

2008-2009-2010

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE
LEGISLATION AMENDMENT (MISCELLANEOUS MEASURES) BILL 2010**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Resources and Energy,
the Honourable Martin Ferguson AM, MP)

OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE LEGISLATION AMENDMENT (MISCELLANEOUS MEASURES) BILL 2010

GENERAL OUTLINE

The purpose of the Bill is to make minor policy and technical amendments to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the Act).

This Bill has eight elements:

- To retain fees raised under the *Offshore Petroleum and Greenhouse Gas (Registration Fees) Act 2006* (the Registration Fees Act) to provide establishment funding for the National Offshore Petroleum Regulator (NOPR).
- To augment the functions of the National Offshore Petroleum Safety Authority (NOPSAs) to include regulatory oversight of non-OHS structural integrity for facilities, wells and well related equipment.
- To clarify how titleholder provisions relating to making applications and requests and giving nominations and notices, and titleholder provisions establishing obligations will apply in relation to multiple titleholders.
- To make certain offence provisions applying to titleholders, where the offence consists of a physical element (the doing of or failure to do an act), offences of strict liability.
- To correct a technical error concerning the powers of the responsible State and Northern Territory Ministers to perform functions as members of the Joint Authority and as the Designated Authority are conferred under regulations.
- To clarify that a titleholder's occupational, health and safety (OHS) responsibilities relate only to wells and not to facilities more generally.
- To make a technical correction to link subclause 57(4) of Schedule 3 to the correct provisions of Clause 61 of Schedule 3.
- To update listed OHS laws in Section 638 and provide transitionals.

The Government has announced on 5 August 2009 that NOPR is to be established and will commence operations on 1 January 2012. To fund the establishment of NOPR the Government intends to retain money raised from industry registration fees under the *Offshore Petroleum and Greenhouse Gas Storage (Registration Fees) Act 2006*. Currently, all money raised under the Act, the *Offshore Petroleum and Greenhouse Gas Storage (Registration Fees) Act 2006* and the *Offshore Petroleum and Greenhouse Gas Storage (Annual Fees) Act 2006* is paid to the States and the Northern Territory.

NOPSAs currently has regulatory functions under the Act relating to occupational health and safety (OHS) matters arising from petroleum and greenhouse gas operations in Commonwealth waters. Those OHS functions extend to structural integrity of facilities (including pipelines) and wells that are part of facilities and pipelines, to the extent that structural integrity affects the safety of the offshore workforce at facilities. The proposed amendments to its functions and powers have

the intent of strengthening the ability of NOPSA to carry out its existing regulatory responsibilities and augmenting its responsibilities by expressly including oversight of the whole of structural integrity of facilities (including pipelines), wells and well-related equipment. For achieving completeness of this oversight role, the amendments include non-OHS structural integrity aspects to ensure complete coverage of this particular function. It should be noted, however, that regulations relating to structural integrity will provide a more detailed delineation of NOPSA's structural integrity functions between NOPSA and the Designated Authorities functions relating to resource security and resource management which may also have a structural integrity aspect.

Due to the high cost of offshore petroleum operations, petroleum titles are often owned by a consortium of titleholders (commonly referred to as 'multiple titleholders'). Existing provisions in the Act which address a titleholder do not necessarily expressly recognise these multiple titleholder ownership arrangements. Amendments in the Bill seek to clarify the position and requirements of multiple titleholders in relation to administrative actions relating to applications, requests, nominations and notices and also on the discharge of obligations imposed by the Act.

Where offence provisions in the Act apply to titleholders and the offence itself consists of only a physical element (the doing of or failure to do an act), the amendments will have the effect that these offences will become offences of strict liability. The application of strict liability to an offence means that a fault element such as intention to do the act, or not do the act, is not required to be proved. This is to ensure that the legislation can be enforced more effectively, as without these changes applying strict liability the intention to do an act or not do an act needs to be proven. Given the remote and complex nature of offshore operations and the prevalence of multiple titleholder arrangements it is extremely difficult to prove intent. To date this has left these particular offence provisions largely unenforceable. The intention of the application of strict liability is to improve compliance in the regulatory regime. Due to the application of strict liability to this group of offences, some existing penalties have been reduced from 5 years imprisonment to 100 penalty units. These changes are in line with Commonwealth strict liability guidelines.

State and Northern Territory legislative Acts authorise State and Northern Territory Ministers to perform functions and exercise powers under the Commonwealth Act. Technical amendments are being made to the Act to ensure that powers and functions can be conferred on the Joint Authority or the Designated Authority by Commonwealth regulations, as well as the Act.

It is intended to redefine a titleholder's occupational health and safety responsibilities under Schedule 3 to the Act to be limited to wells. In October 2009, the Act was amended to add a titleholder duty of care in relation to facilities. The original intention of that amendment was to introduce titleholders' duties in relation to wells only. These amendments bring into effect that original intention and removing any wider application of the clause to facilities in general.

The amendment to subclause 57(4) fixes a minor technical error.

The final amendment to update listed OHS laws is brought about by recent revision and consolidation of safety related regulations under the Act. There is an accompanying transitional provision.

FINANCIAL IMPACT STATEMENT

The Bill includes minor policy and administrative changes which will have a slight financial impact on the Australian Government Budget. The retention of the registration fees is estimated to result in a decrease in expenses of \$15.3 million in 2010-11 and \$7.7 million in 2011-12.

REGULATORY IMPACT STATEMENT

This bill does not impose any new regulatory burden on the petroleum industry.

NOTES ON INDIVIDUAL CLAUSES

Clause 1 - Short title

Clause 1 is a formal provision specifying the short title of the Bill.

Clause 2 - Commencement

Sections 1 to 3 in the Bill will commence on the day the Act receives Royal Assent.

Schedule 1, Part 1 will commence on 1 July 2010. Schedule 1, Parts 2 to 7 will commence on the day after the Act receives Royal Assent. Schedule 1, Part 8 will commence retrospectively on 1 January 2010 reflecting the date the revised regulations commenced.

Clause 3 - Schedules

This clause gives effect to the provisions in the Schedules to this Act.

Schedule 1 - Amendments

Item 1 – Subparagraph 76(1)(a)(ii)

This item limits payments to the States and the Northern Territory, of amounts of money collected by the Commonwealth, to money collected under the Act or under the *Offshore Petroleum and Greenhouse Gas Storage (Annual Fees) Act 2006* (the Annual Fees Act).

Item 2 - Subparagraph 76(1)(a)(iii)

This item removes payments to the States and the Northern Territory of amounts of money collected under the *Offshore Petroleum and Greenhouse Gas Storage (Registration Fees) Act 2006* (the Registration Fees Act).

The Commonwealth intends to retain the money collected under the Registration Fees Act for the period 1 July 2010 to 31 December 2011 to fund the establishment of the National Offshore Petroleum Regulator (NOPR).

Item 3 – Application of amendments

As discussed under Item 2 above the altered arrangements under the Act regarding money paid by the Commonwealth to the States and the Northern Territory are proposed to apply from 1 July 2010.

Item 4 – Section 7

This item defines non occupational health and safety (non-OHS) structural integrity.

This item and items 5 to 11 below augment the existing functions of the National Petroleum Offshore Safety Authority (NOPSA) to include functions and powers in relation to the non-OHS structural integrity of facilities (including pipelines), wells and well-related equipment.

This is to ensure that NOPSAs has a clear and well defined regulatory role relating to the structural integrity of facilities, including pipelines, along with wells and well-related equipment even where regulation of the structural integrity in question may not necessarily be confined to OHS aspects.

For example, in accepting a safety case for a pipeline under the *Offshore Petroleum (Safety) Regulations 2009* NOPSAs will consider the all aspects of the structural integrity of the pipeline. The pipeline will be on the seabed, and for much of its life people will not be in contact with it. Until now, NOPSAs's functions in relation to the structural integrity of the pipeline have focused on the safety of the pipeline for persons who, from time to time, do maintenance or other work on the pipeline. The intent of the current amendments is that a probably meaningless distinction will be removed in relation to unmanned facilities, and NOPSAs can focus on structural integrity of facilities as a whole. NOPSAs will also acquire responsibility for the structural integrity of wells that are not part of a facility.

Regulations relating to structural integrity will confer specific structural integrity functions on NOPSAs. The regulations will also establish the relationship between NOPSAs's structural integrity functions and the Designated Authorities' functions relating to resource security and resource management, which may also have a structural integrity aspect.

Item 5 – Section 7

This item defines non-OHS structural integrity law. See item 4.

Item 6 – Section 7

This item defines structural integrity. See item 4.

Item 7 – Section 7

This item defines structural integrity law. See item 4.

Item 8 – Section 7

This item defines well-related equipment. See item 4.

Item 9 – Section 642

This item amends the outline of Part 6.9 of the Act to add that the functions of NOPSAs include non-OHS structural integrity of facilities, wells and well-related equipment. See item 4.

Item 10 – Paragraphs 646(a) and (b)

This item adds the words to “occupational health and safety matters in connection with” to these paragraphs to make clear that NOPSAs functions under these paragraphs are limited to OHS. There was no need to specify this previously, as NOPSAs did not have any non-OHS functions or powers conferred on it.

Item 11 – After paragraph 646(g)

This item augments NOPSAs's functions to include functions and powers related to the non-OHS structural integrity of facilities, wells or well-related equipment.

The functions will include:

- functions conferred by or under the Act and by or under the equivalent State and Northern Territory legislation in relation to the non-OHS structural integrity of facilities, wells and well-related equipment. (The Commonwealth and State or Territory regulations will be made ‘under’ these new paragraphs (ga) and (gb).
- to develop and implement effective monitoring and enforcement strategies to ensure compliance by persons with their obligations under a non-OHS structural integrity law;
- to investigate accidents, occurrences and circumstances that involve, or may involve, deficiencies in the non-OHS structural integrity of facilities, wells and well-related equipment in Commonwealth waters; and reporting of such to the responsible Commonwealth, State and Northern Territory Ministers; and
- to advise persons, either on its own initiative or on request, on matters relating to the non-OHS structural integrity of facilities, wells and well-related equipment in Commonwealth waters.

It is intended that these new functions will ‘dovetail’ with NOPSA’s existing OHS functions, as they relate to structural integrity, so that there will be no need to inquire (as far as NOPSA’s functions are concerned) whether a particular aspect of structural integrity is an OHS or non-OHS matter.

See item 4.

Item 12 – After Part 9.6

This item adds after Part 9.6 a new Part 9.6A with new sections 775A, 775B, 775C, 775D and 775E.

The intention of this item is to clarify the requirements on titleholders where a title is owned by two or more title holders (‘multiple titleholders’).

Division 1 requires that eligible voluntary actions by multiple titleholders are to be conducted by the titleholder who has been nominated to act on behalf of all the titleholders. Division 2 provides that where the Act imposes an obligation on a titleholder and there are in fact multiple titleholders, the obligation is imposed on each of them, however the obligation may be discharged by one of them.

Section 775A introduces the concept of eligible voluntary action to apply to making an application, giving a nomination, making a request or giving a notice to the relevant authority under the Act, where the title is owned by multiple titleholders.

Section 775B then sets out where an eligible voluntary action is to be taken by the multiple holders of a petroleum title, the titleholders may nominate one of them to take those actions on behalf of the entire group of registered titleholders. Subsection 5 stipulates that the registered titleholders are not entitled to take a voluntary action except by nominating one of the titleholders to take that action on behalf of all the titleholders. This in effect makes the nomination compulsory in making an application, giving a nomination, making a request or giving a notice to the relevant authority under the Act. The taking of the voluntary action by the nominated

titleholder has effect as if it were made by the registered titleholders jointly. This section also sets out how a nomination can be revoked and that it will cease if the nominated titleholder ceases to be one of the registered holders of the title.

Section 775C is identical to section 775B except that it applies to eligible voluntary actions by multiple holders of a greenhouse gas title.

Section 775D sets out that where the Act imposes an obligation on the registered holder of a petroleum title and there are multiple titleholders, the obligation applies to each and every registered holder but may be discharged by any one of the registered titleholders.

Section 775E is identical to section 775D except that it applies to the discharge of obligations by multiple holders of greenhouse gas titles.

To future-proof 775D and 775E, they both also provide that regulations may exempt a specified obligation from the scope of this new rule.

Item 13 – Application of amendments

This item sets out that the amendments in item 25 apply to eligible voluntary actions taken after the commencement of item 26 or to obligations that arise after the commencement of item 26.

Items 14 to 17 – Subsections 227(5) and 228(1)

These items remove the terms of imprisonment set out for offences applying to titleholders under sections 227 and 228 and instead set the penalties at 100 penalty units. These items propose that an offence under subsection 227(5) or subsection 228(1) becomes an offence of strict liability.

Setting the penalty at 100 penalty units is considered appropriate. It is noted this is higher than the preference stated in A Guide To Framing Commonwealth Offences, Civil Penalties and Enforcement Powers, December 2007 for a maximum 60 penalty units for offences of strict liability. However, offshore resources activities, as a matter of course, require a very high level of expenditure and therefore by comparison a smaller penalty would be an ineffective deterrent. It is noted the penalties in subsections 280(3), 284(5), 451(8), 452(5), 460(3), 569(6), 570(5), 586(5), 587(6), 592(5), 593(8), 595(6), 697(3) and 723(3) are all set at 100 penalty units (see items 31-63 below), so the setting of 100 penalty units against sections 227 and 228 in consistent with the rest of the Act.

Item 14 – Subsection 227(5) (penalty). This item omits the words “Imprisonment for 5years” and replaces them with “100 penalty units”.

Item 15 – After subsection 227(5). This item inserts new subsection (5A) that makes an offence, an offence of strict liability.

Item 16 – Subsection 228(1) (penalty). This item omits the words “Imprisonment for 5years” and replaces them with “100 penalty units”.

Item 17 – At the end of section 228. This item adds new subsection (4) that makes the offence, an offence of strict liability.

Items 18 to 50 – Subsections 249(2), 280(3), 284(5), 420(2), 451(8), 452(5), 460(3), 508(4), 514, 557(4), 569(6), 570(5), 575(4), 581(4), 586(5), 587(6), 592(5), 593(8), 595(6), 697(3), and 723(3).

These items (in addition to items 14-17 above) make provisions applying to titleholders where the offence consists only of a physical element, offences of strict liability. This eliminates the necessity to establish intention by titleholders for the doing or not doing of an act. It is common for petroleum titles to be held by multiple titleholders, as a result making it harder if not impossible to prove which one of the titleholders intended to do or not do an act as set out in the offence provisions.

It is not proposed to amend offence provisions applying to titleholders that contain fault elements or provisions which already are stated to be offences of strict liability.

Section 5.6 of the *Criminal Code Act 1995* provides that where a fault element is not specified for a physical element that consists only of conduct (doing or not doing an act) then intention is the fault element. Section 6.1 of the *Criminal Code Act 1995* provides that if an offence is an offence of strict liability then there are no fault elements for any of the physical elements of the offence.

The Senate Standing Committee For the Scrutiny of Bills, Sixth Report of 2002 and A Guide To Framing Commonwealth Offences, Civil Penalties and Enforcement Powers, December 2007 have been duly considered in the revision of these provisions. The Attorney-General's Department was also consulted.

Offshore petroleum and greenhouse gas operations are highly complex. Given the remoteness of these operations, it is not physically possible for regulatory staff to directly and comprehensively monitor, with any frequency, the titleholders' activities. Thus regulatory staff are dependent on reporting by titleholders to confirm that they have complied with directions and requirements. This reporting requirement renders titleholders accountable for their compliance, and in turn strict liability for offences enforces that reporting – in that should compliance actions and auditing be undertaken, offences are easier to prosecute.

Subsections 249(2), 284(5), 420(2), 451(8), 452(5), 508(4), 557(4), 697(3) and 723(3) and section 514 relate to reporting, notification, obtaining information and keeping records. Sections 227(5), 228(1), 280(3), 460(3), 569(6), 570(5), 575(4), 581(4), 586(5), 587(6), 592(5), 592(5), 593(8) and 595(6) relate to requirements on titleholders to comply with directions and requests by the regulator and to meet expected work practices.

Given the regulators' dependence on titleholders for provision of accurate operational and monitoring data and information, any offence provision which requires proof of any level of fault on the part of titleholders is likely to be difficult or even impossible to enforce. If intent is retained as the fault element for these offence provisions, which have a physical element, having to prove that a person to whom the provisions applied intended to do an act or omit to do an act significantly reduces the likelihood of a

conviction for these offences. This frustrates compliance efforts, and in turn, the aims of the Act.

The application of strict liability is therefore considered important to ensuring the effectiveness of the regulatory regime. It provides an incentive to comply in a high-investment, high-return commercial activity where the key driver for titleholders is to maximise return on investment.

Item 18 – Subsection 249(2) (penalty). This item omits the words “for contravention of this subsection”.

Item 19 – At the end of item 249. This item adds subsection (3) that makes an offence, an offence of strict liability.

Item 20 – Subsection 280(3) (penalty). This item omits the words “for contravention of this subsection”.

Item 21 – At the end of section 280. This item adds subsection (4) that makes an offence, an offence of strict liability.

Item 22 – Subsection 284(5) (penalty). This item omits the words “for contravention of this subsection”.

Item 23 – At the end of section 284. This item adds subsection (6) that makes an offence, an offence of strict liability.

Item 24 – Subsection 420(2) (penalty). This item omits the words “for contravention of this subsection”.

Item 25 – At the end of section 420. This item adds subsection (3) that makes an offence, an offence of strict liability.

Item 26 – Subsection 451(8) (penalty). This item omits the words “for contravention of this subsection”.

Item 27 – At the end of section 451. This item adds subsection (9) that makes an offence, an offence of strict liability.

Item 28 – Subsection 452(5) (penalty). This item omits the words “for contravention of this subsection”.

Item 29 – At the end of section 452. This item adds subsection (6) that makes an offence, an offence of strict liability.

Item 30 – Subsection 460(3) (penalty). This item omits the words “for contravention of this subsection”.

Item 31 – At the end of section 460. This item adds subsection (4) that makes an offence, an offence of strict liability.

Item 32 – After subsection 508(4). This item adds subsection (4A) that makes an offence, an offence of strict liability.

Item 33 – Section 514. This item makes the existing text subsection 514(1).

Item 34 – At the end of section 514. This item adds subsection (2) that makes an offence, an offence of strict liability.

Item 35 – After subsection 557(4). This item adds subsection (4A) that makes an offence, an offence of strict liability.

Item 36 – After subsection 569(6). This item adds subsection (6A) that makes an offence, an offence of strict liability.

Item 37 – After subsection 570(5). This item adds subsection (5A) that makes an offence, an offence of strict liability.

Item 38 – Subsection 575(4) (penalty). This item omits the words “for contravention of this subsection”.

Item 39 – At the end of section 575. This item adds subsection (5) that makes an offence, an offence of strict liability.

Item 40 – Subsection 581(4) (penalty). This item omits the words “for contravention of this subsection”.

Item 41 – At the end of section 581. This item adds subsection (5) that makes an offence, an offence of strict liability.

Item 42 – After subsection 586(5). This item adds subsection (5A) that makes an offence, an offence of strict liability.

Item 43 - Subsection 587(6) (penalty). This item omits the words “for contravention of this subsection”.

Item 44 – At the end of section 587. This item adds subsection (7) that makes an offence, an offence of strict liability.

Item 45 – After section 592(5). This item adds subsection (5A) that makes an offence, an offence of strict liability.

Item 46 – After subsection 593(8). This item adds subsection (8A) that makes an offence, an offence of strict liability.

Item 47 – Subsection 595(6) penalty. This item omits the words “for contravention of this subsection”.

Item 48 – At the end of section 595. This item adds subsection (7) that makes an offence, an offence of strict liability.

Item 49 – After subsection 697(3). This item adds subsection (3A) that makes an offence, an offence of strict liability.

Item 50 – After subsection 723(3). This item adds subsection (3A) that makes an offence, an offence of strict liability.

Items 51 to 57 – Subsections 57(1), 57(2), 57(3), 71(1), 71(2), 71(3) and 71(4)
These items substitute the words “this Act confers” with “this Act or the regulations confer”.

The State and Northern Territory Petroleum Submerged Lands Acts which mirror this Act authorise State and Northern Territory Ministers to perform functions and exercise powers under this Act but they do not expressly refer to functions and powers conferred under Commonwealth regulations. These amendments are to remove any doubt that a Joint Authority or Designated Authority can also perform functions and powers under Commonwealth regulations.

Item 58 – 61 – Clause 3 of Schedule 3

These items add new and alter existing definitions applicable in Schedule 3 of the Act.

Item 58. This item defines derived.

Item 59. This item defines petroleum title.

Item 60. This item defines greenhouse gas title.

Item 61. This item adds to the existing definition of regulated business premises.

Item 62 – At the end of Part 1 of Schedule 3

This item adds new clauses 8A and 8B to explain the concept of a series of petroleum (8A) and greenhouse gas (8B) titles in that the responsibilities associated with a title are derived from the title(s) preceding when they are contained in a continuous or unbroken series. This concept is then applied in new clauses 13A and 13B of Schedule 3 of the Act (outlined below in Item 63). The intention is that a titleholder’s duty of care in relation to wells will extend not only to wells in respect of which activities have been carried out, or are being carried out, during the term of the current title but also to wells in respect of which activities have been carried out under the authority of any previous title in the series of titles, beginning with the original exploration permit or assessment permit through to the current title, regardless of the identity of the titleholder.

Item 63 – Clause 13A of Schedule 3

This item repeals the existing clause 13A and replaces it with new clauses 13A and 13B.

The existing Clause 13A was added to the Act by the *Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment Act 2009*, which received Royal Assent on 8 October 2009. It sets out that a titleholder has responsibility in relation to the design of a facility to ensure that it is safe and without risk to health. It was

intended that this clause would allow a titleholder to be prosecuted if there was a failure in well design that breached the duty of care.

Despite this intention, this existing clause may be read that a titleholder has responsibility for the design of certain facilities, such as a floating production storage and offtake (offloading) vessel, over which a titleholder would not reasonably be expected to have control. Further, the existing clause does not cover all aspects of well construction and operation over which a titleholder could reasonably be expected to have control and therefore responsibility.

The new clause 13A sets out that the duties of titleholder relates to ensuring a well that has been used or constructed, is being used, maintained or altered, or is being prepared for use in connection with operations authorised by the title is so designed, constructed, commissioned, altered, equipped, maintained and operated that risks to health and safety of persons at or near a facility are kept as low as reasonably practicable. The 'persons at or near a facility' include the persons who are engaged in a well-related activity, such as drilling the well, as well as any other persons who are at or near a facility. The term 'persons at or near a facility' is also expressly extended to divers, who may be exposed to risk from a well while carrying out operations at a well that are not facility-related. The risks may arise from the well, the unplanned escape of fluids from the well, from anything in the well or anything in the geological formation to which the well is connected or through which the well passes. This duty extends to the suspension, abandonment and closing-off of wells.

The offence provision in the new clause 13A is the same as in the existing clause.

Regarding the use of negligence as a fault element in proposed sections 13A and 13B: It is considered that, in an occupational health and safety regime, it is necessary and appropriate that an objective standard of care be applied, and that the commission of the offence should not be based on the person's own subjective mental state.

Regarding the use of absolute liability in paragraph 13A(3)(a) and 13B(3)(a): Clauses 13A and 13B establish occupational health and safety duties of care in respect of a hazardous aspect of the offshore petroleum industry -- ie the risk of blow-outs and other escape of fluids from wells. It is considered that the application of absolute liability to the element in paragraph (3)(a) in each case, ie the existence of the duty of care, is therefore appropriate. The titleholder is usually a consortium of companies. A requirement to prove a particular state of mind in relation to a non-conduct element of the offence will therefore make a breach of the duty of care difficult or impossible to prove. The application of absolute liability to this element is therefore essential to the integrity of the occupational health and safety regime.

The penalty of 200 penalty units is appropriate because of the very high level of costs of offshore operations and also the very high level of profits. The new clause also provides that where there is a series of titles or renewals of a petroleum or greenhouse gas title, well operations authorised by any of the earlier titles are taken to have been derived from and therefore authorised by the last and current title in the series.

The new clause 13B is identical but applies to greenhouse gas titles.

Items 64 – 77 – clauses 50, 51, 52, 73, 74 and 80 of Schedule 3

These items contain consequential changes to powers of entry and search and collection of evidentiary material by OHS inspectors in order to ensure compliance of titleholders relating to contraventions or possible contraventions of the new clauses 13A or 13B.

Item 64 – Paragraphs 50(1)(a) and (b) of Schedule 3. This item omits the words “the facility to which the inspection relates” and replaces them with “a facility to which the inspection relates”.

Item 65 – Paragraph 51(1)(a) of Schedule 3. This item repeals the current paragraph, and substitutes with a new paragraph allowing an OHS inspector to enter any regulated business premises (other than a facility) if the OHS inspector has reasonable grounds to believe that there are likely to be at those premises documents that relate to a facility that is, or facility operations that are, the subject of the inspection; or if the investigation concerns a contravention or possible contravention of clause 13A or 13B. This amendment is necessary to enable effective enforcement of clause 13A or 13B. Without NOPSA having the ability to investigate, there is no proper method of ensuring compliance. In an important matter such as OHS potentially effecting the healthy and safety of people, relying on reporting by titleholders that they have complied with the clauses would not be sufficient. Offshore petroleum operations is a high-hazard activity and NOPSA as safety regulator requires continuous and unimpeded access to operational records held by titleholders in their onshore business premises. Titleholders may move critical documents from offshore facilities in order to impede NOPSA's access to them. This will give NOPSA the same level of access to the onshore business premises of titleholders as it has to records of facility operators offshore.

Item 66 – Paragraph 52(1)(a) of Schedule 3. This item repeals the current paragraph, and substitutes with a new paragraph allowing an OHS inspector to enter any premises (other than regulated business premises) if the OHS inspector has reasonable grounds to believe that there are likely to be at those premises documents that relate to a facility that is, or facility operations that are, the subject of the inspection; or if the investigation concerns a contravention or possible contravention of clause 13A or 13B. This amendment is necessary to enable effective enforcement of clause 13A or 13B. Without NOPSA having the ability to investigate, there is no proper method of ensuring compliance. In an important matter such as OHS potentially effecting the healthy and safety of people, relying on reporting by titleholders that they have complied with the clauses would not be sufficient.

Item 67 – After paragraph 73(1)(c) of Schedule 3. This items inserts a new subsection (ca) containing the words “a titleholder”.

Item 68 – At the end of paragraph 73(1)(d) of Schedule 3. This item adds the words “or”.

Item 69 – After paragraph 73(1)(d) of Schedule 3. This item inserts subsection (e) containing the words “any person representing a person referred to in paragraph (ca)”.

Item 70 – At the end of clause 73 of Schedule 3. This item adds a limitation relating to inspections relating to titleholders by inserting subsection (5) containing the words “Paragraphs (1)(ca) and (e) do not apply in relation to an inspection unless the inspection concerns a contravention or possible contravention of clause 13A or 13B.” It also defines titleholder for the purposes of the clause.

Item 71 – After subparagraph 74(1)(b)(iii) of Schedule 3. This item inserts subsection (iiia) to include a titleholder.

Item 72 - At the end of paragraph 74(1)(b) of Schedule 3. This item inserts subsection (v) that contains the words “any person representing a person referred to in subparagraph (iiia)”.

Item 73 – After subparagraph 74(3)(b)(iii) of Schedule 3. This item inserts subsection (iiia) to include a titleholder.

Item 74 – At the end of paragraph 74(3)(b) of Schedule 3. This item inserts subsection (v) that contains the words “any person representing a person referred to in subparagraph (iiia)”.

Item 75 – At the end of clause 74 of Schedule 3. This item adds a limitation relating to inspections relating to titleholders by inserting (10) which specifies that subparagraphs (1)(b)(iiia), (1)(b)(v), (3)(b)(iiia), and (3)(b)(v) do not apply in relation to an inspection unless the inspection concerns a contravention or possible contravention of clause 13A or 13B. It also defines titleholder for the purposes of the clause.

Item 76 – Paragraph 80(3)(a) of Schedule 3. This item repeals the current paragraph, and replaces it with subsections requiring that the report on an inspection is given to the relevant person, where it relates to a facility, to the operator of the facility; and where it relates to a contravention of new clauses 13A or 13B, then to the titleholder.

Item 77 – Paragraph 80(3)(b) of Schedule 3. This item omits “or”, and substitutes it with “and”.

Item 78 – Subclause 57(4) of Schedule 3

This item makes a technical correction to subclause 57(4) in Schedule 3 of the Act, to refer to subclause 67(2) or (4) rather than subclause 67(1).

Item 79 – Paragraphs 638(1)(d), (e), (f) and (g)

This item repeals paragraphs (d), (e), (f) and (g) and substitutes a new paragraph (d). This reflects changes to regulations in which the *Offshore Petroleum (Safety) Regulations 2009* replaced the *Offshore Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996*, the *Petroleum (Submerged Lands) (Diving Safety) Regulations 2002* and the *Petroleum (Submerged Lands) (Occupational Health and Safety) Regulations 1993*.

Further to this, the OHS aspects of pipelines have been removed from the *Petroleum (Submerged Lands) Pipelines Regulations 2001* and incorporated in the *Offshore Petroleum (Safety) Regulations 2009*.

Amended regulations commenced on 1 January 2010 and it is proposed that this amendment commences retrospectively on 1 January 2010.

Item 80 - Subsection 638(2)

This item removes references in subsection 638(2) to paragraphs 1(e), (f) and (g) as they are deleted by item 79 above.

Item 81 – Transitional

This item provides that contravention of the listed OHS laws and of provisions of listed OHS laws and any offences against listed OHS laws includes the laws currently listed in Section 638 prior to the commencement of item 79.