proposed revision of the environment plan.
- (3) A notice under subregulation (1) must set out:
  - (a) the reasons for the decision; and
  - (b) if the activity is carried out in the adjacent area of a Territory mentioned in section 7 of the Act — a statement or summary of the right, under section 152 of the Act, of reconsideration or review of the decision.

**24 Steps to be taken before withdrawal of acceptance**

- (1) Before withdrawing the acceptance of an environment plan in force for an activity the Designated Authority must comply with subregulations (2), (4) and (5).
- (2) The Designated Authority must give the operator at least 30 days notice in writing of the Designated Authority's intention to withdraw acceptance of the plan.
- (3) The Designated Authority may give a copy of the notice to such other persons (if any) as the Designated Authority thinks fit.
- (4) The Designated Authority must specify in the notice a date (the *specified date*) on or before which the operator (or any other person to whom a copy of the notice has been given) may submit to the Designated Authority, in writing, any matters for the Designated Authority to take into account.
- (5) The Designated Authority must take into account:
  - (a) any action taken by the operator or petroleum instrument holder to remove the ground for withdrawal of acceptance, or to prevent the recurrence of that ground; and

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- (b) any matter submitted to the Designated Authority before the specified date by the operator or a person to whom a copy of the notice has been given.

**25 Withdrawal of acceptance not affected by other provisions**

- (1) The Designated Authority may withdraw the acceptance of an environment plan in force for an activity on the ground that the operator or petroleum instrument holder has not complied with a provision of the Act, or of a regulation mentioned in paragraph 23 (2) (b), even though the operator or petroleum instrument holder has been convicted of an offence by reason of the failure to comply with that provision.
- (2) The operator of, or the petroleum instrument holder for, an activity for which the acceptance of an environment plan has been withdrawn by the Designated Authority on the ground that the operator or petroleum instrument holder has not complied with a provision of the Act, or of a regulation mentioned in paragraph 23 (2) (b), may be convicted of an offence by reason of the failure to comply with the provision, even though the acceptance of the environment plan has been withdrawn.

## Part 3 Incidents, reports and records

### 26 Notifying reportable incidents

- (1) The operator of an activity must notify a reportable incident in accordance with this regulation.

Penalty: 40 penalty units.

- (2) However, it is a defence to a prosecution for an offence against subregulation (1) if the operator has a reasonable excuse.

*Note* A defendant bears an evidential burden in relation to the question whether he or she has a reasonable excuse (see section 13.3 of the *Criminal Code*).

- (3) An offence against subregulation (1) is an offence of strict liability.

*Note* For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) A notification under subregulation (1):

- (a) must be given to the Designated Authority; and
- (b) must be given as soon as practicable, and in any case not later than 2 hours after:
  - (i) the first occurrence of the reportable incident; or
  - (ii) if the reportable incident was not detected by the operator at the time of the first occurrence — the time the operator becomes aware of the reportable incident; and
- (c) may be oral or in writing; and
- (d) must contain:
  - (i) all material facts and circumstances concerning the reportable incident that the operator knows or is able, by reasonable search or enquiry, to find out; and
  - (ii) any action taken to avoid or mitigate any adverse environment impacts of the reportable incident; and

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- (iii) the corrective action that has been taken, or is proposed to be taken, to prevent a similar reportable incident.

**26A Written report of reportable incidents**

- (1) The operator of an activity must submit a written report of a reportable incident in accordance with this regulation.

Penalty: 40 penalty units.

- (2) However, it is a defence to a prosecution for an offence against subregulation (1) if the operator has a reasonable excuse.

*Note* A defendant bears an evidential burden in relation to the question whether he or she has a reasonable excuse (see section 13.3 of the *Criminal Code*).

- (3) An offence against subregulation (1) is an offence of strict liability.

*Note* For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) A written report under subregulation (1):
  - (a) must be given to the Designated Authority; and
  - (b) must be given as soon as practicable, and in any case:
    - (i) not later than 3 days after the first occurrence of the reportable incident; or
    - (ii) if the Designated Authority specifies, within 3 days after the first occurrence of the reportable incident, another period within which the report must be provided — within that period; and
  - (c) must contain:
    - (i) all material facts and circumstances concerning the reportable incident that the operator knows or is able, by reasonable search or enquiry, to find out; and
    - (ii) any action taken to avoid or mitigate any adverse environment impacts of the reportable incident; and
    - (iii) the corrective action that has been taken, or is proposed to be taken, to prevent a similar reportable incident.

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**26B Reporting recordable incidents**

- (1) The operator of an activity must submit a written report of a recordable incident in accordance with this regulation.

Penalty: 40 penalty units.

- (2) However, it is a defence to a prosecution for an offence against subregulation (1) if the operator has a reasonable excuse.

*Note* A defendant bears an evidential burden in relation to the question whether he or she has a reasonable excuse (see section 13.3 of the *Criminal Code*).

- (3) An offence against subregulation (1) is an offence of strict liability.

*Note* For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) A written report under subregulation (1):

(a) must be given to the Designated Authority; and

(b) must relate to a calendar month; and

(c) must be given as soon as practicable after the end of the calendar month, and in any case not later than 15 days after the end of the calendar month; and

(d) must contain:

(i) a record of all recordable incidents that occurred during the calendar month; and

(ii) all material facts and circumstances concerning the recordable incidents that the operator knows or is able, by reasonable search or enquiry, to find out; and

(iii) any action taken to avoid or mitigate any adverse environment impacts of the recordable incidents; and

(iv) the corrective action that has been taken, or is proposed to be taken, to prevent similar recordable incidents.

**27 Storage of records**

- (1) The operator of a petroleum activity must store and maintain a document or other record mentioned in subregulation (2):

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- (a) for the period of 5 years from the making of the document or other record; and
- (b) in a way that makes retrieval of the document or other record reasonably practicable.

Penalty: 30 penalty units.

- (1A) An offence against subregulation (1) is an offence of strict liability.

*Note* For **strict liability**, see section 6.1 of the *Criminal Code*.

- (2) For subregulation (1), the documents or other records are the following:
- (a) the environment plan in force for the activity;
  - (b) revisions of the environment plan;
  - (c) written reports (including monitoring, audit and review reports) about environmental performance, or about the implementation strategy, under the environment plan;
  - (d) records of emissions and discharges into the environment made in accordance with the environment plan;
  - (e) records of calibration and maintenance of monitoring devices used in accordance with the environment plan;
  - (f) records and copies of reports mentioned in:
    - (i) regulations 26 and 26A, relating to reportable incidents; and
    - (ii) regulation 26B, relating to recordable incidents.

**28 Making records available**

- (1) The operator of an activity must make available, in accordance with this regulation, copies of the records mentioned in regulation 27 for the activity.

Penalty: 30 penalty units.

- (1A) An offence against subregulation (1) is an offence of strict liability.

*Note* For **strict liability**, see section 6.1 of the *Criminal Code*.

- (2) The operator must make copies of the records available to any of the following persons, on request in writing by the person:

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- (a) the Designated Authority;
  - (b) a delegate, under section 15 of the Act, of the Designated Authority;
  - (c) an inspector.
- (3) If the person making the request states that copies of the records be made available to an agent of the person, the operator must make the copies available to the agent.
- (4) However, if the operator requests a person who is a delegate of the Designated Authority, an inspector, or an agent, to produce written evidence of the delegation, or of the person's appointment as an inspector or agent, the operator is not required to make the records available unless the evidence is produced to the operator.
- (5) The copies of the records must be made available:
- (a) in the case of an emergency relating to the activity — as soon as possible at any time of the day or night on any day during the emergency; or
  - (b) in any other case — during normal business hours on any day, other than a Saturday, a Sunday, or a public holiday at the place where the records are kept.
- (6) The copies of the records must be made available at the nominated address or, if agreed between the operator and the person making the request (or the person's agent), at any other place (including by means of electronic transmission to the person or agent at that place).
- (7) If the records are stored on a computer, the records must be made available in print-out form or, if the operator and the Designated Authority so agree, in electronic form.

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**Part 4                      Miscellaneous**

**Division 4.1              Discharges of produced formation water**

**29                      Discharge of produced formation water**

- (1) The operator of an activity must ensure that the concentration of petroleum in any produced formation water discharged into the sea as a result of operations for the activity is not greater than 30mg/L during each period of 24 hours (*specified concentration*).

Penalty: 40 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

*Note* For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) Nothing in subregulation (1) affects an environmental performance standard, in an environment plan in force for the activity, for a concentration of petroleum in produced formation water discharged into the sea that is less than the specified concentration.

- (4) Subregulation (1) does not apply to an operator who:

- (a) has the consent in writing of the Designated Authority in accordance with subregulation (5) to exceed the specified concentration; and  
(b) does not exceed any authorised concentration mentioned in the consent.

- (5) Consent under subregulation (4) may be given by the Designated Authority only if:

- (a) the discharge rate of produced formation water to be authorised by the consent is not greater than 0.5 megalitres per day; or  
(b) the consent is to apply to a period not greater than 48 hours; or

- (c) the Designated Authority is satisfied that the purpose of the discharge at the authorised concentration is for operational research that has the potential to improve environmental performance.
- (6) The Designated Authority must not give a consent under subregulation (4) unless the operator demonstrates, to the satisfaction of the Designated Authority, that the proposed activity will not result in:
  - (a) the occurrence of any significant new environmental impact or risk; or
  - (b) a significant increase in any existing environmental impact or risk.

## **29A Tests and reports of discharges of produced formation water**

- (1) If produced formation water is discharged into the sea, the operator must:
  - (a) conduct an accepted test at regular intervals to assess the performance of the monitoring equipment; and
  - (b) record the test results.
- (2) At the request of the Designated Authority, the operator must produce for inspection the test results mentioned in subregulation (1).

Penalty: 40 penalty units.

- (3) An offence against subregulation (2) is an offence of strict liability.

*Note* For *strict liability*, see section 6.1 of the *Criminal Code*.

## **Division 4.2 Operators of activities**

### **30 Interpretation for Division**

In this Division:

*contact details*, for an operator or an agent, means the name and address within Australia, telephone number, facsimile number and electronic address (if any) of the operator or agent.

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**31                      Notification of appointment of operator**

- (1) The petroleum instrument holder for an activity must ensure that, at all times, there is an operator of the activity.
- (2) The operator of an activity is the person responsible to the petroleum instrument holder for the overall management and operation of the activity.
- (3) The petroleum instrument holder must notify the Designated Authority in writing of the name and contact details of the operator before the first submission for an activity is lodged under these Regulations.
- (4) The petroleum instrument holder must notify the Designated Authority, in writing, of any change of operator of the activity at the earliest practicable opportunity and, if practicable, at least 28 days before the change takes effect.

*Note* The operator is not required to give the information if it has already been given in accordance with another requirement of the Act or the regulations — see r 33.

- (5) Nothing in this regulation affects any duty or responsibility of the petroleum instrument holder, under the Act or the regulations, for an activity carried out under the petroleum instrument.

**32                      Operator to give details**

- (1) The operator of an activity must notify the Designated Authority within 7 days, in writing, of:
  - (a) the appointment of an agent of the operator, in relation to the activity, and the contact details of the agent; or
  - (b) any change of agent; or
  - (c) any change of name (where there is no change of identity) or contact details of the operator or the operator's agent.

Penalty: 40 penalty units.

- (1A) However, it is a defence to a prosecution for an offence against subregulation (1) if the operator has a reasonable excuse.

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*Note* A defendant bears an evidential burden in relation to the question whether he or she has a reasonable excuse (see section 13.3 of the *Criminal Code*).

- (1B) An offence against subregulation (1) is an offence of strict liability.

*Note* For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2) The operator must include, in any submission to the Designated Authority under Part 2, the name and contact details of the operator or the operator's agent.

Penalty: 40 penalty units.

- (2A) An offence against subregulation (2) is an offence of strict liability.

*Note* For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) The operator, at all times after operations for the activity have commenced, must maintain, and ensure that the Designated Authority has notice of:

- (a) an address of the operator, for communications on matters relating to the activity; and
- (b) a facsimile number, or electronic mail address, within Australia at which a request for records may be made under regulation 28.

Penalty: 40 penalty units.

*Note* The operator is not required to give the information if it has already been given in accordance with another requirement of the Act or the regulations — see r 33.

- (4) An offence against subregulation (3) is an offence of strict liability.

*Note* For *strict liability*, see section 6.1 of the *Criminal Code*.

**33 No requirement to give information more than once**

- (1) Despite any other provision of this Division, a petroleum instrument holder or operator is not required to give information to the Designated Authority under this Division if, at any relevant time, the information has been given in

**Regulation 34**

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accordance with any other provision of the Act or the regulations.

- (2) Subregulation (1) does not apply if the information already given has been lost or destroyed.

**34            Designated Authority may decline to consider submission if information is not given**

Despite any other provision of these Regulations, if a petroleum instrument holder for an activity, or an operator of the activity, does not give information to the Designated Authority in accordance with this Division, and the information has not been given under another law, the Designated Authority may decline to consider a submission made by the operator under these Regulations and relating to the activity, until the information is given.

**35            Designated Authority to keep register**

The Designated Authority must maintain a register or other record of information about an operator or agent:

- (a) mentioned in this Division; and  
(b) given (whether under this Division or otherwise) to the Designated Authority.

**36            Proof of appointment as operator**

- (1) In proceedings under these Regulations, a document that appears to the court to be a certificate by a Designated Authority, in accordance with subregulation (2), certifying a statement to the effect mentioned in subregulation (3):
- (a) is evidence of the truth of the statement; and  
(b) may be received in evidence without being proved.
- (2) The certificate must be signed by the Designated Authority and be expressed to be in accordance with the register or other record maintained by the Designated Authority under regulation 35.

- (3) The statement must be to the effect that, on a specified date, or during a specified period, a specified person was the operator for a specified activity.

## **Division 4.3      Other procedural matters**

### **37      Service, delivery and lodgment of documents**

For these Regulations, unless the contrary intention appears, a notice or other document required or permitted to be given to a person is taken to be given:

- (a) in the case of service otherwise than by post on an individual — on the day on which the notice or other document is:
  - (i) delivered to the individual in person; or
  - (ii) delivered to his or her address for service or last address known to the Designated Authority; or
- (b) in the case of service otherwise than by post on a body corporate — on the day on which the notice or other document is delivered to the registered office, or the address for service, of the body corporate; or
- (c) in the case of service by post on a person — on the day on which the notice or other document would ordinarily be delivered in the due course of post or, if the person establishes that it was delivered on a later day, on that later day.

Table of Instruments □

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## Notes to the *Petroleum (Submerged Lands) (Management of Environment) Regulations 1999*

### Note 1

The *Petroleum (Submerged Lands) (Management of Environment) Regulations 1999* (in force under the *Petroleum (Submerged Lands) Act 1967*) as shown in this compilation comprise Statutory Rules 1999 No. 228 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

Under the *Legislative Instruments Act 2003*, which came into force on 1 January 2005, it is a requirement for all non-exempt legislative instruments to be registered on the Federal Register of Legislative Instruments. From 1 January 2005 the Statutory Rules series ceased to exist and was replaced with Select Legislative Instruments (SLI series). Numbering conventions remain the same, ie Year and Number.

### Table of Instruments

Year and number	Date of notification in <i>Gazette</i> or FRLI registraion	Date of commencement	Application, saving or transitional provisions
1991 No. 228	29 Sept 1999	1 Oct 1999	
2001 No. 346	21 Dec 2001	21 Dec 2001	—
2005 No. 318	19 Dec 2005 (see F2005L03952)	20 Dec 2005	R. 4 [see Table A]

**Table of Amendments**

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
R. 4 .....	am. 2005 No. 318
<b>Part 2</b>	
<b>Division 2.1</b>	
R. 6 .....	am. 2001 No. 346; 2005 No. 318
R. 7 .....	am. 2001 No. 346; 2005 No. 318
Heading to r. 8 .....	rs. 2005 No. 318
R. 8 .....	am. 2001 No. 346; 2005 No. 318
Note to r. 8 (2).....	am. 2005 No. 318
<b>Division 2.2</b>	
R. 9 .....	am. 2005 No. 318
R. 10 .....	am. 2005 No. 318
R. 11 .....	am. 2005 No. 318
<b>Division 2.3</b>	
R. 13 .....	am. 2005 No. 318
R. 14 .....	am. 2005 No. 318
R. 16 .....	am. 2005 No. 318
<b>Division 2.4</b>	
R. 17 .....	am. 2005 No. 318
<b>Division 2.5</b>	
R. 24 .....	am. 2005 No. 318
<b>Part 3</b>	
R. 26 .....	rs. 2001 No. 346; 2005 No. 318
R. 26A.....	ad. 2005 No. 318
R. 26B.....	ad. 2005 No. 318
R. 27 .....	am. 2001 No. 346; 2005 No. 318
R. 28 .....	am. 2001 No. 346
<b>Part 4</b>	
<b>Division 4.1</b>	
R. 29 .....	am. 2001 No. 346 rs. 2005 No. 318
R. 29A.....	ad. 2005 No. 318
<b>Division 4.2</b>	
R. 30 .....	am. 2005 No. 318
R. 32 .....	am. 2001 No. 346
R. 38 .....	rep. 2001 No. 346

**Table of Amendments**

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ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

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<b>Provision affected</b>	<b>How affected</b>
Division 4.4 .....	rep. 2005 No. 318
R. 39 .....	rep. 2005 No. 318

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**Table A**                      **Application, saving or transitional provisions**

**Statutory Rules 2005 No. 318**

**4**            **Transitional**

The amendments made by Schedule 1 apply in relation to an environment plan that, on or after the commencement of these Regulations, is submitted:

- (a) to the Designated Authority under regulation 9 of the *Petroleum (Submerged Lands) (Management of Environment) Regulations 1999*; or
- (b) for revision under Division 2.4 of the *Petroleum (Submerged Lands) (Management of Environment) Regulations 1999*.