

Australian intervention of 30 March 2022 on Part I of the Draft Exploitation Regulations – Draft Regulation 2

General point:

As a general matter, Australia first wishes to raise a suggestion for the future work of this Informal Working Group.

Given the cross-cutting nature of institutional issues, Australia is of the view that it may be useful for the Working Group to consider how roles and responsibilities are allocated to the various organs of the Authority across the regulations.

We would like to propose that a map of the various roles and responsibilities of the organs of the Authority be prepared.

- For example, setting out all the obligations placed upon the Secretary-General and the Legal and Technical Commission across the regulations.
- We understand that a similar process was undertaken in the context of the BBNJ negotiations.

Such a mapping exercise will enable the Working Group to ensure a consistent approach to institutional matters across the regulations.

DR2:

Australia agrees with the points raised by the delegations of Norway and Argentina yesterday afternoon that the title and chapeau of this regulation should reflect that a number of the concepts included within draft regulation 2 are most appropriately characterised as approaches, such as the precautionary approach and the ecosystem approach, rather than as policies or principles.

In relation to paragraph (b), we note that this paragraph directly replicates the text of article 150 of UNCLOS, and thus any amendments to those subparagraphs must reflect the scope of that article.

- For example, we do not support the proposed reference to 'precaution' in subparagraph (b)(ii) or the reference to the Sustainable Development Goals as these do not reflect the text of article 150.
- As paragraph (b) merely replicates article 150, we would be supportive of proposals to refer solely to article 150, rather than extracting it in full.

We do not support the inclusion of 'non-human' life and safety in paragraph (d). In our view, protection of marine life most appropriately falls within the scope of paragraph (e) relating to the effective protection of the marine environment.

In relation to the polluter pays principle, Australia supports referring merely to the 'polluter pays principle', without reference to market-based instruments.

- This is as there is a need for further clarity as to the market based instruments, mechanisms and other relevant measures referred to in the current text of draft regulation 2(e)(iv).
- In addition, Australia prefers that the reference to the polluter pays principles is consistent in style to the references to the ecosystem approach and the precautionary approach in the preceding paragraphs.

Finally, Australia supports additions, such as that proposed by Canada, which recognise the need to ensure public trust in the regulation of resource development.

However, Australia supports the existing text in paragraph (e)(vii) in relation to public participation.

- Australia strongly supports the effective engagement by stakeholders at all stages of this regulatory regime, and is of the view that such engagement should be integrated as a binding requirement throughout the regulations.
- However, in our view, it would be inappropriate to characterise this as a 'right' to public participation, especially considering this is a regulatory regime, and thus we support the existing text.