Monitor 4 of 2024 – Ministerial Response

Contents

Attorney-General

Reference: MC24-002070

Senator Deborah O'Neill
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation
Parliament House
CANBERRA ACT 2600

By email: sdlc.sen@aph.gov.au

Dear Chair

I am writing in response to correspondence of 29 February 2024 from the Senate Standing Committee for the Scrutiny of Delegated Legislation outlining scrutiny concerns in relation to *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2024 (Chapter 21 Amendments)*[F2024L00088] (the Instrument).

Chapter 21 of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (AML/CTF Rules) provides exemptions from the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) for the issuing or selling of securities or derivatives in a number of specific circumstances. This includes the issuing or selling of securities or derivatives on certain domestic and foreign financial markets where there is no reasonable way for the issuer or seller to know the identity of the buyer.

The AML/CTF Rules Amendment Instrument extends one part of the existing Chapter 21 exemptions so that it applies to market participants of FEX Global Pty Ltd (FEX). It also clarifies that the Australian Securities Exchange Limited (ASEL) is not a prescribed financial market under the *Corporations Act 2001*, but has been specified as an exempt financial market.

The Instrument did not seek to alter the other exemptions contained in Chapter 21 (such as issuing an interest in a managed investment or litigation funding scheme) on which a range of other businesses rely. The amendments sought only to address a time-sensitive competitive neutrality issue, and ensure equal treatment of FEX and ASEL under the AML/CTF Rules.

As outlined in my letter to the Committee of 4 October 2022, regarding *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2021 (No. 2)* [F2021L01658], the inclusion of exemptions in the AML/CTF Rules ensures that the AUSTRAC CEO has sufficient flexibility to make, amend, and repeal exemptions as circumstances require without being delayed by infrequent and lengthy legislative amendment processes. In this instance, the issue was time-sensitive and needed to be addressed faster than legislative amendment would allow.

Further, I consider using the Instrument to introduce a cessation date for the whole Chapter is not appropriate. The Chapter contains multiple enduring exemptions upon which a range of entities rely and this change would have had a much broader regulatory impact than the minor amendments the Instrument made. Conversely, applying a cessation date only to the exemption as it applied to FEX and ASEL would place them at a comparative disadvantage to all other entities that are covered by the Chapter 21 exemptions.

However, as the Committee would be aware, the Australian Government has commenced consultation on reforms to Australia's anti-money laundering and counter-terrorism financing regime.

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As part of the reform process, the Attorney-General's Department (the department) is giving consideration to which of the exemptions currently contained in the AML/CTF Rules should be moved into the AML/CTF Act.

In order to ensure appropriate parliamentary oversight and provide regulatory certainty for industry, the department proposes to codify in the AML/CTF Act those exemptions that are intended to be enduring. Exemptions which are limited in scope, have detailed conditions attached, or are likely to require amendment to adapt to changing circumstances will be retained in the AML/CTF Rules. It is intended that any exemption that is to be retained in the AML/CTF Rules will be remade and time-limited consistent with the Committee's expectations.

I consider that the reform process will provide an opportunity to systematically consider exemptions to the AML/CTF Act in a way that is consistent, and ensures equality of treatment for the businesses that rely on them.

I trust this information will assist members of the Committee in their consideration of the Instrument. If the Committee has further questions, AUSTRAC would be happy to meet with the Committee to discuss the AML/CTF Rules and the Committee's concerns in more detail.

Yours sincerely

THE HON MARK DREYFUS KC MP
20 / 3 /2024

SENATOR THE HON MURRAY WATT
MINISTER FOR AGRICULTURE, FISHERIES AND FORESTRY
MINISTER FOR EMERGENCY MANAGEMENT

MS24-000058

Senator Linda Reynolds
Deputy Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation
Parliament House
CANBERRA ACT 2600

Dear Senator Linda

I refer to the Committee's request for further information about the *Biosecurity (Electronic Decisions) Determination 2023* (the Determination) as outlined in the *Delegated Legislation Monitor 1 of 2024* (the Monitor).

I understand that the Committee is seeking advice on matters identified during the Committee's assessment of the Determination. My responses are set out below.

(a) *Response to the Committee's request for advice in paragraph 1.38 of the Monitor*

Pursuant to section 193 of the *Biosecurity Act 2015* (the Act), it is a mandatory requirement that the operator of an aircraft or vessel give a report (Pre-Arrival Report (PAR)) which is consistent with the reporting requirements outlined in the *Biosecurity Regulations 2016* (the Regulations). Commercial vessel masters and shipping agents submit the PAR electronically.

Under subsection 541A(1) of the Act, the Director of Biosecurity (the Director) arranged for a computer program, under the Director's control, to make a decision in relation to the PAR about whether to seek further information or documents relating to biosecurity under the relevant provisions (subsections 195(2), 195(3), 200(1) or 201(1)) as specified in the Determination.

This computer program, subject to the arrangement, is used by commercial vessel masters and shipping agents to submit a PAR and subsequently receive Biosecurity Status Documents (BSDs) which provide advice to a commercial vessel operator, vessel master or shipping agent. The computer program is the only method of electronically reporting pre-arrival requirements for all international commercial vessels seeking entry into Australian territory.

The Director has taken reasonable steps to ensure that the decisions to seek information or documents that are made by the computer program are consistent with the objects of the Act and to ensure that any electronic decisions are based on are grounds on the basis of which a biosecurity officer could have made a decision.

Broadly, these include ensuring that the arrangement made under subsection 541A(1) provides for measures and processes for electronic decisions that would lead to the effective assessment and management of biosecurity risk. This includes arranging for the computer system to be updated with technical and scientific criteria based on biosecurity risk.

Further, the arrangement provides for appropriate and accurate business rules so that the relevant computer system takes into consideration the same grounds on the basis of which a biosecurity officer could have made that decision.

In addition, biosecurity officers can override BSD advice issued by the computer program and can manually exercise a relevant power or decision at any point in time.

In particular, subsections 195(2) and 195(3) of the Act provide powers to require information or answers to questions (subsection 195(2)) or production of documents (subsection 195(3)) for the purpose of assessing the level of biosecurity risk associated with a vessel.

The computer program incorporates a series of business rules to determine whether the provision of extra information, answers to questions or production of documents is required in order for further decisions to be made (that are not made by a computer).The business rules are based on technical and scientific criteria for the assessment of biosecurity risk, for example, the level of biosecurity risk associated with a pest or disease in a particular country or region, at a particular point in time. These criteria are the same as a human decision-maker would consider to make the decision.

There are several instances where the computer program or a biosecurity officer may request additional information or answers to questions (subsection 195(2)) or the production of documents (subsection 195(3)). For example, once the operator of a vessel submits a PAR under section 193 of the Act, the computer program utilises a series of 'seasonal pest criteria' to determine whether the operator of a vessel will be required to complete a Seasonal Pest Questionnaire (SPQ).

The seasonal pest criteria will depend on the vessel type, the type of seasonal pest and the incursion season date range that is of a biosecurity concern, for example, the Brown Marmorated Stink Bug (BMSB) would be a seasonable pest of biosecurity concern if a vessel would be arriving in Australian territory:

- within a designated time period (i.e., between 1 September 2022 – 30 April 2023)
- from a target risk country; namely, a country that has the relevant pest or disease that is of biosecurity concern.

If a vessel meets this objective criteria and its operator intends for the vessel to enter Australian territory during BMSB season, the computer program will make a decision to send the SPQ to the operator of the vessel requiring additional information under subsection 195(2) and/or the production of documents under subsection 195(3) to the department. This information or documents will enable an accurate assessment of the biosecurity risks by a biosecurity officer prior to the vessel entering an Australian port.

The computer program may also direct the master of the vessel to provide information or answers to questions (subsection 200(1)) or require the production of documents (subsection 201(1)) using a similar process of objective criteria, for the purpose of assessing the level of

biosecurity risk associated with a vessel that has entered Australian territory and is subject to biosecurity control. The computer program has been designed to enable the provision of answers to questions under subsection 200(1) and production of documents under subsection 201(1).

For example, the computer program may require the provision of information (subsection 200(1)) relating to the health of travellers (i.e., in the form of information to be supplied on the Human Health Questionnaire), in accordance with the below criteria and process. If vessel masters or shipping agents become aware of any additional travellers on board the vessel with signs or symptoms of a list human disease (as prescribed by the *Biosecurity (Listed Human Disease) Determination 2016*), they must notify the department as soon as practicable. This is done by submitting a Human Health Update.

When a Human Health Update has been submitted, and signs or symptoms of a listed human disease are declared, the computer program will then make a decision about whether to send the human health related questions (in the form of a Human Health Questionnaire) to the vessel operator or agent and will require production of specified documents (e.g., medical log and/or testing results etc). This information will enable a biosecurity officer to effectively assess the level of biosecurity risk associated with the reporting of the listed human disease. The effective assessment of biosecurity risk is crucial to ensure that the biosecurity risk is properly managed.

The business rules that underpin the computer program include rule parameters and safeguards. These include formulas that weigh different factors that assist with automated decision making, the mechanisms used to identify errors in automated decision making, and measures to correct errors based on those safeguards. An audit trail of decisions can be made available to a biosecurity officer to assist in identifying errors in decision outcomes and subsequently rectifying such errors.

The computer program can make decisions in relation to registered users only. These registered users are set out in subsection 5(2) of the Determination as classes of persons who may use the computer program; for example, registered agents, vessel masters and persons in charge of a conveyance. The system is a secure environment that is accessible only through registration. Commercial registered users use the program to provide information and documents to the department when required, with access limited to this role. Each user has a unique identifier issued by the department which enables user access and action to be traced and reported on. The department also provides instructional and training material to vessel masters and shipping agents to ensure that they understand conditions of use of the program and the requirement to comply with them; especially the need to ensure that information is accurately entered.

(b) ***whether consideration has been given to the Commonwealth Ombudsman's*** **Automated Decision-making Better Practice Guide** ***and addressing recommendations 17.1 and 17.2 of the Royal Commission into the Robodebt Scheme***

The business rules, departmental policy and instructional material have been designed with consideration to the Commonwealth's Ombudsman's Automated Decision-making Better Practice Guide and were considered by the Director prior to the making of the arrangement.

In relation to recommendations 17.1 and 17.2 of the Robodebt Royal Commission, the Government has committed to considering opportunities for legislative reform to introduce a

consistent legal framework in which automation in government services, such as those covered by the Determination, operate ethically, without bias and with appropriate safeguards.

(c) ***whether legislative amendments could be made to provide that decisions specified in subsection 5(1) are 'reviewable decisions' under the*** **Biosecurity Act 2015** ***or whether independent review of these discretionary decisions could otherwise be provided for.***

The requirement to report under subsection 193(2) of the Act is necessary in order to achieve the legitimate objective of ensuring pre-arrival reports are provided by commercial operators so that risks associated with incoming goods, conveyances and people can be assessed and managed. This provision is reasonable and proportionate to the legitimate objective of the Act because the operator of an aircraft or vessel will have the information, knowledge or documentation that would support the accurate reporting requirements under this provision.

The requirements to provide information, answer questions or produce documents pursuant to subsections 195(2), 195(3), 200(1) and 201(1) of the Act enable biosecurity officers to have access to the necessary information to make an accurate and timely assessment of biosecurity risk associated with a conveyance based on the information provided by the operator of the conveyance. For example, a biosecurity officer may ask questions or seek information about the previous movements of the conveyance to determine whether the conveyance has been in a location known to have specific pests or diseases that pose biosecurity risks.

Once the information gathering process is complete, a biosecurity officer assesses the information and documentation and may decide to exercise additional powers under the Act. Those decisions are not made through the operation of the computer program. As those decisions are critical to the management of biosecurity risk, the accuracy of information provided by persons inputting information into the computer is critical. Such persons are on notice of the requirement to provide information or documents and have the ability to update that information at any stage. Any decision to pursue penalties for the provision of false or misleading information is not subject to automation and the imposition of any civil penalty or the conviction of an offence can only occur through judicial processes.

With respect to subsections 195(2), 195(3), 200(1) and 201(1), the nature of these provisions does not lend them to an independent merits review process. This is because the requirement of information or documents in the context of assessing biosecurity risk does not, in and of itself, affect the rights and obligations of individuals. Rather, it is a preliminary decision that facilitates and leads to the making of a substantive decision. The Administrative Review Council's 1999 guide *What decisions should be subject to merits review* posits that a factor that may justify excluding merits review is whether or not the decision is of a preliminary nature. In this instance, the decision is preliminary to a substantive decision about how to manage any biosecurity risk that is identified.

For these reasons I do not propose to make legislative amendments to provide for independent merits review of electronic decisions made under the provisions specified in the Determination.

(d) ***whether any consultation was undertaken in relation to the instrument with persons affected or experts or, if not, why not.***

The department regularly meets with the persons using this computer program and those affected by the Determination to discuss maritime related biosecurity activities and supporting operational tasks, including updates to the relevant computer program and associated processes. The computer program subject to the Determination was designed with the assistance of industry over the course of 5 years. Automating decisions to require further information or documentation under the relevant provisions within the Determination provides efficiencies for industry and the department and supports timely decisions by biosecurity officers based on the information inputted into the computer program by the class of person as outlined in the Determination.

As mentioned above, the requirement to report under subsection 193(2) of the Act is necessary in order to achieve the legitimate objective of ensuring pre-arrival reports are provided and risks associated with incoming goods, conveyances and people can be assessed and managed.

The Attorney-General's Department and the Office of Impact Analysis (OIA) were consulted in the making of the Determination. The OIA advised that an Impact Analysis was not required (OIA23-04595).

(e) ***whether the explanatory statement can be amended to correct the possible drafting error identified***

The explanatory statement currently refers to, on page 7, subsection 5(4) of the instrument as providing the conditions of use of an authorised computer program. It also refers to subsection 5(2) or (3) as provisions setting out classes of persons who may use an authorised computer program. As the committee has identified, the reference on page 7 to subsection 5(4) should refer to subsection 5(3), and the reference to subsection 5(2) or (3) should correctly refer to subsection 5(2) only. I have emphasised the importance of accurate drafting in explanatory statements to my department who will ensure that this error in the explanatory statement is corrected.

I thank the Committee for raising these issues for my attention.

Yours sincerely

MURRAY WATT 21 / 3 /2024

THE HON MADELEINE KING MP
MINISTER FOR RESOURCES
MINISTER FOR NORTHERN AUSTRALIA

MS24-000322

Ms Hannah Dibley
Committee Secretary
Senate Standing Committee for the Scrutiny of Delegated Legislation
Room S1.111, Parliament House
CANBERRA ACT 2600

sdlc.sen@aph.gov.au

Dear Ms Dibley

I refer to your email of 29 February 2024 seeking further information in relation to the *Offshore Petroleum and Greenhouse Gas Storage (Greenhouse Gas Injection and Storage) Regulations 2023* (the GHG Regulations).

In the *Delegated Legislation Monitor 2 of 2024*, tabled in the Senate on 28 February 2024, the Senate Standing Committee for the Scrutiny of Delegated Legislation (the Committee) requested additional information relating to the GHG Regulations. Specifically, the Committee sought further advice regarding the exclusion of merits review for discretionary decisions made by the responsible Commonwealth Minister under subsections 25(1) and 32(2) of the GHG Regulations, and additional information in relation to discretionary decisions made by the responsible Commonwealth Minister under subsections 25(3) and 42(3) and whether the explanatory statement can be amended to include these further details.

A response to the matters raised is enclosed with this letter. Per the Committee's request, I agree to amend the explanatory statement to include additional information about discretionary decisions made by the responsible Commonwealth Minister under subsections 25(3) and 42(3). A replacement explanatory statement will be published on the Federal Register of Legislation.

Yours sincerely

Madeleine King MP

11/03/2024

Enc (1) - Response to the Senate Standing Committee for the Scrutiny of Delegated Legislation

Attachment A

Additional response to the Senate Standing Committee for the Scrutiny of Delegated Legislation in relation to the Offshore Petroleum and Greenhouse Gas Storage (Greenhouse Gas Injection and Storage) Regulations 2023

In its *Delegated Legislation Monitor 2 of 2024* tabled in the Senate on 28 February 2024 (Delegated Legislation Monitor No. 2), the Senate Standing Committee for the Scrutiny of Delegated Legislation (the Committee) considered the Minister's response to matters raised in its *Delegated Legislation Monitor 1 of 2024* (Delegated Legislation Monitor No. 1). The Committee has requested the Minister's further advice in relation to the exclusion of merits review under subsections 25(1) and 32(2) of the *Offshore Petroleum and Greenhouse Gas Storage (Greenhouse Gas Injection and Storage) Regulations 2023* (the GHG Regulations) and the conferral of discretionary powers under subsections 25(3) and 42(3).

Response to the Committee's questions about the availability of independent merits review

In its Delegated Legislation Monitor No. 1 the Committee stated that the explanatory statement to the GHG Regulations does not adequately justify why merits review is excluded in relation to discretionary decisions of the responsible Commonwealth Minister (RCM) under subsections 25(1) and 32(2) of the GHG Regulations having regard to the factors set out in the Administrative Review Council's Guide: *What decisions should be subject to merits review?* (the ARC guide).

In Delegated Legislation Monitor No. 2, the Committee has requested the Minister's further advice in relation to:

- whether further justification can be provided for the exclusion of merits review of decisions under subsections 25(1) or 32(2) of the GHG Regulations with reference to the grounds cited in the explanatory statement or any other grounds in the ARC guide.
- if independent merits review is not available, whether any other mechanisms for review such as internal review are available; and
- the expected timeframes for the upcoming review of the carbon capture and storage regulatory regime.

Response:

Decisions under subsection 25(1)

As described in the explanatory statement, the discretionary decision made under subsection 25(1) of the GHG Regulations is preliminary in nature and therefore is appropriate for exclusion from merits review having regard to the factors set out in the ARC guide.

Subsection 25(1) requires the Responsible Commonwealth Minister (RCM) to either approve or refuse to approve a draft site plan. The RCM may approve the draft site plan if reasonably satisfied that it meets the criteria set out in Division 2 of Part 4 of the GHG Regulations. The RCM may also have regard to any other matter the RCM considers relevant in deciding whether to approve a draft site plan.

The ARC guide states that preliminary or procedural decisions that facilitate, or that lead to, the making of a substantive decision are unsuitable for review. The ARC guide further provides that it is appropriate to exclude preliminary decisions from merits review because the beneficial effect of merits review is limited by the fact such decisions do not generally have substantive consequences. A decision made by the RCM under subsection 25(1) of the GHG Regulations as to whether a draft site plan should be approved or refused is a preliminary step that leads to the substantive decision made

under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act). The substantive decision made under the OPGGS Act determines whether the applicant for a greenhouse gas (GHG) injection licence will receive an offer document advising that the RCM is prepared to grant the licence (which is itself not a reviewable decision). Therefore, as a decision by the RCM under subsection 25(1) of the GHG Regulations is merely preliminary to the later substantive decision that is made under the Act, it is appropriate under the ARC guide that this decision is excluded from independent merits review.

However, the GHG Regulations do recognise the potential significant consequences that the RCM's preliminary decision in relation to a draft site plan may have on the later substantive decision made under the OPGGS Act by imposing an obligation on the RCM to give an applicant an opportunity to provide additional information or vary a site plan in specified circumstances. As explained in the explanatory statement, under section 27 of the GHG Regulations, before approval of a draft site plan is refused under section 25 on the basis that the RCM is not satisfied that the plan meets the criteria set out in Division 2, the applicant must be given an opportunity to vary the draft site plan, or provide further information, if the RCM reasonably believes that varying the plan or providing the additional information could so satisfy the RCM. Additionally, although the GHG Regulations do not provide for internal review, the inclusion of this process ensures that applicants are given appropriate opportunities to provide fulsome information to support the RCM to make the appropriate decision with regards to a draft site plan.

Decisions under subsection 32(2)

Section 32 of the GHG Regulations enables the RCM to withdraw approval of a site plan on the grounds specified in paragraph 32(1)(b). The grounds for withdrawal of approval of a site plan set out in paragraph 32(1)(b) relate to non-compliance by a GHG injection licensee with the requirements of the GHG Regulations or a direction given by the RCM under the OPGGS Act. These incidents of non-compliance are sufficiently serious to be punishable by offence and/or civil penalty provisions. As described in the explanatory statement, the basis for a decision by the RCM to withdraw approval of a site plan under section 32 of the GHG Regulations therefore only arises from serious non-compliance with the law on the part of the licensee. The relevant offence and civil penalty provisions have been framed in accordance with the Attorney-General's Department's: *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*. A decision by the RCM under subsection 32(2) of the GHG Regulations to withdraw approval of a site plan therefore has the character of an enforcement decision, and as such it is appropriate that these decisions are excluded from merits review.

Although the GHG Regulations do not provide for internal review the RCM must comply with the steps set out in section 33 before withdrawing an approval of a site plan. The RCM must give at least 30 days written notice of the intention to withdraw the approval and provide the licensee with a specified time period for providing additional information to the RCM for their consideration. The RCM is also required to consider any action taken by the licensee to remove the ground for withdrawal of approval, or to prevent the recurrence of that ground and any matter submitted to the RCM by the licensee or any other notified person. The inclusion of this process in the GHG Regulations ensures that licensees are given appropriate opportunities to provide fulsome information to support the RCM to make the appropriate decision with regards to the withdrawal of an approval of a site plan.

Expected timeframes for the policy review of the environmental management regulatory regime for offshore petroleum and greenhouse gas storage activities

The Review of the Offshore Carbon Capture and Storage Regime (ROCCSR) has been funded over the period of FY2023-24 to FY2025-26. As part of ROCCSR, permitting approvals under the

OPGGS Act and associated regulations will be analysed over the course of 2024 to evaluate if they are fit-for-purpose and reflect best practice. This will involve consideration of site plan requirements and their regulatory implementation, including the potential application of merits review principles to this approval process. Pending the outcomes of this analysis and both targeted industry consultation and wider public consultation on site plan requirements, any proposed reforms to these requirements under the GHG Regulations would likely be progressed during FY2025-26. Implementation timeframes would remain subject to gaining the necessary policy approvals and consideration of any changes by the Governor-General in Council.

Response to the Committee's question about the conferral of discretionary powers

The GHG Regulations enable the RCM to have regard to any other matters the RCM considers relevant when making a decision as to whether to approve or refuse a draft site plan, or to approve or refuse a draft variation to an approved plan.

In its *Delegated Legislation Monitor No.1* the Committee stated that the explanatory statement to the GHG Regulations does not provide adequate guidance on the types of matters that may be relevant matters for the purpose of these provisions.

In *Delegated Legislation Monitor No. 2* the Committee requests the Minister's advice as to whether further detail can be provided about the kinds of 'other matters' that may be relevant under subsections 25(3) and 42(3) of the GHG Regulations, and whether this could be specified in the instrument's explanatory statement.

Response:

As previously advised, subsections 25(3) and 42(3) of the GHG Regulations provide that the RCM may have regard to any other matters the RCM considers relevant when making a decision as to whether to approve or refuse a draft site plan, or to approve or refuse a draft variation to an approved plan. These provisions allow the RCM to take relevant matters into account on a case-by-case basis when making such decisions. This approach to decision making criteria is consistent across the legislative framework for offshore petroleum and GHG storage and is included for most applications under the OPGGS Act for both petroleum and GHG titles.

The discretion for the RCM to consider any other relevant matters afforded by subsections 25(3) and 42(3) of the GHG Regulations is necessary given the complexity of site plans. Each GHG injection and storage operation will differ in relation to relevant matters including location, the nature of the identified GHG storage formation, potential behaviour of an injected greenhouse substance, and infrastructure and equipment to be used for operations. Importantly, this discretion is appropriately constrained by the wording of the provisions which ensure that any other relevant matters that the RCM may have regard to must be directly relevant to the decision under consideration. As such, other relevant matters the RCM may have regard to in relation to site plans are anticipated to include consideration of relevant government policy or requirements as set out in guidelines. The RCM cannot take into account irrelevant considerations. The explanatory statement will be amended to reflect this information.

For example, offshore GHG storage proponents are required to obtain approvals across a range of legislative frameworks including the OPGGS Act, the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) and the *Environment Protection (Sea Dumping) Act 1981* (the Sea Dumping Act). Currently under the Administrative Arrangement Order these Acts are administered by two separate portfolios with ministerial decisions shared by two separate ministers. All three frameworks require overlapping assessments of geological considerations and the environmental impacts of projects and provide differing discretions to ministers in applying conditions and compliance obligations on titleholders.

Common to these conditions and compliance obligations on titleholders, particularly between the OPGGS Act and the Sea Dumping Act, are ongoing monitoring requirements for project proponents during the operational phase. Under the OPGGS Act, key aspects of these monitoring requirements would be outlined in monitoring plans as specified under Clause 6 of Schedule 2 to the GHG Regulations. Under the Sea Dumping Act proposals would be outlined in a Long Term Management Plan in an application form recently developed by the Department of Climate Change, Energy, the Environment and Water: www.dcceew.gov.au/sites/default/files/documents/ccs-sea-dumping-permit-application-form.pdf. Monitoring obligations may also be imposed on a titleholder as part of the conditions of an EPBC Act approval.

The recently published Offshore Carbon Capture and Storage Regulatory Approvals Guidance Note provides recommendations on a best practice approach to sequencing these approvals: www.nopta.gov.au/_documents/fact-sheets/Offshore-Carbon-Capture-and-Storage-Regulatory-Approvals-2023.pdf. While this guidance recommends that OPGGS Act approvals for GHG injection licences (and associated site plans) are obtained in advance of Sea Dumping Act and EPBC Act approvals, it remains at the discretion of project proponents to determine the sequencing of these approvals for their individual project.

The discretion provided under subsection 25(3) of the GHG Regulations for the RCM to have regard to other relevant matters when approving a site plan will allow the RCM to take into account the approval terms, including conditions of an earlier permit approval under the Sea Dumping Act or EPBC Act approval, when considering the content of a site plan, in circumstances where a proponent has already obtained one or both of these other approvals. Given that site plans consider similar environmental and geological factors to approvals under the other legislative frameworks the discretion afforded to the RCM to have regard to these materials will limit the potential for the imposition of incompatible obligations and conditions on proponents. This flexibility will also assist to mitigate the risk of inconsistent decision making across the frameworks.

Similarly, where a proponent seeks to vary an approved site plan under Division 7 of Part 4 of the GHG Regulations during the operational phase of their project, approvals across the OPGGS Act, EPBC Act and Sea Dumping Act will be operating concurrently. The discretion provided under subsection 42(3) for the RCM to have regard to other relevant matters when considering whether to approve a variation to a site plan will allow the RCM to take into account the approval terms and conditions under the Sea Dumping Act permit or EPBC Act approval for the project. The site plan variation will address similar environmental and geological factors to approvals under the other legislative frameworks. As such the flexibility afforded to the RCM to consider these materials will further assist to mitigate the risk of introducing inconsistencies in proponent obligations and approval conditions between these frameworks.