2002-2003

The Parliament of the Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Petroleum (Submerged Lands) Amendment Bill 2003

No. , 2003

(Industry, Tourism and Resources)

A Bill for an Act to amend the Petroleum (Submerged Lands) Act 1967, and for other purposes
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A Bill for an Act to amend the Petroleum (Submerged Lands) Act 1967, and for other purposes

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the Petroleum (Submerged Lands) Amendment Act 2003.

2 Commencement

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

<table>
<thead>
<tr>
<th>Provision(s)</th>
<th>Commencement Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day on which this Act receives the Royal Assent.</td>
</tr>
<tr>
<td>2. Schedule 1, Part 1</td>
<td>The day on which this Act receives the Royal Assent.</td>
</tr>
<tr>
<td>4. Schedule 2</td>
<td>The first day of the month following the month in which this Act receives the Royal Assent.</td>
</tr>
<tr>
<td>5. Schedule 3</td>
<td>A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.</td>
</tr>
</tbody>
</table>

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Amendments relating to occupational health and safety

Part 1—Amendments relating to the National Offshore Petroleum Safety Authority

Petroleum (Submerged Lands) Act 1967

1 Paragraphs 140AA(1)(d) and (e)

Repeal the paragraphs, substitute:

(d) the Safety Authority;
(e) the Chief Executive Officer of the Safety Authority;
(f) an inspector appointed under section 125;
(g) an OHS inspector appointed under Part IIIC;
(h) a person acting under the direction or authority of the Joint Authority or the Designated Authority;
(i) a person acting under the direction or authority of the Safety Authority or the Chief Executive Officer of the Safety Authority.

2 Subsection 140AA(3)

Omit “approved by or on behalf of the Joint Authority or the Designated Authority”, substitute “accepted, agreed or otherwise approved by or on behalf of the Joint Authority, the Designated Authority or the Safety Authority”.

3 At the end of section 140AA

Add:

(7) In this section:

Safety Authority means the National Offshore Petroleum Safety Authority established by section 150XD.

4 After Part III B

Insert:
Part IIC—National Offshore Petroleum Safety Authority

Division 1—Introduction

150XA Simplified outline

The following is a simplified outline of this Part:

- This Part establishes the National Offshore Petroleum Safety Authority.
- The Safety Authority has functions in relation to the occupational health and safety of persons engaged in offshore petroleum operations.
- There is to be a Chief Executive Officer (CEO) of the Safety Authority.
- The National Offshore Petroleum Safety Authority Board is established.
- The main function of the Board is to give advice, and make recommendations, to the CEO about the operational policies and strategies to be followed by the Safety Authority in the performance of its functions.
- The CEO may appoint OHS inspectors.

150XB Definitions

In this Part, unless the contrary intention appears:

Board means the National Offshore Petroleum Safety Authority Board established by section 150XL.

Board member means a member of the Board, and includes the Chair of the Board.

CEO means the Chief Executive Officer of the Safety Authority.
Amendments relating to occupational health and safety  
Schedule 1
Amendments relating to the National Offshore Petroleum Safety Authority  
Part 1

Commonwealth waters means the waters of the sea that comprise the adjacent areas of each State and of each Territory.

designated coastal waters, in relation to a State or the Northern Territory, has the meaning given by section 150XC.

facility means:
(a) a facility (within the meaning of Schedule 7 to this Act as in force on or after 1 January 2005) located in Commonwealth waters; or
(b) a facility (within the meaning of the provisions of a State or Territory PSLA that substantially correspond to Schedule 7 of this Act as in force on or after 1 January 2005) located in the designated coastal waters of the State or of the Northern Territory, as the case may be.

In applying this definition before 1 January 2005, assume that Schedule 7, and the provisions of a State or Territory PSLA that substantially correspond to Schedule 7 of this Act as in force on or after 1 January 2005, had commenced at the same time as the commencement of this section.

offshore petroleum operations means any operations (including diving operations) that:
(a) relate to:
   (i) the exploration for petroleum; or
   (ii) the recovery, processing, storage, offloading or piped conveyance of petroleum; and
(b) if the operations are diving operations—take place in Safety Authority waters; and
(c) if the operations are not diving operations—take place:
   (i) in Safety Authority waters; and
   (ii) at a facility.

OHS inspector means a person appointed as an OHS inspector under section 150YL.

operation includes an activity to which the core regulatory provisions of a State or Territory PSLA apply. For this purpose, the core regulatory provisions are the provisions that substantially correspond to Part III of this Act.
Schedule 1 Amendments relating to occupational health and safety
Part 1 Amendments relating to the National Offshore Petroleum Safety Authority

responsible Northern Territory Minister means the Minister of the Northern Territory who is responsible for the Territory PSLA.

responsible State Minister, in relation to a State, means the Minister of that State who is responsible for the State PSLA.

Safety Authority means the National Offshore Petroleum Safety Authority established by section 150XD.

Safety Authority waters means:
(a) Commonwealth waters; and
(b) the designated coastal waters of each State and of the Northern Territory.


section 140H OHS laws means the laws designated as section 140H OHS laws under subsection 140H(2).

staff, in relation to the Safety Authority, includes, for the purposes of sections 150XI and 150YP, a person who is appointed as an OHS inspector under this Part, whether or not that person is engaged under the Public Service Act 1999 for the purposes of subsection 150YH(1).

State PSLA means:
(a) in relation to New South Wales—the Petroleum (Submerged Lands) Act 1982 of that State; or
(b) in relation to Victoria—the Petroleum (Submerged Lands) Act 1982 of that State; or
(c) in relation to Queensland—the Petroleum (Submerged Lands) Act 1982 of that State; or
(d) in relation to Western Australia—the Petroleum (Submerged Lands) Act 1982 of that State; or
(e) in relation to South Australia—the Petroleum (Submerged Lands) Act 1982 of that State; or
(f) in relation to Tasmania—the Petroleum (Submerged Lands) Act 1982 of that State.

Territory PSLA means the Petroleum (Submerged Lands) Act of the Northern Territory.
150XC  Designated coastal waters

(1) For the purposes of this Part, designated coastal waters, in relation to a State or the Northern Territory, means:

(a) so much of the area described in Schedule 2 under the heading that refers to that State or Territory as comprises the first 3 nautical miles seaward of the baseline of Australia’s territorial sea adjacent to that State or Territory (including the first 3 nautical miles of the territorial sea adjacent to any island forming part of that State or Territory); and

(b) subject to subsection (2), any area that:

(i) is within the area described in Schedule 2 under the heading that refers to that State or Territory; and

(ii) is seaward of the coastline of that State or Territory at mean low water and landward of the inner limit of Australia’s territorial sea; and

(iii) was, immediately before the commencement of the relevant State or Territory PSLA, the subject of an exploration permit for petroleum subsisting under this Act.

(2) For the purposes of this Part, if (whether before or after the commencement of this subsection) an area that is within the designated coastal waters of a State or Territory because it is described in subparagraphs (1)(b)(i), (ii) and (iii) became or becomes an area that is:

(a) not the subject of a permit under the relevant State or Territory PSLA; and

(b) not the subject of a lease under the relevant State or Territory PSLA; and

(c) not the subject of a licence under the relevant State or Territory PSLA; and

(d) not the subject of an application for a lease or licence under the relevant State or Territory PSLA;

the area is taken to have ceased to be part of the designated coastal waters of that State or Territory.
Division 2—Establishment, functions and powers of the Safety Authority

150XD Establishment of the National Offshore Petroleum Safety Authority

The National Offshore Petroleum Safety Authority is established by this section.

150XE Safety Authority’s functions

The Safety Authority has the following functions:
(a) the functions conferred on it by or under this Act in relation to offshore petroleum operations in Commonwealth waters;
(b) the functions conferred on it by or under a State PSLA or the Territory PSLA in relation to offshore petroleum operations in the designated coastal waters of that State or Territory;
(c) to promote the occupational health and safety of persons engaged in offshore petroleum operations;
(d) to develop and implement effective monitoring and enforcement strategies to secure compliance by persons with their occupational health and safety obligations under this Act and the regulations;
(e) to:
   (i) investigate accidents, occurrences and circumstances that affect, or have the potential to affect, the occupational health and safety of persons engaged in offshore petroleum operations in Commonwealth waters; and
   (ii) to report, as appropriate, to the Commonwealth Minister, and to each responsible State or Northern Territory Minister, on those investigations;
(f) to advise persons, either on its own initiative or on request, on occupational health and safety matters relating to offshore petroleum operations;
(g) to make reports, including recommendations, to:
   (i) the Commonwealth Minister; and
   (ii) each responsible State or Northern Territory Minister; on issues relating to the occupational health and safety of persons engaged in offshore petroleum operations;
(h) to cooperate with:
   (i) other Commonwealth agencies having functions relating
       to offshore petroleum operations; and
   (ii) State or Northern Territory agencies having functions
       relating to offshore petroleum operations; and
   (iii) the Designated Authorities of the States and the
       Northern Territory.

150XF Policy principles

(1) The Commonwealth Minister may give written policy principles to
the Safety Authority about the performance of its functions.

Note: For agreement and consultation requirements, see subsections (2) and
(3).

(2) The Commonwealth Minister must not give a policy principle that
relates wholly or principally to the Safety Authority’s operations in
the designated coastal waters of one or more of the States and the
Northern Territory unless the Commonwealth Minister has
obtained the agreement of each responsible State and Northern
Territory Minister concerned.

(3) Before giving a policy principle that is not covered by
subsection (2), the Commonwealth Minister must consult each
responsible State and Northern Territory Minister.

(4) The Commonwealth Minister must cause a copy of the policy
principles to be tabled in each House of the Parliament within 15
sitting days of that House after the day on which they were given
to the Safety Authority.

(5) The Safety Authority must comply with the policy principles (if
any) when performing its functions.

150XG Safety Authority’s ordinary powers

(1) The Safety Authority has power to do all things necessary or
convenient to be done for or in connection with the performance of
its functions.

(2) The Safety Authority’s powers include, but are not limited to, the
following powers:
Schedule 1 Amendments relating to occupational health and safety
Part 1 Amendments relating to the National Offshore Petroleum Safety Authority

(a) the power to acquire, hold and dispose of real and personal property;
(b) the power to enter into contracts;
(c) the power to lease the whole or any part of any land or building for the purposes of the Safety Authority;
(d) the power to occupy, use and control any land or building owned or held under lease by the Commonwealth and made available for the purposes of the Safety Authority;
(e) the power to conduct research and development projects and to cooperate with others in such projects;
(f) the power to apply for and hold patents and exploit patents;
(g) the power to do anything incidental to any of its functions.

(3) Any real or personal property held by the Safety Authority is taken to be the property of the Commonwealth.

(4) Any money received by the Safety Authority is taken to be received by the Safety Authority on behalf of the Commonwealth.

150XH References to functions and powers of the Safety Authority

For the avoidance of doubt, a reference in this Part (other than section 150XI) to the functions or powers of the Safety Authority includes a reference to the functions or powers conferred on the Safety Authority by or under a State or Territory PSLA.

150XI Safety Authority may be given additional powers in certain circumstances

States or Northern Territory may empower Safety Authority to exercise powers in other places and circumstances

(1) If a law of a State or of the Northern Territory provides for the Safety Authority, or members of the staff of the Safety Authority, to exercise powers, on or after 1 January 2005, in relation to the occupational health and safety of persons who do work in connection with exploration for petroleum or the recovery, processing, storage, offloading or piped conveyance of petroleum:
(a) in waters of the sea:
(i) that are landward of the baseline of Australia’s territorial sea adjacent to the State or Territory; and
(ii) that are not designated coastal waters of the State or Territory; or

(b) within the limits of the State or Territory, including internal waters of that State or Territory;
the Safety Authority and those members of staff may exercise those powers in those waters or in that State or Territory but are not obliged to do so.

(2) A law of a State or of the Northern Territory that confers powers on the Safety Authority or on the staff of the Safety Authority in accordance with subsection (1) may only provide for the exercise of those powers in respect of a vessel or structure (however described):

(a) that is involved in one or more of the activities referred to in subsection (1); and

(b) that is owned or controlled, or that is being constructed, operated or decommissioned, by a corporation to which paragraph 51(xx) of the Constitution applies.

Must be agreement as to fees payable to support Safety Authority’s provision of services

(3) Neither the Safety Authority nor members of the staff of the Safety Authority can exercise powers in a place referred to in subsection (1) unless there is agreement between the Commonwealth and the State or Territory concerned as to the fees payable by the State or Territory to the Safety Authority, on behalf of the Commonwealth, for the exercise of those powers.

150XJ Power to refer matters to NOGSAC

(1) The Safety Authority may refer a matter to the NOGSAC body for advice.

(2) For the purposes of this section, the NOGSAC body is:

(a) the body known as the National Oil and Gas Safety Advisory Committee; or

(b) if that body is disbanded—any successor body with similar membership and functions.

(3) A matter referred under subsection (1) must be of a general nature and must not relate to a particular case.

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150XK Safety Authority is a body corporate

(1) The Safety Authority:
   (a) is a body corporate; and
   (b) must have a seal; and
   (c) may sue and be sued.

Seal

(2) The seal of the Safety Authority must be kept in such custody as the CEO directs, and must not be used except as authorised by the CEO.

(3) All courts, judges and persons acting judicially must:
   (a) take judicial notice of the imprint of the seal of the Safety Authority appearing on a document; and
   (b) presume that the document was duly sealed.

Division 3—National Offshore Petroleum Safety Authority Board

Subdivision A—Establishment, functions and membership

150XL Establishment of Board

The National Offshore Petroleum Safety Authority Board is established by this section.

150XM Functions of the Board

(1) The Board has the following functions:
   (a) to give advice, and make recommendations, to the CEO about the operational policies and strategies to be followed by the Safety Authority in the performance of its functions;
   (b) to give advice, and make recommendations, to:
       (i) the Commonwealth Minister; and
       (ii) a responsible State Minister; and
       (iii) the responsible Northern Territory Minister; and
       (iv) the body known as the Ministerial Council on Mineral and Petroleum Resources;
Amendments relating to occupational health and safety

Schedule 1

Amendments relating to the National Offshore Petroleum Safety Authority

Part 1

about either or both of the following:

(v) policy or strategic matters relating to the occupational health and safety of persons engaged in offshore petroleum operations;

(vi) the performance by the Safety Authority of its functions;

(c) such other functions (if any) as are specified in a written notice given by the Commonwealth Minister to the Chair of the Board.

(2) A notice under paragraph (1)(c) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

(3) As soon as practicable after the Board gives advice, or makes recommendations, under paragraph (1)(b) to:

(a) a responsible State Minister; or

(b) the responsible Northern Territory Minister; or

(c) the body known as the Ministerial Council on Mineral and Petroleum Resources;

the Board must give the Commonwealth Minister a written copy of that advice or those recommendations.

150XN  Powers of the Board

The Board has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

150XO  Membership

(1) The Board consists of the following members:

(a) a Chair;

(b) 4 or 6 other members.

Note: Section 18B of the Acts Interpretation Act 1901 deals with the title of the Chair.

(2) The performance of the functions, or the exercise of the powers, of the Board is not affected only because of there being a vacancy or vacancies in the membership of the Board.

(3) Board members are to be appointed by the Commonwealth Minister by written instrument.
Schedule 1 Amendments relating to occupational health and safety

Part 1 Amendments relating to the National Offshore Petroleum Safety Authority

Note: For re-appointment, see subsection 33(4A) of the Acts Interpretation Act 1901.

(4) Each person appointed as a Board member must have been selected for appointment by the body known as the Ministerial Council on Mineral and Petroleum Resources.

Note: The Chair is a Board member appointed by the Commonwealth Minister as the Chair.

Subdivision B—Board procedures

150XP Board procedures

(1) The Commonwealth Minister may, by writing, determine matters relating to the operation of the Board, including (but not limited to) the following:

(a) procedures for convening Board meetings;
(b) the constitution of a quorum for a Board meeting;
(c) procedures for conducting Board meetings, including (but not limited to) the way the Board may resolve matters;
(d) disclosure of interests;
(e) Board records;
(f) reporting requirements, including (but not limited to) reports to the Commonwealth Minister and to the public.

(2) If no determination is in force for the purposes of a paragraph of subsection (1), the Board may operate in the way it determines in respect of the matters described in that paragraph.

(3) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

Subdivision C—Terms and conditions for Board members

150XQ Term of appointment and related matters for Board members

(1) A Board member is to be appointed on a part-time basis.

(2) A Board member holds office for the period that is specified in the instrument of appointment. The period must not exceed 3 years.
Note: For re-appointment, see subsection 33(4A) of the Acts Interpretation Act 1901.

150XR Remuneration and allowances of Board members

(1) A Board member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Board member is to be paid the remuneration that is determined by the Commonwealth Minister.

(2) However, if a Board member is in full-time employment with:
   (a) a State or the Northern Territory; or
   (b) an instrumentality of a State or of the Northern Territory;
   the Board member is not to be paid remuneration under subsection (1).

(3) A Board member is to be paid the allowances that are prescribed.

(4) This section has effect subject to the Remuneration Tribunal Act 1973.

150XS Leave of absence of Board members

(1) The Commonwealth Minister may grant leave of absence to the Chair of the Board on the terms and conditions that the Commonwealth Minister determines.

(2) The Chair of the Board may grant leave of absence to another Board member on the terms and conditions that the Chair determines.

150XT Resignation of Board members

A Board member may resign his or her appointment by giving the Commonwealth Minister a written resignation.

150XU Termination of appointment of Board members

(1) The Commonwealth Minister may terminate the appointment of a Board member for misbehaviour or physical or mental incapacity.

(2) The Commonwealth Minister may terminate the appointment of a Board member if:
Schedule 1 Amendments relating to occupational health and safety
Part 1 Amendments relating to the National Offshore Petroleum Safety Authority

(a) the member:
   (i) becomes bankrupt; or
   (ii) applies to take the benefit of any law for the relief of
        bankrupt or insolvent debtors; or
   (iii) compounds with his or her creditors; or
   (iv) makes an assignment of his or her remuneration for the
        benefit of his or her creditors; or
(b) the member is absent, except on leave of absence, from 3
    consecutive meetings of the Board; or
(c) the member fails, without reasonable excuse, to comply with
    a section 150XP determination to the extent to which the
    determination relates to disclosure of interests; or
(d) the Commonwealth Minister is satisfied that the performance
    of the member has been unsatisfactory for a significant
    period.

(3) The Commonwealth Minister must consult all responsible State
    Ministers and the responsible Northern Territory Minister before
    terminating the appointment of a Board member.

150XV Other terms and conditions of Board members

A Board member holds office on the terms and conditions (if any)
    in relation to matters not covered by this Act that are determined
    by the Commonwealth Minister.

150XW Acting Board members

(1) The Commonwealth Minister may appoint a person to act as the
    Chair of the Board:
    (a) during a vacancy in the office of Chair of the Board, whether
        or not an appointment has previously been made to the
        office; or
    (b) during any period, or during all periods, when the Chair of
        the Board is absent from duty or from Australia, or is, for any
        reason, unable to perform the duties of the office.

(2) The Commonwealth Minister may appoint a person to act as a
    Board member (other than the Chair of the Board):
(a) during a vacancy in the office of a Board member (other than the Chair of the Board), whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when a Board member (other than the Chair of the Board) is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

(3) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:

(a) the occasion for the appointment had not arisen; or

(b) there was a defect or irregularity in connection with the appointment; or

(c) the appointment had ceased to have effect; or

(d) the occasion to act had not arisen or had ceased.

Note: See section 33A of the Acts Interpretation Act 1901.

### Division 4—Chief Executive Officer and staff of the Safety Authority

#### 150XX Appointment of the CEO

(1) There is to be a Chief Executive Officer of the Safety Authority.

(2) The CEO is to be appointed by the Commonwealth Minister by written instrument.

(3) The Commonwealth Minister must not appoint a person as CEO unless the person is recommended to the Commonwealth Minister by the body known as the Ministerial Council on Mineral and Petroleum Resources.

(4) The CEO is to be appointed on a full-time basis.

(5) The CEO holds office for the period that is specified in the instrument of appointment. The period must not exceed 5 years.

Note: For re-appointment, see subsection 33(4A) of the Acts Interpretation Act 1901.

#### 150XY Duties of the CEO

(1) The CEO is responsible for managing the Safety Authority.
(2) Anything done by the CEO in the name of the Safety Authority or on the Safety Authority’s behalf is taken to have been done by the Safety Authority.

150XZ Working with the Board

(1) The CEO must request the Board’s advice on strategic matters relating to the performance of the Safety Authority’s functions.

(2) The CEO must have regard to the advice given to him or her by the Board (whether or not the advice was given in response to a request).

(3) The CEO must:
   (a) keep the Board informed of the Safety Authority’s operations; and
   (b) give the Board such reports, documents and information in relation to those operations as the Chair of the Board requires.

(4) The CEO may attend Board meetings as an observer (including by telephone or other means).

150Y Remuneration and allowances of the CEO

(1) The CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the CEO is to be paid the remuneration that is determined by the Commonwealth Minister.

(2) The CEO is to be paid the allowances that are prescribed.

(3) This section has effect subject to the Remuneration Tribunal Act 1973.

150YA Leave of absence of the CEO

(1) The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Commonwealth Minister may grant the CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Commonwealth Minister determines.
150YB  Resignation of the CEO

The CEO may resign his or her appointment by giving the Commonwealth Minister a written resignation.

150YC  Notification of possible conflict of interest by CEO

Immediately after the CEO:

(a) acquires any interest, pecuniary or otherwise, that could conflict with the proper performance of his or her duties; or

(b) becomes aware that any interest, pecuniary or otherwise, that:

(i) he or she has; or

(ii) he or she is likely to acquire;

could conflict with the proper performance of his or her duties;

the CEO must notify the Commonwealth Minister, in writing, of that interest.

150YD  Termination of CEO’s appointment

Termination

(1) The Commonwealth Minister may terminate the appointment of the CEO for misbehaviour or physical or mental incapacity.

(2) The Commonwealth Minister may terminate the appointment of the CEO if:

(a) the CEO:

(i) becomes bankrupt; or

(ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with his or her creditors; or

(iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

(b) the CEO is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

(c) the CEO engages, except with the Commonwealth Minister’s approval, in paid employment outside the duties of his or her office; or
Schedule 1  Amendments relating to occupational health and safety
Part 1  Amendments relating to the National Offshore Petroleum Safety Authority

(d) the CEO fails, without reasonable excuse, to comply with section 150YC; or
(e) the Commonwealth Minister is satisfied that the performance of the CEO has been unsatisfactory for a significant period.

Conflict of interest

(3) If the Commonwealth Minister becomes aware, whether because of a notification under section 150YC or otherwise, that the CEO has an interest that could conflict with the proper performance of the CEO’s duties, the Commonwealth Minister must make a written determination either that the interest does, or that it does not, pose a significant risk of a conflict of interest.

(4) If the Commonwealth Minister determines that the interest poses a significant risk, the Commonwealth Minister must require the CEO to dispose of that interest within a period specified by the Commonwealth Minister.

(5) If:
   (a) the Commonwealth Minister requires the CEO to dispose of an interest; and
   (b) the CEO refuses or fails to comply with that requirement;
the Commonwealth Minister must terminate the appointment of the CEO.

150YE  Other terms and conditions

The CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Commonwealth Minister.

150YF  Acting appointments

(1) The Commonwealth Minister may appoint a person to act as the CEO:
   (a) during a vacancy in the office of CEO (whether or not an appointment has previously been made to the office); or
   (b) during any period, or during all periods, when the CEO is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.
(2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
   (a) the occasion for the appointment had not arisen; or
   (b) there was a defect or irregularity in connection with the appointment; or
   (c) the appointment had ceased to have effect; or
   (d) the occasion to act had not arisen or had ceased.

Note: See section 33A of the Acts Interpretation Act 1901.

150YG  Delegation by CEO

(1) The CEO may, by writing, delegate any or all of his or her functions or powers (except a power conferred by section 150YL) to:
   (a) a member of staff of the Safety Authority; or
   (b) an employee of the Commonwealth or of a Commonwealth authority; or
   (c) an employee of a State or of the Northern Territory or of an authority of a State or of the Northern Territory.

(2) In exercising powers under the delegation, the delegate must comply with any directions of the CEO.

Note: See sections 34AA to 34A of the Acts Interpretation Act 1901.

150YH  Staff of the Safety Authority

(1) The staff of the Safety Authority must be persons engaged under the Public Service Act 1999.

(2) For the purposes of the Public Service Act 1999:
   (a) the CEO and the APS employees assisting the CEO together constitute a Statutory Agency; and
   (b) the CEO is the Head of that Statutory Agency.

150YI  Consultants and persons seconded to the Safety Authority

(1) The CEO may, on behalf of the Commonwealth, engage consultants to perform services for the Safety Authority in connection with the performance of any of its functions or the exercise of any of its powers.
(2) The terms and conditions of engagement of persons engaged under subsection (1) are such as the CEO determines in writing.

(3) The Safety Authority may also be assisted:
   (a) by officers and employees of Agencies (within the meaning of the Public Service Act 1999), and of authorities of the Commonwealth; or
   (b) by officers and employees of, or of authorities of, a State or the Northern Territory;
whose services are made available to the Safety Authority in connection with the performance of any of its functions or the exercise of any of its powers.

Division 5—Corporate plans

150YJ Corporate plans

(1) The CEO must prepare a corporate plan for the Safety Authority at least once every 3 years and give the plan to the Commonwealth Minister.

(2) The plan must cover a period of at least 3 years.

(3) The CEO must keep the Commonwealth Minister informed about:
   (a) significant changes to the plan; and
   (b) matters that arise that might significantly affect the achievement of the objectives of the plan.

(4) The plan must include details of the following matters:
   (a) the Safety Authority’s operational environment;
   (b) the Safety Authority’s strategies;
   (c) performance indicators for the Safety Authority;
   (d) a review of performance against previous corporate plans;
   (e) an analysis of risk factors likely to affect the safety of offshore petroleum operations;
   (f) human resource strategies and industrial relations strategies.

(5) The plan must also cover any other matters required by the Commonwealth Minister, which may include further details about the matters in subsection (4).
150YK Commonwealth Minister’s response to corporate plan

(1) On receiving a corporate plan, the Commonwealth Minister must:
   (a) provide a copy of the plan to each responsible State or Northern Territory Minister; and
   (b) consult those Ministers on the content of the plan.

(2) The Commonwealth Minister must respond to the plan as soon as practicable after completion of those consultations.

(3) The Commonwealth Minister’s response may include a written direction to the CEO to vary the plan. However, a direction under this subsection must not be given in respect of particular offshore petroleum operations.

(4) The Commonwealth Minister’s response must set out the reasons for giving a direction.

(5) If the Commonwealth Minister’s response includes a direction to vary the corporate plan, the CEO must prepare a revised plan and give it to the Commonwealth Minister within 30 days after being given the response.

(6) The Commonwealth Minister must not approve, or direct the variation of, a part of a corporate plan that relates specifically to operations of the Safety Authority in the designated coastal waters of one or more of the States without the approval of the responsible State Minister or responsible State Ministers concerned.

(7) The Commonwealth Minister must not approve, or direct the variation of, a part of a corporate plan that relates specifically to operations of the Safety Authority in the designated coastal waters of the Northern Territory without the approval of the responsible Northern Territory Minister.

Division 6—OHS inspectors

150YL Appointment of OHS inspectors

(1) The CEO may, by writing, appoint persons as OHS inspectors.

(2) The CEO may only appoint as OHS inspectors persons who are:
   (a) members of the staff of the Safety Authority; or
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(b) employees of the Commonwealth or of a Commonwealth authority; or
(c) employees of a State or of the Northern Territory or of an authority of a State or of the Northern Territory.

(3) Despite subsection (2), the CEO may appoint persons who are not covered by paragraph (2)(a), (b) or (c) as OHS inspectors, so long as the appointment is for a specified period and for the performance of specified functions.

(4) In addition to the powers, functions and duties conferred or imposed by or under this Act, an OHS inspector has all the powers, functions and duties that are conferred or imposed by or under a State PSLA or the Territory PSLA.

150YM Identity cards

(1) The Safety Authority must issue an identity card to each OHS inspector:
   (a) stating that he or she is an OHS inspector for the purposes of this Act; and
   (b) if the OHS inspector is appointed for a limited period and in respect only of particular functions—specifying that period and those functions.

(2) The identity card must:
   (a) be in the form prescribed by the regulations; and
   (b) contain a recent photograph of the OHS inspector.

(3) A person is guilty of an offence if:
   (a) the person has been issued with an identity card for the purposes of this section; and
   (b) the person ceases to be an OHS inspector; and
   (c) the person does not return the identity card to the Safety Authority as soon as practicable.

Penalty: 1 penalty unit.

(4) However, the person is not guilty of the offence if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4). See subsection 13.3(3) of the Criminal Code.
(5) A person to whom an identity card is issued under this section must carry the identity card at all times when carrying out functions as an OHS inspector.

Note: For requirements to produce the card when entering premises, see clauses 31, 31A and 31B of Schedule 7.

Division 7—National Offshore Petroleum Safety Account

150YN National Offshore Petroleum Safety Account

(1) The National Offshore Petroleum Safety Account is established by this section.

(2) The Account is a Special Account for the purposes of the Financial Management and Accountability Act 1997.

150YO Credits to the Account

The following amounts must be credited to the Account:

(a) amounts appropriated by the Parliament for the purposes of the Account;

(b) amounts equal to amounts paid to the Safety Authority on behalf of the Commonwealth by way of fees paid under regulations made for the purposes of subsection 150YQ(1);

(c) amounts equal to the following amounts paid to the Safety Authority on behalf of the Commonwealth:
   (i) amounts paid by way of safety investigation levy imposed by the Safety Levies Act;
   (ii) amounts paid by way of late payment penalty under subsection 150YR(2);

(d) amounts equal to the following amounts paid to the Safety Authority on behalf of the Commonwealth:
   (i) amounts paid by way of safety case levy imposed by the Safety Levies Act;
   (ii) amounts paid by way of late payment penalty under subsection 150YS(4);

(e) amounts equal to the following amounts paid to the Safety Authority on behalf of the Commonwealth:
   (i) amounts paid by way of pipeline safety management plan levy imposed by the Safety Levies Act;
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(ii) amounts paid by way of late payment penalty under subsection 150YT(2);

(f) amounts equal to amounts paid to the Safety Authority, on behalf of the Commonwealth, by a State or the Northern Territory under an agreement referred to in subsection 150XI(3);

(g) amounts equal to any other amounts paid to the Safety Authority, on behalf of the Commonwealth, by a State or the Northern Territory;

(h) amounts equal to any other amounts paid to the Safety Authority on behalf of the Commonwealth.

150YP  Purposes of the Account

The purposes of the Account are as follows:

(a) to pay or discharge the costs, expenses and other obligations incurred by the Safety Authority in the performance of its functions or the exercise of its powers;

(b) to pay any remuneration or allowances payable to Board members, the CEO and the staff of the Safety Authority;

(c) to make any other payments that the Safety Authority is authorised to make by or under any law of a State or of the Northern Territory that confers powers on the Safety Authority or on the staff of the Safety Authority in the area and under circumstances described in section 150XI.


Division 8—Other financial matters

150YQ  Fees for services provided by the Safety Authority

Fees

(1) The regulations may provide for the payment to the Safety Authority, on behalf of the Commonwealth, of fees in relation to services provided by the Safety Authority.

(2) Subsection (1) does not authorise the imposition of taxation within the meaning of section 55 of the Constitution.
Amendments relating to occupational health and safety  Schedule 1
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1

Recovery of fees

(3) Each fee:

(a) is a debt due to the Safety Authority on behalf of the Commonwealth; and

(b) is recoverable by the Safety Authority, on behalf of the Commonwealth, in a court of competent jurisdiction.

150YR Safety investigation levy

When safety investigation levy becomes due and payable

(1) Safety investigation levy imposed by the Safety Levies Act becomes due and payable at the time specified in, or worked out in accordance with, the regulations.

Late payment penalty

(2) If safety investigation levy payable by a person under the Safety Levies Act remains wholly or partly unpaid after it becomes due and payable, the person is liable to pay a late payment penalty under this section.

(3) The late payment penalty is calculated at the rate of 0.33% per day on the amount of the safety investigation levy remaining unpaid.

(4) The Safety Authority may remit the whole or a part of an amount of late payment penalty if the Safety Authority considers that there are good reasons for doing so.

Recovery of safety investigation levy and late payment penalty

(5) Each amount of safety investigation levy, and each amount of late payment penalty payable in respect of safety investigation levy:

(a) is a debt due to the Safety Authority on behalf of the Commonwealth; and

(b) is recoverable by the Safety Authority, on behalf of the Commonwealth, in a court of competent jurisdiction.
Schedule 1  Amendments relating to occupational health and safety
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150YS  Safety case levy

Remittal

(1) The regulations may make provision for the remittal of part of an amount of safety case levy imposed by the Safety Levies Act in respect of a facility and a year if:
   (a) the facility is of a kind declared by the regulations to be a facility that operates on an intermittent basis; and
   (b) the facility in fact only operates for a part of that year.

(2) The regulations may make provision for the remittal of part of an amount of safety case levy imposed by the Safety Levies Act in respect of a facility and a part of a year if:
   (a) the facility is of a kind declared by the regulations to be a facility that operates on an intermittent basis; and
   (b) the facility in fact only operates for a part of that part of the year.

When safety case levy becomes due and payable

(3) Safety case levy imposed by the Safety Levies Act becomes due and payable at the time specified in, or worked out in accordance with, the regulations.

Late payment penalty

(4) If safety case levy payable by a person under the Safety Levies Act remains wholly or partly unpaid after it becomes due and payable, the person is liable to pay a late payment penalty under this section.

(5) The late payment penalty is calculated at the rate of 0.33% per day on the amount of the safety case levy remaining unpaid.

(6) The Safety Authority may remit the whole or a part of an amount of late payment penalty if the Safety Authority considers that there are good reasons for doing so.

Recovery of safety case levy and late payment penalty

(7) Each amount of safety case levy, and each amount of late payment penalty payable in respect of safety case levy:
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(a) is a debt due to the Safety Authority on behalf of the Commonwealth; and
(b) is recoverable by the Safety Authority, on behalf of the Commonwealth, in a court of competent jurisdiction.

Definitions

(8) In this section:

facility:

(a) in relation to safety case levy imposed by section 7 of the Safety Levies Act—has the same meaning as in that section;

or

(b) in relation to safety case levy imposed by section 8 of the Safety Levies Act—has the same meaning as in that section.

year has the same meaning as in the Safety Levies Act.

150YT  Pipeline safety management plan levy

When pipeline safety management plan levy becomes due and payable

(1) Pipeline safety management plan levy imposed by the Safety Levies Act becomes due and payable at the time specified in, or worked out in accordance with, the regulations.

Late payment penalty

(2) If pipeline safety management plan levy payable by a person under the Safety Levies Act remains wholly or partly unpaid after it becomes due and payable, the person is liable to pay a late payment penalty under this section.

(3) The late payment penalty is calculated at the rate of 0.33% per day on the amount of the pipeline safety management plan levy remaining unpaid.

(4) The Safety Authority may remit the whole or a part of an amount of late payment penalty if the Safety Authority considers that there are good reasons for doing so.
Schedule 1 Amendments relating to occupational health and safety

Part 1 Amendments relating to the National Offshore Petroleum Safety Authority

Recovery of pipeline safety management plan levy and late payment penalty

(5) Each amount of pipeline safety management plan levy, and each amount of late payment penalty payable in respect of pipeline safety management plan levy:
   (a) is a debt due to the Safety Authority on behalf of the Commonwealth; and
   (b) is recoverable by the Safety Authority, on behalf of the Commonwealth, in a court of competent jurisdiction.

150YU Liability to taxation

(1) The Safety Authority is not subject to taxation under the laws of the Commonwealth or of a State or Territory.

(2) However, the regulations may provide that subsection (1) does not apply in relation to a specified law of the Commonwealth or of a State or Territory.

Note: For specification by class, see subsection 46(2) of the Acts Interpretation Act 1901.

Division 9—Miscellaneous

150YV Annual reports

Safety Authority

(1) The CEO must, as soon as practicable after 30 June in each year:
   (a) prepare and give to the Commonwealth Minister a report of the Safety Authority’s operations during the year ending on that 30 June; and
   (b) give a copy of that report to:
       (i) each responsible State Minister; and
       (ii) the responsible Northern Territory Minister; and
       (iii) the body known as the Ministerial Council on Mineral and Petroleum Resources.

Note: See also section 34C of the Acts Interpretation Act 1901.

(2) A report under subsection (1) must include such other matters as are prescribed in the regulations.
Board

(3) The Chair of the Board must, as soon as practicable after 30 June in each year:

(a) prepare and give to the Commonwealth Minister a report of the Board’s operations during the year ending on that 30 June; and

(b) give a copy of that report to:

(i) each responsible State Minister; and

(ii) the responsible Northern Territory Minister; and

(iii) the body known as the Ministerial Council on Mineral and Petroleum Resources.

Note: See also section 34C of the Acts Interpretation Act 1901.

Tabling of reports

(4) The Commonwealth Minister must cause a copy of each report under this section to be tabled in each House of the Parliament within 15 sitting days of that House after receiving the report.

150YW Ministers may require the Safety Authority to prepare reports or give information

Reports

(1) The Commonwealth Minister or a responsible State or Northern Territory Minister may, by written notice given to the Safety Authority, require the Safety Authority:

(a) to prepare a report about one or more specified matters relating to the performance of the Safety Authority’s functions or the exercise of the Safety Authority’s powers; and

(b) give a copy of the report to:

(i) the Commonwealth Minister; and

(ii) each responsible State Minister; and

(iii) the responsible Northern Territory Minister;

within the period specified in the notice.
Schedule 1  Amendments relating to occupational health and safety
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Information

(2) The Commonwealth Minister or a responsible State or Northern Territory Minister may, by written notice given to the Safety Authority, require the Safety Authority to:

(a) prepare a document setting out specified information relating to the performance of the Safety Authority’s functions or the exercise of the Safety Authority’s powers; and

(b) give a copy of the document to:

(i) the Commonwealth Minister; and

(ii) each responsible State Minister; and

(iii) the responsible Northern Territory Minister;

within the period specified in the notice.

Compliance with requirement

(3) The Safety Authority must comply with a requirement under subsection (1) or (2).

150YX  Commonwealth Minister may give directions to the Safety Authority

Minister may give directions

(1) The Commonwealth Minister may give written directions to the Safety Authority as to the performance of its functions or the exercise of its powers.

Note: For agreement and consultation requirements, see subsections (7) and (11).

(2) Directions given by the Commonwealth Minister must not relate to operations at a particular facility.

(3) Subsection (2) does not prevent the Commonwealth Minister from directing the Safety Authority to investigate a particular occurrence in relation to a facility located in Safety Authority waters.

Responsible State/Northern Territory Minister may request the Commonwealth Minister to give a direction

(4) A responsible State Minister or the responsible Northern Territory Minister may request the Commonwealth Minister to give a
direction to the Safety Authority that relates wholly or principally to the Safety Authority’s operations in the designated coastal waters of the relevant State or the Northern Territory, as the case may be.

(5) The Commonwealth Minister must use his or her best endeavours to make a decision on the request within 30 days after receiving the request.

(6) If the Commonwealth Minister refuses the request, the Commonwealth Minister must give the Minister who made the request a written statement setting out the reasons for the refusal.

Agreement of responsible State/Northern Territory Ministers

(7) The Commonwealth Minister must not give a direction that relates wholly or principally to the Safety Authority’s operations in the designated coastal waters of one or more of the States and the Northern Territory unless the Commonwealth Minister has obtained the agreement of each responsible State or Northern Territory Minister concerned (the affected Minister or Ministers).

Urgency

(8) If the Commonwealth Minister is satisfied that the circumstances of a case are sufficiently urgent to warrant it, the Commonwealth Minister may, despite subsection (7), give a direction to the Safety Authority without obtaining the agreement of the affected Minister or Ministers concerned.

(9) If the Commonwealth Minister gives a direction as mentioned in subsection (8), the direction expires at the end of the 30-day period beginning on the day on which the direction was given unless, before the end of that period, the Commonwealth Minister has obtained the agreement of the affected Minister or Ministers concerned.

(10) If a direction expires because of subsection (9), this Act does not prevent the Commonwealth Minister from giving a subsequent direction in the same or similar terms as the expired direction.
Schedule 1  Amendments relating to occupational health and safety
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Consultation with responsible State/Northern Territory Ministers

(11) Before giving a direction that is not covered by subsection (7), the Commonwealth Minister must consult each responsible State or Northern Territory Minister.

Compliance with directions

(12) The Safety Authority must comply with any direction given by the Commonwealth Minister under this section.

Other provisions do not limit this section

(13) Sections 150XF and 150YW do not limit the scope of the directions that may be given by the Commonwealth Minister under this section.

150YY Prosecutions by the Director of Public Prosecutions under mirror provisions

The Commonwealth Director of Public Prosecutions has the functions and powers (including the power to institute and carry on appeals arising out of prosecutions of offences) conferred on him or her by or under an Act or regulation of a State or of the Northern Territory in relation to offences under laws that substantially correspond to section 140H OHS laws.

150YZ Australian Industrial Relations Commission may exercise powers under mirror provisions

(1) If the laws of a State or of the Northern Territory confer appropriate powers and functions on the Australian Industrial Relations Commission to do so, the Australian Industrial Relations Commission may deal with appeals against decisions of an OHS inspector under laws or regulations of that State or Territory that substantially correspond to section 140H OHS laws in respect of which a similar decision can be the subject of an appeal under clause 37 of Schedule 7.

(2) If the laws of a State or of the Northern Territory confer appropriate powers and functions on the Australian Industrial Relations Commission to do so, the Australian Industrial Relations Commission may deal with the resolution of matters under a law of
that State or Territory that substantially corresponds to clause 12 of Schedule 7.

150Z Reviews of operations of Safety Authority

(1) The Commonwealth Minister must cause to be conducted reviews of the operations of the Safety Authority in relation to Safety Authority waters.

(2) The Commonwealth Minister must cause to be prepared a report of a review under subsection (1).

(3) The first review is to relate to the 3-year period beginning on 1 January 2005, and is to be completed within 6 months, or such longer period as the Commonwealth Minister allows, after the end of that 3-year period.

(4) Subsequent reviews are to relate to successive 3-year periods, and must be completed within 6 months, or such longer period as the Commonwealth Minister allows, after the end of the 3-year period to which the review relates.

(5) For the purposes of this section, a review is completed when the report of the review is made available to the Commonwealth Minister.

(6) A responsible State or Northern Territory Minister may give the Commonwealth Minister a written request that a particular review under subsection (1) be conducted in conjunction with another review that:

   (a) is a review of the operations of the Safety Authority in the designated coastal waters of the State or of the Northern Territory, as the case may be; and

   (b) is being, or is to be, conducted by the responsible State or Northern Territory Minister at the same time.

The Commonwealth Minister must ensure that the request is complied with.

(7) Without limiting the matters to be covered by a review under subsection (1), the review must include an assessment of the effectiveness of the Safety Authority in bringing about improvements in the occupational health and safety of persons engaged in offshore petroleum operations.
(8) The Commonwealth Minister must cause a copy of the report of a review under subsection (1) to be tabled in each House of the Parliament within 15 sitting days of that House after the report of the review is made available to the Commonwealth Minister.
Part 2—Amendments relating to substantive occupational health and safety provisions

Division 1—Amendments

*Petroleum (Submerged Lands) Act 1967*

5 After subsection 9(2)

Insert:

Applied laws do not include State OHS laws

(2A) Despite subsection (1), the laws or parts of laws of a State, as in force from time to time, that are prescribed in the regulations in relation to that State do not apply in relation to a facility located in the adjacent area of that State.

(2B) Laws or parts of laws prescribed under subsection (2A) must be laws or parts of laws with respect to occupational health and safety.

State OHS laws do not apply of their own force in adjacent areas

(2C) The laws or parts of laws, as in force from time to time, that are prescribed in regulations made under subsection (2A) in relation to a State do not apply by force of the law of that State in relation to a facility located in the adjacent area of that State.

Substantive criminal provisions of State OHS laws are not applied by Crimes at Sea Act 2000 in adjacent areas

(2D) Despite subclauses 2(1) and (2) of Schedule 1 to the *Crimes at Sea Act 2000*, the laws or parts of laws of a State that are referred to in those subclauses and that are prescribed in the regulations in relation to that State do not apply in relation to a facility located in the adjacent area in respect of that State either:

(a) by force of the law of the State; or

(b) by force of subclause 2(2) of that Schedule.

(2E) Laws or parts of laws prescribed under subsection (2D) must be laws or parts of laws relating to occupational health and safety.
(2F) Laws or parts of laws of a State that are prescribed for the purposes of subsection (2A) or (2D) may be laws or parts of laws that relate to occupational health and safety and to other matters.

(2G) A reference in subsections (2A) to (2F) to a law or a part of a law of a State includes a reference to an instrument or a part of an instrument made under a law of a State.

Substantive criminal provisions of State section 140H OHS laws are not applied by Crimes at Sea Act 2000 in adjacent areas.

(2H) Despite subclauses 2(1) and (2) of Schedule 1 to the Crimes at Sea Act 2000, the laws to which subsection (2I) applies do not apply in relation to a facility located in the adjacent area of the relevant State, either:

(a) by force of the law of that State; or
(b) by force of subclause 2(2) of that Schedule.

(2I) This subsection applies to provisions of a State PSLA, or of regulations under a State PSLA, that substantially correspond to the terms of the section 140H OHS laws.

6 At the end of section 9

Add:

(11) If this section provides that laws or parts of laws do not apply in relation to a facility located in a particular adjacent area of a State, those laws or parts of laws do not apply in relation to:

(a) a facility that is so located; or
(b) persons at or near a facility that is so located; or
(c) activities that take place on a facility that is so located.

(12) In this section:

facility has the same meaning as in Schedule 7.

section 140H OHS laws has the same meaning as in section 140H.

State PSLA has the same meaning as it has for the purposes of Part IIIC.

7 After subsection 11(2)

Insert:
Amendments relating to occupational health and safety  Schedule 1
Amendments relating to substantive occupational health and safety provisions  Part 2

Applied laws do not include Northern Territory OHS laws

(2A) Despite subsection (1), the laws or parts of laws of the Northern Territory, as in force from time to time, that are prescribed in the regulations in relation to that Territory do not apply in relation to a facility located in the adjacent area of that Territory.

(2B) Laws or parts of laws prescribed under subsection (2A) must be laws or parts of laws with respect to occupational health and safety.

Northern Territory OHS laws do not apply of their own force in the adjacent area in respect of the Northern Territory

(2C) The laws or parts of laws, as in force from time to time, that are prescribed in regulations made under subsection (2A) in relation to the Northern Territory do not apply by force of the law of that Territory in relation to a facility located in the adjacent area of that Territory.

Substantive criminal provisions of Northern Territory OHS laws are not applied by Crimes at Sea Act 2000 in the adjacent area

(2D) Despite subclauses 2(1) and (2) of Schedule 1 to the Crimes at Sea Act 2000, the laws or parts of laws of the Northern Territory that are referred to in those subclauses and that are prescribed in the regulations in relation to that Territory do not apply in relation to a facility located in the adjacent area of that Territory either:

(a) by force of the law of that Territory; or

(b) by force of subclause 2(2) of that Schedule.

(2E) Laws or parts of laws prescribed under subsection (2D) must be laws or parts of laws relating to occupational health and safety.

(2F) Laws or parts of laws of the Northern Territory that are prescribed for the purposes of subsection (2A) or (2D) may be laws or parts of laws that relate to occupational health and safety and to other matters.

(2G) A reference in subsections (2A) to (2F) to a law or a part of a law of the Northern Territory includes a reference to an instrument or a part of an instrument made under a law of the Northern Territory.
Schedule 1 Amendments relating to occupational health and safety
Part 2 Amendments relating to substantive occupational health and safety provisions

Substantive criminal provisions of the Northern Territory
section 140H OHS laws are not applied by Crimes at Sea Act 2000
in adjacent area.

(2H) Despite subclauses 2(1) and (2) of Schedule 1 to the Crimes at Sea
Act 2000, the laws to which subsection (2I) applies do not apply in
relation to a facility located in the adjacent area of the Northern
Territory, either:
   (a) by force of the law of that Territory; or
   (b) by force of subclause 2(2) of that Schedule.

(2I) This subsection applies to provisions of the Territory PSLA, or of
regulations under that PSLA, that substantially correspond to the
terms of the section 140H OHS laws.

Northern Territory OHS laws do not apply in the adjacent area of
Ashmore and Cartier Islands

(2J) The laws or parts of laws that are prescribed in the regulations
made under subsection (2A) in relation to the Northern Territory
do not apply in relation to a facility located in the adjacent area of
the Territory of Ashmore and Cartier Islands either:
   (a) by force of the Ashmore and Cartier Islands Acceptance Act
       1933; or
   (b) by force of subsection (1) of this section.

Note 1: Laws in force in the Northern Territory (except Commonwealth Acts)
are applied in the Territory of Ashmore and Cartier Islands by the
Ashmore and Cartier Islands Acceptance Act 1933.

Note 2: The adjacent area of Ashmore and Cartier Islands includes land areas
and the coastal sea area.

Substantive criminal provisions of Northern Territory OHS laws
are not applied by Crimes at Sea Act 2000 in the adjacent area of
Ashmore and Cartier Islands

(2K) Despite subclauses 2(1) and (2) of Schedule 1 to the Crimes at Sea
Act 2000, the laws or parts of laws of the Northern Territory that
are referred to in those subclauses and that are prescribed in the
regulations under subsection (2D) in relation to that Territory do
not apply in relation to a facility located in the adjacent area of the
Territory of Ashmore and Cartier Islands, either:
Amendments relating to occupational health and safety  Schedule 1
Amendments relating to substantive occupational health and safety provisions  Part 2

(a) by force of the Ashmore and Cartier Islands Acceptance Act 1933; or
(b) by force of subclause 2(2) of that Schedule.

Note: Laws in force in the Northern Territory (except Commonwealth Acts) are applied in the Territory of Ashmore and Cartier Islands by the Ashmore and Cartier Islands Acceptance Act 1933.

Substantive criminal provisions of Northern Territory section 140H OHS laws are not applied by Crimes at Sea Act 2000 in the adjacent area of Ashmore and Cartier Islands

(2L) Despite subclauses 2(1) and (2) of Schedule 1 to the Crimes at Sea Act 2000, the laws to which subsection (2I) applies do not apply in relation to a facility located in the adjacent area of the Territory of Ashmore and Cartier Islands, either:
(a) by force of the Ashmore and Cartier Islands Acceptance Act 1933; or
(b) by force of subclause 2(2) of that Schedule.

8 At the end of section 11
Add:
(10) If this section provides that laws or parts of laws do not apply, in relation to a facility located in the adjacent area of the Northern Territory or of the Territory of Ashmore and Cartier Islands, those laws or parts of laws do not apply in relation to:
(a) a facility that is so located; or
(b) persons at or near a facility that is so located; or
(c) activities that take place on a facility that is so located.

(11) In this section:
facility has the same meaning as in Schedule 7.
section 140H OHS laws has the same meaning as it has in section 140H.
Territory PSLA has the same meaning as it has for the purposes of Part IIIC.

9 After section 11
Insert:
Schedule 1  Amendments relating to occupational health and safety
Part 2  Amendments relating to substantive occupational health and safety provisions

11A Disapplication of the Navigation Act 1912 and the Occupational Health and Safety (Maritime Industry) Act 1993 in adjacent areas

Disapplication of Maritime legislation

(1) The Maritime legislation does not apply in relation to a facility located in the adjacent area of a State or Territory, while it is a facility.

Note: Instead, a facility located in the adjacent area of a State or Territory will be covered by the occupational health and safety laws that are referred to in section 140H.

Joint operation of this Act and Maritime legislation otherwise disapplied

(2) However, subsection (1) does not prevent the application of the Maritime legislation to the extent that it relates to the transfer of persons or goods between a ship and a facility.

Note: In these cases, the Maritime legislation will generally apply in addition to the occupational health and safety laws that are referred to in section 140H.

(3) In this section:

facility has the same meaning as in Schedule 7.

Maritime legislation means:

(a) the Navigation Act 1912; and
(b) the Occupational Health and Safety (Maritime Industry) Act 1993; and
(c) any subordinate legislation under either of those Acts.

ship means any kind of vessel used in navigation by water, however propelled or moved, that is not, for the time being, a facility or part of a facility.


(1) This section applies in relation to the designated coastal waters of a State or of the Northern Territory if the relevant State or Territory
PSLA and regulations under the relevant State or Territory PSLA, in their application to those designated coastal waters, substantially correspond to the terms of the section 140H OHS laws.

(2) The Maritime legislation is disapplied in those designated coastal waters to the same extent as the Maritime legislation is disapplied in the adjacent area.

(3) In this section:

- **designated coastal waters**, in relation to a State or the Northern Territory, has the same meaning as it has for the purposes of Part III.C.

- **Maritime legislation** has the same meaning as it has in section 11A.

- **State PSLA** has the same meaning as it has for the purposes of Part III.C.

- **Territory PSLA** has the same meaning as it has for the purposes of Part III.C.

10 **Section 140H**

Repeal the section, substitute:

**140H Application of occupational health and safety laws**

(1) Schedule 7 has effect.

(2) The following provisions are the **section 140H OHS laws** for the purposes of this Act:

- (a) Schedule 7 to this Act;
- (b) the Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996;
- (c) the Petroleum (Submerged Lands) (Diving Safety) Regulations 2002;
- (d) the Petroleum (Submerged Lands) (Occupational Health and Safety) Regulations 1993;
- (e) the Petroleum (Submerged Lands) (Pipelines) Regulations 2001, to the extent that those regulations relate to occupational health and safety matters;
(f) any other regulations relating to occupational health and
safety matters that are prescribed for the purposes of this
paragraph.

11 Clause 1 of Schedule 7

Repeal the clause, substitute:

1 Objects

The objects of this Schedule are, in relation to facilities located in
Commonwealth waters:

(a) to secure the health, safety and welfare of persons at or near
such facilities; and
(b) to protect persons at or near such facilities from risks to
health and safety arising out of activities being conducted at
such facilities; and
(c) to ensure that expert advice is available on occupational
health and safety matters in relation to such facilities; and
(d) to promote an occupational environment for members of the
workforce at such facilities that is adapted to their needs
relating to health and safety; and
(e) to foster a consultative relationship between all relevant
persons concerning the health, safety and welfare of members
of the workforce at such facilities.

12 Clause 2 of Schedule 7

Insert:

associated offshore place, in relation to a facility, means any
offshore place near the facility where activities (including diving
activities) relating to the construction, operation, maintenance or
decommissioning of the facility take place, but does not include:
(a) another facility; or
(b) a supply vessel, offtake tanker, anchor handler or tugboat; or
(c) a vessel, or structure, that is declared by the regulations not to
be an associated offshore place.

13 Clause 2 of Schedule 7

Insert:
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Commonwealth waters has the same meaning as in Part IIIC.

14 Clause 2 of Schedule 7 (definition of contractor)

Repeal the definition, substitute:

contractor has the meaning given by clause 2D.

15 Clause 2 of Schedule 7 (definition of designated work group)

Repeal the definition, substitute:

designated work group means a group of members of the workforce at a facility that is established as a designated work group under clause 12, or that group as varied in accordance with that clause.

16 Clause 2 of Schedule 7 (definition of employer)

Repeal the definition, substitute:

employer means an employer who carries on an activity at a facility.

17 Clause 2 of Schedule 7

Insert:

facility means a facility as defined by clause 2A, and:

(a) includes a facility (as defined by clause 2A) that is being constructed or installed; and

(b) except in the definition of associated offshore place, includes an associated offshore place in relation to a facility (as defined by clause 2A).

18 Clause 2 of Schedule 7

Insert:

group member, in relation to a designated work group at a facility, means a member of the workforce at that facility included in that designated work group.

19 Clause 2 of Schedule 7

Insert:
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inspection means an inspection conducted under Part 4 of this Schedule. For this purpose, an inspection may include an investigation or inquiry.

20 Clause 2 of Schedule 7 (definition of investigation)
Repeal the definition.

21 Clause 2 of Schedule 7 (definition of investigator)
Repeal the definition.

22 Clause 2 of Schedule 7 (definition of involved union)
Repeal the definition.

23 Clause 2 of Schedule 7
Insert:

member of the workforce, in relation to a facility, means an individual who does work at the facility, whether as an employee of the operator of the facility or of another person, or as a contractor of the operator or of another person.

24 Clause 2 of Schedule 7
Insert:

offshore petroleum operations has the same meaning as in Part IIIC.

25 Clause 2 of Schedule 7
Insert:

OHS inspector means an OHS inspector appointed under section 150YL.

26 Clause 2 of Schedule 7
Insert:

operator, in relation to a facility or proposed facility, means the person who, under the regulations, is taken to be the operator of that facility or proposed facility.

27 Clause 2 of Schedule 7
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Insert:

operator’s representative at a facility means a person present at
the facility in compliance with the obligations imposed on the
operator by clause 2B.

28  Clause 2 of Schedule 7

Insert:

premises includes the following:
(a) a structure or building;
(b) a place (whether or not enclosed or built on);
(c) a part of a thing referred to in paragraph (a) or (b).

29  Clause 2 of Schedule 7

Insert:

proposed facility means a facility proposed to be constructed,
installed or operated.

30  Clause 2 of Schedule 7

Insert:

recovery, in relation to petroleum, includes all processes directly or
indirectly associated with its recovery. This definition does not, by
implication, limit the meaning of the expression recovery when
used in a provision of this Act other than this Schedule.

31  Clause 2 of Schedule 7

Insert:

registered organisation means an organisation within the meaning
of the Workplace Relations Act 1996.

32  Clause 2 of Schedule 7 (definition of registered union)

Repeal the definition.

33  Clause 2 of Schedule 7

Insert:

regulated business premises means:
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(a) a facility; or
(b) premises that are:
   (i) occupied by a person who is the operator of a facility; and
   (ii) used, or proposed to be used, wholly or principally in connection with offshore petroleum operations.

34 Clause 2 of Schedule 7 (definition of work)

Repeal the definition, substitute:

work means work offshore that is directly or indirectly related to the construction, operation, maintenance or decommissioning of a facility.

35 Clause 2 of Schedule 7

Insert:

workforce representative means:
   (a) in relation to a person who is a member of the workforce at a facility—a registered organisation of which that person is a member, if the person is qualified to be a member of that organisation because of the work the person performs at the facility; or
   (b) in relation to a designated work group or a proposed designated work group—a registered organisation of which a person who is, or who is likely to be, in the work group is a member, if the person is qualified to be a member of that organisation because of the work the person performs, or will perform, at a facility as a member of the group.

36 Clause 2 of Schedule 7

Insert:

work group employer, in relation to a designated work group at a facility, means an employer, other than the operator, of one or more group members.

37 Clause 2 of Schedule 7 (definition of workplace)

Repeal the definition, substitute:
workplace, in relation to a facility, means either the whole facility
or any part of the facility.

38 Clause 3 of Schedule 7

Repeal the clause, substitute:

2A Definitions and other provisions relating to facilities

Vessels or structures that are facilities

(1) Subject to subclauses (4) and (5), a vessel or structure (whether
floating or fixed) is taken to be a facility for the purposes of this
Schedule, whether or not it is capable of independent navigation,
while that vessel or structure:

(a) is located at a site in Commonwealth waters; and
(b) is being used, or prepared for use, at that site:

(i) for the recovery of petroleum, for the processing of
petroleum, or for the storage and offloading of
petroleum, or for any combination of those activities; or
(ii) for the provision of accommodation for persons
working on another facility, whether connected by a
walkway to that other facility or not; or
(iii) for drilling or servicing a well for petroleum or doing
work associated with the drilling or servicing process;
or
(iv) for laying pipes for petroleum, including any
manufacturing of such pipes, or for doing work on an
existing pipe; or
(v) for the erection, dismantling or decommissioning of a
vessel or structure referred to in a previous
subparagraph of this paragraph; or
(vi) for any other purpose related to offshore petroleum
operations that is prescribed for the purposes of this
subparagraph.

(2) For the purposes of subclause (1), a vessel or structure that is
located offshore for the purpose of laying pipes as described in
subparagraph (1)(b)(iv) is taken to be located at a site, despite the
fact that the vessel or structure moves as the pipe laying process
proceeds.
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(3) A vessel or structure used for a purpose referred to in subparagraph (1)(b)(i) includes:
(a) any wells and associated plant and equipment by means of which petroleum processed or stored at the vessel or structure is recovered; and
(b) any pipe or system of pipes through which petroleum is conveyed from a well to the vessel or structure; and
(c) any secondary line associated with the vessel or structure.

Vessels or structures that are not facilities

(4) Despite subclause (1), a vessel or structure is taken not to be a facility if it is:
(a) an offtake tanker; or
(b) a tug or an anchor handler; or
(c) a vessel or structure used for supplying a facility or otherwise travelling between a facility and the shore; or
(d) a vessel or structure used for any purpose such that it is declared by the regulations not to be a facility.

Meaning of use for a particular purpose

(5) In determining when a vessel or structure that has the potential to be used for one or more of the purposes referred to in paragraph (1)(b) is in fact being so used, the vessel or structure is to be taken:
(a) to commence to be so used only at the time when it arrives at the site where it is to be so used and any activities necessary to make it operational at that site are begun; and
(b) to cease to be so used when operations cease, and the vessel or structure has been returned either to a navigable form or to a form in which it can be towed to another place.

Pipelines that are facilities

(6) Each of the following is taken to be a facility for the purposes of this Schedule:
(a) a pipeline licensed under Division 4 of Part III;
(b) if a pipeline licensed under Division 4 of Part III conveys petroleum recovered from a well without the petroleum
having passed through another facility—that pipeline, together with:
(i) that well and associated plant and equipment; and
(ii) any pipe or system of pipes through which petroleum is conveyed from that well to that pipeline.

(7) In paragraph (6)(b):

facility does not include a pipeline.

2B Operator must ensure presence of operator’s representative

(1) The operator of a facility must ensure that, at all times when one or more individuals are present at a facility, there is also present an individual (the operator’s representative at the facility) who has day-to-day management and control of operations at the facility.

Penalty: 50 penalty units.

(2) The operator must ensure that the name of the operator’s representative at the facility is displayed in a prominent place at the facility.

Penalty: 50 penalty units.

(3) Subclause (1) does not imply that, if the operator is an individual, the operator’s representative at the facility may not be, from time to time, the operator.

2C Health and safety of persons using an accommodation facility

For the avoidance of doubt, a reference in this Schedule to the occupational health and safety of a person includes a reference to the health and safety of a person using an accommodation facility provided for the accommodation of persons working on another facility.

2D Contractor

For the purposes of this Schedule, if an individual does work at a facility under a contract for services between:
(a) a person (the relevant person); and
(b) either:
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(i) the individual; or
(ii) the employer of the individual;
the individual is taken to be a contractor of the relevant person.

3 Duties of operator

(1) The operator of a facility must take all reasonably practicable steps to ensure that:
(a) the facility is safe and without risk to the health of any person at or near the facility; and
(b) all work and other activities carried out on the facility are carried out in a manner that is safe and without risk to the health of any person at or near the facility.

Penalty: 1,000 penalty units.

(2) Without limiting the generality of subclause (1), the operator of a facility must:
(a) provide and maintain a physical environment at the facility that is safe and without risk to health; and
(b) provide and maintain adequate facilities for the welfare of all members of the workforce at the facility; and
(c) ensure that any plant, equipment, materials and substances at the facility are safe and without risk to health; and
(d) implement and maintain systems of work at the facility that are safe and without risk to health; and
(e) implement and maintain appropriate procedures and equipment for the control of, and response to, emergencies at the facility; and
(f) provide all members of the workforce, in appropriate languages, with the information, instruction, training and supervision necessary for them to carry out their activities in a manner that does not adversely affect the health and safety of persons at the facility; and
(g) monitor the health and safety of all members of the workforce and keep records of that monitoring; and
(h) provide appropriate medical and first aid services at the facility; and
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(i) develop, in consultation with members of the workforce and any workforce representatives, a policy, relating to occupational health and safety, that will:

(i) enable the operator and the members of the workforce to cooperate effectively in promoting and developing measures to ensure the occupational health and safety of persons at the facility; and

(ii) provide adequate mechanisms for reviewing the effectiveness of the measures.

Penalty: 1,000 penalty units.

(3) Paragraph (2)(i) does not require the operator of a facility to engage in consultations with a workforce representative unless a member of the workforce at the facility has requested the workforce representative to be involved in those consultations.

(4) A policy relating to occupational health and safety referred to in paragraph (2)(i) that is developed in consultation with members of the workforce and one or more workforce representatives must provide for the making of an agreement between:

(a) on the one hand—the operator; and

(b) on the other hand:

(i) the members of the workforce; and

(ii) if a member of the workforce at the facility has requested a workforce representative in relation to the member to be a party to that agreement—that workforce representative;

that:

(c) provides appropriate mechanisms for continuing consultation between the parties to the agreement; and

(d) provides for such other matters (if any) as are agreed between the parties to the agreement.

39 Clauses 4 and 5 of Schedule 7

Repeal the clauses, substitute:
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4 Duties of persons in control of parts of facility or particular work

(1) A person who is in control of any part of a facility, or of any particular work carried out at a facility, must take all reasonably practicable steps to ensure that:

(a) that part of the facility, or the place where that work is carried out, is safe and without risk to health; and

(b) if the person is in control of particular work—the work is carried out in a manner that is safe and without risk to health.

Penalty: 1,000 penalty units.

(2) Without limiting the generality of subclause (1), a person who is in control of any part of a facility, or of any particular work carried out at a facility, must:

(a) ensure that the physical environment at that part of the facility or at the place where the work is carried out is safe and without risk to health; and

(b) ensure that any plant, equipment, materials and substances at or near that part of the facility or that place, or used in that work, are safe and without risk to health; and

(c) implement and maintain systems of work at that part of the facility, or in carrying out work at that place, that are safe and without risk to health; and

(d) ensure a means of access to, and egress from, that part of the facility or that place that is safe and without risk to health; and

(e) provide all members of the workforce located at that part of the facility or engaged on that work, in appropriate languages, with the information, instruction, training and supervision necessary for them to carry out their work in a manner that is safe and without risk to health.

Penalty for contravention of this subclause: 1,000 penalty units.

5 Duties of employers

(1) An employer must take all reasonably practicable steps to protect the health and safety of employees at a facility.

Penalty: 1,000 penalty units.
(2) Without limiting the generality of subclause (1), an employer must:
   (a) provide and maintain a working environment that is safe for employees and without risk to their health; and
   (b) ensure that any plant, equipment, materials and substances used in connection with the employees’ work are safe and without risk to health; and
   (c) implement and maintain systems of work that are safe and without risk to health; and
   (d) provide a means of access to, and egress from, the employees’ work location that is safe and without risk to health; and
   (e) provide the employees, in appropriate languages, with the information, instruction, training and supervision necessary for them to carry out their work in a manner that is safe and without risk to health.

Penalty: 1,000 penalty units.

(3) A person has, in respect of a contractor of that person, the same obligations that an employer has under subclauses (1) and (2) in respect of an employee of that employer, but only in relation to:
   (a) matters over which the first-mentioned person has control; or
   (b) matters over which the first-mentioned person would have had control apart from express provision to the contrary in a contract, being matters over which the first-mentioned person would, in the circumstances, usually be expected to have had control.

(4) Without limiting the generality of subclause (1) so far as it applies in relation to employees, an employer must take all reasonable steps to monitor the health and safety of the employees and to keep records of that monitoring.

Penalty for contravention of this subclause: 1,000 penalty units.

40 Subclause 6(1) of Schedule 7

Omit “by employees at work” (first occurring), substitute “by members of the workforce at a facility”.

41 Paragraph 6(1)(a) of Schedule 7
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1 Omit “safe for employees and without risk to their health”, substitute “safe and without risk to health”.

42 Paragraph 6(1)(b) of Schedule 7
Omit “the health or safety of employees”, substitute “health and safety”.

43 Paragraph 6(1)(c) of Schedule 7
Omit “to an employer, in connection with the use of the plant by employees at work, adequate”, substitute “, in connection with the use of the plant at a facility, adequate written”.

44 Subparagraph 6(1)(c)(iii) of Schedule 7
Omit “safe for employees and without risk to their health”, substitute “safe and without risk to health”.

45 Subclause 6(2) of Schedule 7
Omit “by employees at work” (first occurring), substitute “by members of the workforce at a facility”.

46 Paragraph 6(2)(a) of Schedule 7
Omit “safe for employees and without risk to their health”, substitute “safe and without risk to health”.

47 Paragraph 6(2)(b) of Schedule 7
Omit “the health and safety of employees”, substitute “health and safety”.

48 Paragraph 6(2)(c) of Schedule 7
Omit “to an employer, in connection with the use of the substance by employees at work, adequate”, substitute “, in connection with the use of the substance at a facility, adequate written”.

49 Subparagraph 6(2)(c)(iii) of Schedule 7
Omit “safe for employees and without risk to their health”, substitute “safe and without risk to health”.

50 Subclauses 7(1) and (2) of Schedule 7
Repeal the subclauses, substitute:
(1) A supplier of a facility, or of any plant or substance that the supplier ought reasonably to expect will be used by members of the workforce at a facility, must take all reasonably practicable steps: 

(a) to ensure that, at the time of supply, the facility, or the plant or substance, is in such condition as to be, when properly used, safe and without risk to health; and 

(b) to carry out, or cause to be carried out, the research, testing and examination necessary to discover, and to eliminate or minimise, any risk to health or safety that may arise from the condition of the facility, plant or substance; and 

(c) to make available: 

(i) in the case of a facility—to the operator of a facility; 

and 

(ii) in the case of plant or substance—to the person to whom the plant or substance is supplied; 

adequate written information, in connection with the use of the facility, plant or substance, as the case requires, about: 

(iii) the condition of the facility, plant or substance at the time of supply; and 

(iv) any risk to the health and safety of members of the workforce at the facility to which the condition of the facility, plant or substance may give rise unless it is properly used; and 

(v) the steps that need to be taken in order to eliminate such risk; and 

(vi) in the case of a substance—the first aid and medical procedures that should be followed if the condition of the substance causes injury to a member of the workforce at the facility. 

Penalty: 200 penalty units. 

(2) For the purposes of subclause (1), if a person (the _ostensible supplier_) supplies to a person either a facility, or any plant or substance that is to be used by members of the workforce at a facility, and the ostensible supplier: 

(a) carries on the business of financing the acquisition or the use of goods by other persons; and 

(b) has, in the course of that business, acquired an interest in the facility, or in the plant or substance, from another person (the _actual supplier_), solely for the purpose of financing its
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acquisition by, or its provision to, the person to whom it is
finally supplied; and

(c) has not taken possession of the facility, plant or substance, or
has taken possession of the facility, plant or substance solely
for the purpose of passing possession of the facility, plant or
substance to the person to whom it is finally supplied;

a reference in subclause (1) to a supplier is, in relation to the
facility, plant or substance referred to in this subclause, to be read
as a reference to the actual supplier and not as a reference to the
ostensible supplier.

Note: The heading to clause 7 of Schedule 7 is replaced by heading “Duties of suppliers of
facilities, plant and substances”.

51 Subclause 8(1) of Schedule 7

Repeal the subclause, substitute:

(1) A person who erects or installs a facility, or erects or installs any
plant at a facility, must take all reasonably practicable steps to
ensure that the facility or plant is not erected or installed in such a
way that it is unsafe or constitutes a risk to health.

Penalty: 200 penalty units.

Note: The heading to clause 8 of Schedule 7 is replaced by the heading “Duties of persons
erecting facilities or installing plant”.

52 Subclause 9(1) of Schedule 7

Repeal the subclause, substitute:

(1) A person at a facility must, at all times, take all reasonably
practicable steps:

(a) to ensure that the person does not take any action, or make
any omission, that creates a risk, or increases an existing risk,
to the health or safety of that person or of any other person at
or near the facility; and

(b) in respect of any obligation imposed on the operator or on
any other person by or under this Schedule or the
regulations—to cooperate with the operator or that other
person to the extent necessary to enable the operator or that
other person to fulfil that obligation; and

(c) to use equipment that is:
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(i) supplied to the person by the operator, an employer of the person or any other person having control of work at a facility (the equipment supplier); and
(ii) necessary to protect the health and safety of the person, or of any other person at or near the facility;
in accordance with any instructions given by the equipment supplier, consistent with the safe and proper use of the equipment.
Penalty: 50 penalty units.

Note: The heading to clause 9 is altered by omitting “employees” and substituting “persons”.

53 Subclauses 9(2) and (3) of Schedule 7

Omit “employer” (wherever occurring), substitute “equipment supplier”.

54 Paragraph 9(2)(a) of Schedule 7

Omit “involved union”, substitute “health and safety representative”.

55 Subclause 9(3) of Schedule 7

Omit “an employee”, substitute “a person”.

56 Subclause 9(4) of Schedule 7

Omit “an employee for failure to use, in the manner required by the employer,”, substitute “a person for failure to use, in the manner required by the equipment supplier,”.

57 Subclause 10(1) of Schedule 7

Omit “reasonable steps as required by clause 4 or 5”, substitute “reasonably practicable steps as required by clause 3, 4 or 5”.

58 Subclause 10(1) of Schedule 7

Omit “such reasonable steps”, substitute “such reasonably practicable steps”.

59 Subclause 10(2) of Schedule 7

Repeal the subclause, substitute:

(2) Without limiting the generality of what constitutes reasonably practicable steps as required by clause 8, for the purpose of the
application of that clause to the erection of a facility or the erection
or installation of plant at a facility, a person on whom an obligation
is imposed under that clause is regarded as having taken such
reasonably practicable steps as that clause requires to the extent
that:
(a) the person ensured, so far as is reasonably practicable, that
the erection of the facility, or the erection or installation of
the plant, was in accordance with information supplied by the
manufacturer or supplier of the facility or plant relating to its
errection or its installation, consistent with the health and
safety of persons at the facility; and
(b) it was reasonable for the person to rely on that information.

60  Subclause 10(3) of Schedule 7
Omit all the words before paragraph (a), substitute:

(3) Without limiting the generality of what constitutes taking
reasonably practicable steps as required by clause 6 or 7, for the
purpose of the application of that clause to carrying out research,
testing and examining a facility, or any plant or substance, a person
on whom an obligation is imposed under that clause is regarded as
having taken such reasonably practicable steps as that clause
requires, in relation to carrying out research, testing and examining
the facility, plant or substance, to the extent that:

61  Subclause 11(1) of Schedule 7
Omit “employees or contractors”, substitute “persons at a facility”.

62  Paragraphs 11(2)(a), (b), (c) and (d) of Schedule 7
Omit “at a workplace or by employees or contractors at work”
(wherever occurring), substitute “at a facility”.

63  Paragraph 11(2)(e) of Schedule 7
Repeal the paragraph, substitute:

(e) specifying the form in which information required to be made
available under paragraph 6(1)(c) or 7(1)(c) is to be so made
available;

64  Paragraphs 11(2)(f), (h), (j), (k) and (m) of Schedule 7
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Omit “at a workplace or by employees or contractors at work” (wherever occurring), substitute “at a facility”.

65  Paragraph 11(2)(q) of Schedule 7
Omit “at workplaces” (first occurring), substitute “at a facility”.

66  Paragraph 11(2)(q) of Schedule 7
Omit “at workplaces” (second occurring), substitute “at the facility”.

67  Paragraph 11(2)(r) of Schedule 7
Omit “at a workplace or by employees or contractors at work”, substitute “at a facility”.

68  Paragraph 11(2)(s) of Schedule 7
Omit “employees and the conditions at workplaces”, substitute “members of the workforce at a facility and the conditions at the facility”.

69  Paragraph 11(2)(u) of Schedule 7
Omit “workplaces”, substitute “facilities”.

70  At the end of clause 11 of Schedule 7
Add:

(3) Regulations made for the purposes of this clause may make different provision in respect of different classes of facility.

(4) Subclause (3) does not limit subsection 33(3A) of the Acts Interpretation Act 1901.

71  Subclauses 12(1), (2) and (3) of Schedule 7
Repeal the subclauses, substitute:

(1) A request to the operator of a facility to enter into consultations to establish designated work groups in respect of the members of the workforce at the facility, or to vary designated work groups that have already been established, may be made by:

(a) any member of the workforce; or
(b) if a member of the workforce requests a workforce representative in relation to the member to make the request to the operator—that workforce representative.

(2) The operator of a facility must, within 14 days after receiving a request under subclause (1), enter into consultations with:

(a) if any member of the workforce made a request to establish designated work groups:
  (i) that member of the workforce; and
  (ii) if that member requests that the operator enter into consultations with a workforce representative in relation to the member—that workforce representative; and
  (iii) each employer (if any) of members of the workforce; and

(b) if any member of the workforce made a request to vary designated work groups:
  (i) that member of the workforce; and
  (ii) the health and safety representative of each designated work group affected by the proposed variation; and
  (iii) each work group employer (if any) in relation to each designated work group affected by the proposed variation; and

(c) if a workforce representative made a request to establish designated work groups:
  (i) if a member of the workforce requests that the operator enter into consultations with that workforce representative—that workforce representative; and
  (ii) each employer of members of the workforce; and

(d) if a workforce representative made a request to vary designated work groups:
  (i) if a member of a designated work group affected by the proposed variation requests that the operator enter into consultations with a workforce representative in relation to the group—that workforce representative; and
  (ii) the health and safety representative of each designated work group affected by the proposed variation; and
  (iii) each work group employer (if any) in relation to each designated work group affected by the proposed variation.
(2A) If, at any time, the operator of a facility considers that designated work groups should be established, the operator must enter into consultations with:
   (a) all members of the workforce; and
   (b) if a member of the workforce requests that the operator enter into consultations with a workforce representative in relation to the member—that workforce representative; and
   (c) each employer (if any) of members of the workforce.

(3) If the operator of a facility believes the designated work groups should be varied, the operator may, at any time, enter into consultations about the variations with:
   (a) the health and safety representative of each of the designated work groups affected by the proposed variation; and
   (b) if a member of a designated work group affected by the proposed variation requests that the operator enter into consultations with a workforce representative in relation to the group—that workforce representative; and
   (c) each work group employer (if any) in relation to each designated work group affected by the proposed variation.

72 Subclause 12(4) of Schedule 7

Omit “subclause (2) or (3)”, substitute “subclause (2), (2A) or (3)”.

73 Subclause 12(5) of Schedule 7

Omit “the employer must, by notifying the employees”, substitute “the operator must, by notifying the members of the workforce”.

74 Subclause 12(6) of Schedule 7

Omit “the employer must, if it has been determined that the variation of some or all of those designated work groups is justified, by notifying the employees”, substitute “the operator must, if it has been determined that the variation of some or all of those designated work groups is justified, by notifying the members of the workforce”.

75 Subclause 12(7) of Schedule 7

Omit “manner of grouping employees”, substitute “manner of grouping members of the workforce”.

76 Paragraph 12(7)(a) of Schedule 7
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Omit “the employees’”, substitute “their”.

77 Paragraph 12(7)(b) of Schedule 7
Omit “each employee in the group”, substitute “each group member”.

78 Subclause 12(8) of Schedule 7
Repeal the subclause, substitute:

(8) The parties to the consultations must have regard, in particular, to:
(a) the number of members of the workforce at the facility to which the consultation relates; and
(b) the nature of each type of work performed by such members; and
(c) the number and grouping of such members who perform the same or similar types of work; and
(d) the workplaces where each type of work is performed; and
(e) the nature of any risks to health and safety at each such workplace; and
(f) any overtime or shift working arrangement at the facility.

79 Subclauses 12(9) and (10) of Schedule 7
Omit “the employees” (wherever occurring), substitute “the members of the workforce at a facility”.

80 Subclause 13(2) of Schedule 7
Omit “an employee”, substitute “a member of the workforce”.

81 Paragraph 13(3)(a) of Schedule 7
Omit “employees”, substitute “members of the workforce”.

82 At the end of paragraph 13(3)(b) of Schedule 7
Add “in accordance with clause 13A”.

83 Subclauses 13(4) to (10) of Schedule 7
Repeal the subclauses.

84 After clause 13 of Schedule 7
Insert:
13A Election of health and safety representatives

(1) If:

(a) there is a vacancy in the office of health and safety representative for a designated work group; and

(b) within a reasonable time after the vacancy occurs, a person has not been selected under paragraph 13(3)(a); the operator of the facility must invite nominations from all group members for election as the health and safety representative of the group.

(2) If the office of health and safety representative is vacant and the operator has not invited nominations within a further reasonable time that is no later than 6 months after the vacancy occurred, the Safety Authority may direct the operator to do so.

(3) If there is more than one candidate for election at the close of the nomination period, the operator must conduct, or arrange for the conduct of, an election at the operator’s expense.

(4) An election conducted or arranged to be conducted under subclause (3) must be conducted in accordance with regulations made for the purposes of this subclause if this is requested by the lesser of:

(a) 100 members of the workforce normally in the designated work group; or

(b) a majority of the members of the workforce normally in the designated work group.

(5) If there is only one candidate for election at the close of the nomination period, that person is taken to have been elected.

(6) A person cannot be a candidate in the election if he or she is disqualified under clause 21.

(7) All the members of the workforce in the designated work group are entitled to vote in the election.

(8) An operator conducting or arranging for the conduct of an election under this clause must comply with any relevant directions issued by the Safety Authority.
13B List of health and safety representatives

The operator of a facility must:

(a) prepare and keep up to date a list of all the health and safety representatives of designated work groups comprising members of the workforce performing work at the facility; and

(b) ensure that the list is available for inspection, at all reasonable times, by:

(i) the members of the workforce at the facility; and

(ii) OHS inspectors.

13C Members of designated work group must be notified of selection etc. of health and safety representative

The operator of a facility must:

(a) notify members of a designated work group in relation to the facility of a vacancy in the office of health and safety representative for the designated work group within a reasonable time after the vacancy arises; and

(b) notify those members of the name of any person selected (whether under paragraph 13(3)(a) or (b)) as health and safety representative for the designated work group within a reasonable time after the selection is made.

85 Subclause 15(1) of Schedule 7

Omit “Designated Authority”, substitute “Safety Authority”.

86 Subclause 15(2) of Schedule 7

Omit “The employer”, substitute “The operator of the facility concerned and, if a person other than the operator is the employer of the representative, that person,”.

87 Clause 16 of Schedule 7

Repeal the clause, substitute:
16 Powers of health and safety representatives

(1) A health and safety representative for a designated work group may, for the purpose of promoting or ensuring the health and safety at a workplace of the group members:

(a) do all or any of the following:

(i) inspect the whole or any part of the workplace if there has, in the immediate past, been an accident or a dangerous occurrence at the workplace, or if there is an immediate threat of such an accident or dangerous occurrence;

(ii) inspect the whole or any part of the workplace if the health and safety representative has given reasonable notice of the inspection to the operator’s representative at the facility and to any other person having immediate control of the workplace;

(iii) make a request to an OHS inspector or to the Safety Authority that an inspection be conducted at the workplace;

(iv) accompany an OHS inspector during any inspection at the workplace by the OHS inspector (whether or not the inspection is being conducted as a result of a request made by the health and safety representative);

(v) if there is no health and safety committee in respect of the members of the workforce at the facility—represent group members in consultations with the operator and any work group employer about the development, implementation and review of measures to ensure the health and safety of those members at the workplace;

(vi) if a health and safety committee has been established in respect of the members of the workforce at the facility—examine any of the records of that committee; and

(b) investigate complaints made by any group member to the health and safety representative about the health and safety of any of the members of the workforce (whether in the group or not); and

(c) with the consent of a group member, be present at any interview about health and safety at work between that member and:
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(i) an OHS inspector; or
(ii) the operator or any work group employer or a person representing the operator or that employer; and
(d) obtain access to any information under the control of the operator or any work group employer:
   (i) relating to risks to the health and safety of any group member; and
   (ii) subject to subclause (6), relating to the health and safety of any group member; and
(e) issue provisional improvement notices in accordance with clause 17.

(2) A health and safety representative for a designated work group is entitled, in the exercise of his or her powers, to be assisted by a consultant.

(3) A health and safety representative for a designated work group must not:
   (a) be assisted by a consultant at a workplace at which work is performed; or
   (b) provide to a consultant information that has been provided to the health and safety representative by a group member under paragraph (1)(d);
   unless the operator or the Safety Authority has, in writing, agreed to the provision of that assistance at that workplace or the provision of that information, as the case may be.

(4) Neither the operator nor any workplace employer becomes, because of the agreement under subclause (3) to the provision of assistance by a consultant, liable for any remuneration or other expenses incurred in connection with the consultant’s activities.

(5) If a health and safety representative for a designated work group is being assisted by a consultant, the consultant is entitled to be present with the representative at any interview, about health and safety at work, between a group member and:
   (a) an OHS inspector; or
   (b) the operator or any work group employer or a person representing the operator or that employer;
   if, and only if, the group member consents to the presence of the consultant.
(6) The health and safety representative is not entitled or, where the health and safety representative is assisted by a consultant, the health and safety representative and the consultant are not entitled, under subparagraph (1)(d)(ii), to have access:

(a) to information in respect of which a group member is entitled to claim, and does claim, legal professional privilege; or

(b) to information of a confidential medical nature relating to a person who is or was a group member unless:

(i) the person has delivered to the operator or any work group employer a written authority permitting the health and safety representative, or the health and safety representative and the consultant, as the case requires, to have access to the information; or

(ii) the information is in a form that does not identify the person or enable the identity of the person to be discovered.

(7) This Schedule does not:

(a) impose an obligation on a person to exercise any power conferred on the person because the person is a health and safety representative; or

(b) render a person liable in civil proceedings because of:

(i) a failure to exercise such a power; or

(ii) the way such a power was exercised.

88 Subclause 17(1) of Schedule 7

Omit “employees included in the group, the representative must consult with the person supervising the work performed by the employee or employees”, substitute “group members, the representative must consult with the person supervising the relevant activity”.

89 Subclause 17(2) of Schedule 7

Omit “the person (in this clause called the responsible person)”, substitute “any or all of the persons (each of whom is in this clause called a responsible person)”.

90 Subclause 17(3) of Schedule 7

Repeal the subclause, substitute:
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(3) If a responsible person is the operator, the improvement notice may be issued to the operator by giving it to the operator’s representative at the facility.

(3A) If it is not practicable to issue the notice to a responsible person (other than the operator or the supervisor) by giving it to that responsible person:
   (a) the notice may be issued to that responsible person by giving it to the person who for the time being is, or may reasonably be presumed to be, on behalf of the responsible person, in charge of the activity to which the notice relates; and
   (b) if the notice is so issued, a copy of the notice must be given to the responsible person as soon as practicable afterwards.

91 Subclause 17(7) of Schedule 7

Repeal the subclause, substitute:

(7) On issuing the notice, the health and safety representative must give a copy of the notice to:
   (a) if the operator is not a responsible person—the operator; and
   (b) each work group employer other than a work group employer who is a responsible person; and
   (c) if the supervisor is not a responsible person—the supervisor; and
   (d) if the notice relates to any plant, substance or thing that is owned by a person other than a responsible person or a person to whom a copy of the notice is given under paragraph (a), (b) or (c)—that owner.

92 Subclause 18(1) of Schedule 7

Omit “Designated Authority or to an investigator that an investigation”, substitute “Safety Authority or to an OHS inspector that an inspection”.

93 Subclauses 18(2) and (3) of Schedule 7

Omit “investigator” (wherever occurring), substitute “OHS inspector”.

94 Subclause 18(3) of Schedule 7

Omit “investigation” (wherever occurring), substitute “inspection”.

95 Subclause 18(4) of Schedule 7
Repeal the subclause, substitute:

(4) If the OHS inspector varies a notice, the notice as so varied has effect:

(a) so far as the notice concerns obligations imposed on the responsible person that are unaffected by the variation—as if the notice as so varied resumed effect on the day of the variation; and

(b) so far as the notice concerns new obligations imposed by virtue of the variation—as if the notice as so varied were a new notice issued on the day of the variation.

96 Subclause 18(5) of Schedule 7

Omit all the words before paragraph (b), substitute:

(5) If the notice is issued to a responsible person, the responsible person must:

(a) notify each group member who is affected by the notice of the fact of the issue of the notice; and

97 Subclauses 18(6) and (8) of Schedule 7

Omit “investigator” (wherever occurring), substitute “OHS inspector”.

98 Subclause 19(1) of Schedule 7

Omit all the words before paragraph (c), substitute:

(1) The operator of a facility, in respect of which a designated work group having a health and safety representative has been established, must:

(a) on being requested to do so by the representative, consult with the representative on the implementation of changes at any workplace at which some or all of the group members perform work, being changes that may affect their health and safety; and

(b) in respect of a workplace at which some or all of the group members perform work:

(i) permit the representative to make such inspection of the workplace as the representative is entitled to make in accordance with subparagraph 16(1)(a)(i) and to accompany an OHS inspector during an inspection at the workplace by the OHS inspector; and
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(ii) if there is no health and safety committee in respect of the members of the workforce—on being requested to do so by the representative, consult with the representative about the development, implementation and review of measures to ensure the health and safety of group members; and

Note: The heading to clause 19 is altered by inserting “the operator and other employers” before “employers”.

99 Subclause 19(2) of Schedule 7
Omit all the words before paragraph (a), substitute:

(2) The operator must not permit a health and safety representative in respect of a designated work group to have access to information of a confidential medical nature under the control of the operator, being information relating to a person who is or was a group member, unless:

100 Subclause 19(3) of Schedule 7
Repeal the subclause, substitute:

(3) The operator is not required to give a health and safety representative access to any information in respect of which the operator is entitled to claim, and does claim legal professional privilege.

(4) The duties imposed by this clause on the operator in respect of the health and safety representative for a designated work group apply equally, to the extent that the matters to which the duties relate are within the control of a work group employer or of a supervisor of particular work, to that employer and to that supervisor.

101 Paragraph 20(1)(b) of Schedule 7
Repeal the paragraph, substitute:

(b) the person ceases to be a group member of that designated work group; or

102 Subclauses 20(2) and (3) of Schedule 7
Repeal the subclauses, substitute:
(2) A person may resign as the health and safety representative for a designated work group by notice in writing delivered to the operator and to each work group employer.

(3) If a person resigns as the health and safety representative for a designated work group, the person must notify the resignation to:
   (a) the group members; and
   (b) the operator and each work group employer.

103 **Paragraphs 20(4)(a), (b) and (c) of Schedule 7**
Repeal the paragraphs, substitute:
   (a) the group members; and
   (b) the operator and each work group employer;

104 **Subclause 21(1) of Schedule 7**
Omit “Designated Authority by the employer of all of the employees included in the designated work group, or by an involved union in relation to the designated work group.”, substitute “Safety Authority by the operator, by a work group employer or, at the request of a group member of the designated work group, by a workforce representative in relation to the designated work group.”.

105 **Paragraphs 21(1)(a) and (b) of Schedule 7**
Omit “employer” (wherever occurring), substitute “operator or work group employer”.

106 **Subclause 21(2) of Schedule 7**
Omit all the words before paragraph (b), substitute:

   (2) If, on an application by the operator or work group employer under subclause (1), the Safety Authority is satisfied that the health and safety representative has acted in a manner referred to in paragraph (1)(a) or (b), the Safety Authority may, after having regard to:
   (a) the harm (if any) that was caused to the operator or work group employer or to an undertaking of the operator or work group employer as a result of the action of the representative; and

107 **Subclauses 23(1) and (2) of Schedule 7**
Repeal the subclauses, substitute:

(1) A health and safety committee must be established in respect of the members of the workforce at a facility if:

(a) the number of those members normally present at the facility is not less than 50 (whether or not those members are all at work at the facility at the same time); and

(b) the members of the workforce are included in one or more designated work groups; and

(c) the operator is requested to establish the committee by the health and safety representative for the designated work group or for one of the designated work groups.

(2) The health and safety committee consists of:

(a) the number of members specified in an agreement reached between the operator and the members of the workforce; or

(b) if there is no such agreement—an equal number of members, chosen by the members of the workforce, to represent the interests of members of the workforce and members, chosen by the operator, to represent the interests of the operator and the employer (other than the operator) of members of the workforce.

108 Subclause 23(3) of Schedule 7

Omit “interests of management”, substitute “interests of the operator and employers (other than the operator) of members of the workforce”.

109 Subclauses 23(3) and (4) of Schedule 7

Omit “employees” (wherever occurring), substitute “members of the workforce”.

110 Subclause 23(8) of Schedule 7

Omit “employer” (wherever occurring), substitute “operator”.

111 Subclause 23(8) of Schedule 7

Omit “registered unions”, substitute “members of the workforce”:

112 Paragraphs 24(1)(a), (b), (c), (d) and (e) of Schedule 7

Repeal the paragraphs, substitute:

(a) to assist the operator of the facility concerned:
(i) to develop and implement measures designed to protect;
and
(ii) to review and update measures used to protect;
the health and safety at work of members of the workforce;
(b) to facilitate cooperation between the operator of the facility,
employers (other than the operator) of members of the
workforce, and members of the workforce, in relation to
occupational health and safety matters;
(c) to assist the operator to disseminate among members of the
workforce, in appropriate languages, information relating to
health and safety at work;
(d) such functions as are prescribed;
(e) such other functions as are agreed upon between the operator
and the health and safety committee.

113 Subclause 25(1) of Schedule 7

Repeal the subclause, substitute:

(1) If there is a health and safety committee, the operator and any
employer (other than the operator) of a member of the workforce
must:

(a) subject to subclauses (2) and (3), make available to the
committee any information possessed by the operator or that
employer relating to risks to health and safety to members of
the workforce; and

(b) permit any member of the committee who is a member of the
workforce to take such time off work, without loss of
remuneration or other entitlements, as is necessary for the
member adequately to participate in the performance by the
committee of its functions.

Note: The heading to clause 25 is altered by inserting “the operator and other” before “employers”.

114 Subclause 25(2) of Schedule 7

Omit all the words before paragraph (b), substitute:

(2) The operator or any employer (other than the operator) of a
member of the workforce must not make available to a health and
safety committee information of a confidential nature relating to a
person who is or was a member of the workforce, unless:
(a) the person has authorised the information to be made available to the committee; or

115 Subclause 25(3) of Schedule 7
Repeal the subclause, substitute:
(3) The operator or any employer (other than the operator) of a member of the workforce is not required to make available to a health and safety committee any information in respect of which the operator or employer is entitled to claim, and does claim, legal professional privilege.

116 Clauses 26 and 27 of Schedule 7
Repeal the clauses, substitute:

26 Action by health and safety representatives
(1) If a health and safety representative for a designated work group has reasonable cause to believe that there is an imminent and serious danger to the health or safety of any person at or near the facility unless a group member or group members cease to perform particular work, the representative must:
(a) inform a person (a supervisor) supervising the group member or group members in the performance of the work of the danger; or
(b) if no supervisor can be contacted immediately:
(i) direct the group member or group members to cease, in a safe manner, to perform the work; and
(ii) as soon as practicable, inform a supervisor that the direction has been given.

(2) If a supervisor is informed under paragraph (1)(a) of a danger to the health or safety of any person at or near the facility, the supervisor must take such action as he or she thinks appropriate to remove that danger, and any such action may include directing a group member or group members to cease, in a safe manner, to perform the work.

(3) If:
(a) a health and safety representative has informed a supervisor under paragraph (1)(a) of a danger; and
(b) the representative has reasonable cause to believe that,
    despite any action taken by the supervisor in accordance with
    subclause (2), there continues to be an imminent and serious
    danger to the health or safety of any person at or near the
    facility unless the group member or group members cease to
    perform particular work;

the representative must:

(c) direct the group member or group members to cease, in a safe
    manner, to perform the work; and

(d) as soon as practicable, inform the supervisor that the
    direction has been given.

(4) If:

(a) a health and safety representative gives a direction under
    paragraph (1)(b), but is unable to agree with a supervisor
    whom the representative has informed under that paragraph
    that there is a need for a direction under that paragraph; or

(b) a health and safety representative gives a direction under
    paragraph (3)(c);

the representative or the supervisor may make a request to the
Safety Authority or to an OHS inspector that an inspection be
conducted of the work that is the subject of the direction.

(5) As soon as possible after a request is made, an inspection must be
conducted of the work that is the subject of the direction, and the
OHS inspector conducting the inspection must make such
decisions, and exercise such powers, under Part 4 as the OHS
inspector considers necessary in relation to the work.

(6) This clause does not limit the power of a health and safety
representative under subparagraph 16(1)(a)(iii) to make a request
to an OHS inspector or to the Safety Authority that an inspection
be conducted at the workplace.

27 Directions to perform other work

If a group member who is an employee has ceased to perform
work, in accordance with the direction of a health and safety
representative under paragraph 26(1)(b) or (3)(c), not being a
cessation of work that continues after:

(a) the health and safety representative has agreed with a person
    supervising work at the workplace where the work was being
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performed that the cessation of work was not, or is no longer, necessary; or

(b) an OHS inspector has, under subclause 26(5), made a decision to the effect that the employee should perform the work;

the employer may direct the employee to perform suitable alternative work, and the employee is to be taken, for all purposes, to be required to perform that other work under the terms and conditions of the employee’s employment.

117 At the end of Part 3 of Schedule 7

Add:

Division 4—Exemptions

27A Exemptions

(1) The Safety Authority may, in accordance with the regulations, make a written order exempting a specified person from any or all of the provisions of this Part (other than this clause).

Note: For specification by class, see subsection 46(2) of the Acts Interpretation Act 1901.

(2) The Safety Authority must not make an order under subclause (1) unless it is satisfied on reasonable grounds that it is impracticable for the person to comply with the provision or provisions.

(3) An order under subclause (1) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

118 Part 4 of Schedule 7 (heading)

Repeal the heading, substitute:

Part 4—Inspections

119 Division 1 of Part 4 of Schedule 7

Repeal the Division.

120 Division 2 of Part 4 of Schedule 7 (heading)

Repeal the heading, substitute:
**Division 1—Inspections**

**121 Clauses 29, 30 and 31 of Schedule 7**

Repeal the clauses, substitute:

**29 OHS inspectors**

(1) A person who is appointed under section 150YL as an OHS inspector has the powers, functions and duties of an OHS inspector conferred or imposed by this Schedule and by regulations set out in or prescribed for the purposes of subsection 140H(2).

(2) The Safety Authority may give written directions specifying the manner in which, and the conditions subject to which, powers conferred on OHS inspectors:

(a) by this Schedule; or

(b) by regulations set out in or prescribed for the purposes of subsection 140H(2);

are to be exercised. If it does so, the powers of OHS inspectors must be exercised in accordance with those directions.

(3) The Safety Authority may, by notice in writing, impose restrictions, not inconsistent with any direction in force under subclause (2), on the powers that are conferred on a particular OHS inspector by this Schedule or by regulations set out in or prescribed for the purposes of subsection 140H(2). If it does so, the powers of the OHS inspector are taken to have been restricted accordingly.

**30 Inspections**

(1) An OHS inspector may, at any time, conduct an inspection:

(a) to ascertain whether the requirements of, or any requirements properly made under, this Schedule or regulations set out in or prescribed for the purposes of subsection 140H(2), are being complied with; or

(b) concerning a contravention or a possible contravention of this Schedule or those regulations; or

(c) concerning an accident or dangerous occurrence that has happened at a facility.
(2) The Safety Authority may direct an OHS inspector to conduct an inspection:

(a) to ascertain whether the requirements of, or any requirements properly made under, this Schedule or regulations set out in or prescribed for the purposes of subsection 140H(2), are being complied with; or

(b) concerning a contravention or a possible contravention of this Schedule or those regulations; or

(c) concerning an accident or dangerous occurrence that has happened at a facility;

and the OHS inspector must, unless the Safety Authority revokes the direction, conduct an inspection accordingly.

31 Powers of entry and search—facilities

(1) An OHS inspector may, for the purposes of an inspection, at any reasonable time during the day or night:

(a) enter the facility to which the inspection relates and do all or any of the following:

(i) search the facility;

(ii) inspect, examine, take measurements of, or conduct tests concerning, any workplace at the facility or any plant, substance or thing at the facility;

(iii) take photographs of, or make sketches of, any workplace at the facility or any plant, substance or thing at the facility;

(iv) inspect, take extracts from, or make copies of, any documents at the facility that the OHS inspector has reasonable grounds to believe relate, or are likely to relate, to the subject matter of the inspection; and

(b) inspect the seabed and subsoil in the vicinity of the facility to which the inspection relates.

(2) Immediately on entering a facility for the purposes of an inspection, an OHS inspector must take reasonable steps to notify the purpose of entering the facility to:

(a) the operator’s representative at the facility; and

(b) if there is a health and safety representative for a designated work group having a group member likely to be affected by the matter the subject of the inspection—that representative;
and must, on being requested to do so by the person referred to in paragraph (a) or (b), produce for inspection by that person:

(c) the OHS inspector’s identity card; and

(d) a copy of the Safety Authority’s written direction (if any) to conduct the inspection; and

(e) a copy of the restrictions (if any) imposed on the powers of the OHS inspector under subclause 29(3).

(3) If there is a health and safety representative for a designated work group having a group member likely to be affected by the matter the subject of the inspection, the OHS inspector must afford the health and safety representative a reasonable opportunity to consult on the matter the subject of the inspection.

(4) A person is guilty of an offence if the person obstructs or hinders an OHS inspector in the exercise of an OHS inspector’s powers under this clause.

Penalty: 50 penalty units.

(5) Subclause (4) does not apply if the person has a reasonable excuse.

Note 1: The defendant bears an evidential burden in relation to the matter in subclause (5)—see section 13.3(3) of the Criminal Code.

Note 2: See also Part 2.3 of the Criminal Code (circumstances in which there is no criminal responsibility).

Note 3: The same conduct may be an offence against subclause (4) of this clause and section 149.1 of the Criminal Code.

31A Powers of entry and search—regulated business premises (other than facilities)

(1) An OHS inspector may, for the purposes of an inspection:

(a) at any reasonable time, 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 to facility operations that are, the subject of the inspection; and

(b) search for, inspect, take extracts from, or make copies of, any such documents at those premises.

(2) Immediately on entering premises referred to in subclause (1), an OHS inspector must take reasonable steps to notify the purpose of
the entry to the occupier of those premises, and must, on being requested to do so by the occupier, produce for inspection by the occupier:

(a) the OHS inspector’s identity card; and
(b) a copy of the Safety Authority’s written direction (if any) to conduct the inspection; and
(c) a copy of the restrictions (if any) imposed on the powers of the OHS inspector under subclause 29(3).

(3) A person is guilty of an offence if the person obstructs or hinders an OHS inspector in the exercise of an OHS inspector’s powers under this clause.

Penalty: 50 penalty units.

(4) Subclause (3) does not apply if the person has a reasonable excuse.

Note 1: The defendant bears an evidential burden in relation to the matter in subclause (4)—see section 13.3(3) of the Criminal Code.

Note 2: See also Part 2.3 of the Criminal Code (circumstances in which there is no criminal responsibility).

Note 3: The same conduct may be an offence against subclause (3) of this clause and section 149.1 of the Criminal Code.

31B Powers of entry and search—premises (other than regulated business premises)

(1) An OHS inspector may, for the purposes of an inspection:

(a) 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 to facility operations that are, the subject of the inspection; and

(b) search for, inspect, take extracts from, or make copies of, any such documents at those premises.

(2) An OHS inspector may exercise the powers referred to in subclause (1) to enter premises only:

(a) if the premises are not a residence:

(i) in accordance with a warrant under clause 31C; or

(ii) with the consent of the occupier of the premises; or
(b) if the premises are a residence—with the consent of the occupier of the premises.

(3) Immediately on entering premises referred to in subclause (1), an OHS inspector must:
   (a) take reasonable steps to notify the purpose of the entry to the occupier of those premises; and
   (b) take reasonable steps to produce, for inspection by the occupier, the OHS inspector’s identity card; and
   (c) on being requested to do so by the occupier, produce, for inspection by the occupier:
      (i) a copy of the Safety Authority’s written direction (if any) to conduct the inspection; and
      (ii) a copy of the restrictions (if any) imposed on the powers of the OHS inspector under subclause 29(3).

(4) If:
   (a) an OHS inspector enters premises in accordance with a warrant under clause 31C; and
   (b) the occupier of the premises is present at the premises;
the OHS inspector must make a copy of the warrant available to the occupier.

(5) Before obtaining the consent of a person as mentioned in paragraph (2)(a) or (b), an OHS inspector must inform the person that:
   (a) the person may refuse consent; and
   (b) the consent may be withdrawn.

(6) The consent of a person is not effective for the purposes of subclause (2) unless the consent is voluntary.

(7) A person is guilty of an offence if the person obstructs or hinders an OHS inspector in the exercise of an OHS inspector’s powers under this clause.

Penalty: 50 penalty units.

(8) Subclause (7) does not apply if the person has a reasonable excuse.

Note 1: The defendant bears an evidential burden in relation to the matter in subclause (8)—see section 13.3(3) of the Criminal Code.
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31C Warrant to enter premises (other than regulated business premises)

(1) An OHS inspector may apply to a Magistrate for a warrant authorising the OHS inspector, with such assistance as the OHS inspector thinks necessary, to exercise the powers referred to in subclause 31B(1) in relation to particular premises (other than a residence).

(2) The application must be supported by an information on oath or affirmation that sets out the grounds on which the OHS inspector is applying for the warrant.

(3) If the Magistrate is satisfied that there are reasonable grounds for issuing the warrant, the Magistrate may issue the warrant.

(4) A warrant issued under subclause (3) must state:
   (a) the name of the OHS inspector; and
   (b) whether the inspection may be carried out at any time or only during specified hours of the day; and
   (c) the day on which the warrant ceases to have effect; and
   (d) the purposes for which the warrant is issued.

(5) The day specified under paragraph (4)(c) is not to be more than 7 days after the day on which the warrant is issued.

(6) The purposes specified under paragraph (4)(d) must include the identification of the premises in relation to which the warrant is issued.

122 Subclause 32(1) of Schedule 7

Repeal the subclause, substitute:

Requirement to give reasonable assistance to an OHS inspector

(1) An OHS inspector may, to the extent that it is reasonably necessary to do so in connection with the conduct of an inspection, require:
   (a) the operator of a facility; or
(b) the person in charge of operations at a workplace in relation to a facility; or
(c) a member of the workforce at a facility; or
(d) any person representing a person referred to in paragraph (a) or (b);

to provide the OHS inspector with reasonable assistance and facilities:
(e) that is or are reasonably connected with the conduct of the inspection at or near the facility; or
(f) for the effective exercise of the OHS inspector’s powers under this Schedule in connection with the conduct of the inspection at or near the facility.

(1A) The reasonable assistance referred to in subclause (1) includes, so far as the operator of the facility is concerned:
(a) appropriate transport to or from the facility for the OHS inspector and for any equipment required by the OHS inspector, or any article of which the OHS inspector has taken possession; and
(b) reasonable accommodation and means of subsistence while the OHS inspector is at the facility.

Requirement to answer questions

(1B) If:
(a) an OHS inspector believes on reasonable grounds that a person is capable of answering a question that is reasonably connected with the conduct of an inspection; and
(b) the person is covered by any of the following subparagraphs:
   (i) the operator of a facility;
   (ii) the person in charge of operations at a workplace in relation to a facility;
   (iii) a member of the workforce at a facility;
   (iv) any person representing a person referred to in subparagraph (i) or (ii);

the OHS inspector may, to the extent that it is reasonably necessary to do so in connection with the conduct of the inspection, require the person to answer the question put by the OHS inspector.

(1C) If, at the time when a requirement under subclause (1B) is imposed on a person, the person is not physically present on regulated...
business premises, the person is not obliged to comply with the requirement unless the requirement:

(a) is in writing; and
(b) specifies the day on or before which the question is to be answered; and
(c) is accompanied by a statement to the effect that a failure to comply with the requirement is an offence.

The day specified under paragraph (b) must be at least 14 days after the day on which the requirement is imposed.

**Requirement to produce documents or articles**

(1D) If:

(a) an OHS inspector believes on reasonable grounds that a person is capable of producing a document or article that is reasonably connected with the conduct of an inspection; and
(b) the person is covered by any of the following subparagraphs:
   (i) the operator of a facility;
   (ii) the person in charge of operations at a workplace in relation to a facility;
   (iii) a member of the workforce at a facility;
   (iv) any person representing a person referred to in subparagraph (i) or (ii);
the OHS inspector may, to the extent that it is reasonably necessary to do so in connection with the conduct of the inspection, require the person to produce the document or article.

(1E) If, at the time when a requirement under subclause (1D) is imposed on a person, the person is not physically present on regulated business premises, the person is not obliged to comply with the requirement unless the requirement:

(a) is in writing; and
(b) specifies the day on or before which the document or article is to be produced; and
(c) is accompanied by a statement to the effect that a failure to comply with the requirement is an offence.

The day specified under paragraph (b) must be at least 14 days after the day on which the requirement is imposed.

Note: The following heading to subclause 32(2) of Schedule 7 is inserted "Enforcement".
123 Subclause 32(2A) of Schedule 7 (note)
   Omit “Note”, substitute “Note 1”.

124 At the end of subclause 32(2A) of Schedule 7 (after the note)
   Add:
   
   Note 2: See also Part 2.3 of the Criminal Code (circumstances in which there
   is no criminal responsibility).

125 Subclause 32(2B) of Schedule 7
   Repeal the subclause.

126 At the end of subclause 32(3) of Schedule 7
   Add:
   
   Note: The same conduct may be an offence against both subclause (3) of
   this clause and section 137.1 of the Criminal Code.

127 Subclause 32(4) of Schedule 7
   After “document” (wherever occurring), insert “or article”.

128 Subclause 32(4) of Schedule 7
   Omit “subclause (1)”, substitute “subclause (1B) or (1D)”.

129 Subclause 32(5) of Schedule 7
   After “document” (wherever occurring), insert “or article”.

130 Subclause 33(1) of Schedule 7
   Omit “investigation” (wherever occurring), substitute “inspection”.

131 Subclause 33(1) of Schedule 7
   Omit “investigator”, substitute “OHS inspector”.

132 Subclause 33(1) of Schedule 7
   Omit “workplace” (wherever occurring), substitute “facility”.

133 Subclause 33(2) of Schedule 7
   Repeal the subclause, substitute:
(2) On taking possession of plant, a substance or a thing, or taking a sample of a substance or thing, the OHS inspector must, by notice in writing, inform:

(a) the operator of the facility; and

(b) if the plant, substance or thing is used for the performance of work by an employer of a member or members of the workforce at the facility other than the operator of the facility—that employer; and

(c) if the plant, substance or thing is owned by a person other than a person mentioned in paragraph (a) or (b)—that person; and

(d) if there is a health and safety representative for a designated work group that includes a member of the workforce who is affected by the matter to which the inspection relates—that representative;

of the taking of possession or the taking of the sample, as the case may be, and the reasons for it.

134 Subclause 33(3) of Schedule 7

Repeal the subclause, substitute:

(3) If the OHS inspector gives the notice to the operator of the facility to which the inspection relates, the operator’s representative at the facility must cause the notice to be displayed in a prominent place at the workplace from which the plant, substance or thing was removed.

135 Subclauses 33(4) and (5) of Schedule 7

Omit “the investigator” (wherever occurring), substitute “the OHS inspector”.

136 Subclause 34(1) of Schedule 7

Repeal the subclause, substitute:

(1) In conducting an inspection, an OHS inspector may, if he or she has reasonable grounds to believe that it is reasonably necessary to give a direction in order to:

(a) remove an immediate threat to the health or safety of any person; or
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(b) allow the inspection, examination or taking of measurements
of, or conducting of tests concerning, a facility or any plant,
substance or thing at the facility;
direct, by written notice given to the operator’s representative at
the facility, that the operator must ensure that:
(c) a particular workplace; or
(d) particular plant, or a particular substance or thing;
not be disturbed for a period specified in the direction.

(1A) The period specified in the direction must be a period that the OHS
inspector has reasonable grounds to believe is necessary in order to
remove the threat or to allow the inspection, examination,
measuring or testing to take place.

137 Subclauses 34(3) and (4) of Schedule 7

Repeal the subclauses, substitute:

(3) If an OHS inspector gives a notice to the operator’s representative
under subclause (1), the operator’s representative must cause the
notice to be displayed in a prominent place at the workplace:
(a) that is to be left undisturbed; or
(b) where the plant, substance or thing that is to be left
undisturbed is located.

(4) As soon as practicable after giving the direction, the OHS inspector
must take reasonable steps to notify:
(a) if the workplace, plant, substance or thing to which the
direction relates is owned by a person other than the operator
of the facility—that person; and
(b) if there is a health and safety representative for a designated
work group that includes a group member performing work:
(i) at a workplace; or
(ii) involving the plant, substance or thing;
to which the direction relates—that representative:
of the direction and the reasons for giving it.

138 Subclause 34(5) of Schedule 7

Repeal the subclause, substitute:
(5) The operator of a facility to which a direction concerning a workplace, plant, substance or a thing relates must ensure that the direction is complied with.

Penalty: 250 penalty units.

139 Subclauses 35(1) and (2) of Schedule 7

Repeal the subclauses, substitute:

(1) If, having conducted an inspection, an OHS inspector is satisfied on reasonable grounds that it is reasonably necessary to issue a prohibition notice to the operator of a facility in order to remove an immediate threat to the health or safety of any person, the OHS inspector may issue such a notice, in writing, to the operator.

(2) The notice must be issued to the operator by giving it to the operator’s representative at the facility.

140 Paragraph 35(3)(a) of Schedule 7

Omit “investigator’s”, substitute “OHS inspector’s”.

141 Paragraph 35(3)(b) of Schedule 7

Omit “employer” (wherever occurring), substitute “operator”.

142 Subclauses 35(4), (5) and (6) of Schedule 7

Repeal the subclauses, substitute:

(4) The operator must ensure that the notice is complied with.

Penalty: 250 penalty units.

(5) If an OHS inspector is satisfied that action taken by the operator to remove the threat to health and safety is not adequate, the OHS inspector must inform the operator accordingly.

(6) The notice ceases to have effect when an OHS inspector notifies the operator that the OHS inspector is satisfied that the operator has taken adequate action to remove the threat to health or safety.

143 Subclauses 35(7) and (8) of Schedule 7

Omit “investigator” (wherever occurring), substitute “OHS inspector”.

144 Subclause 35(7) of Schedule 7
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Omit “investigation”, substitute “inspection”.

145 Subclause 35(9) of Schedule 7

Repeal the subclause, substitute:

(9) The operator’s representative at the facility must:

(a) give a copy of the notice to each health and safety
representative (if any) for any designated work group having
group members performing work that is affected by the
notice; and

(b) cause a copy of the notice to be displayed at a prominent
place at or near each workplace at which that work is
performed.

146 Subclause 35(10) of Schedule 7

Omit “an employer, the investigator”, substitute “the operator, the OHS
inspector”.

147 Subclause 36(1) of Schedule 7

Omit “having conducted an investigation, an investigator forms the
opinion”, substitute “in conducting an inspection, an OHS inspector
believes on reasonable grounds”.

148 Subclause 36(1) of Schedule 7

Omit “the investigator”, substitute “the OHS inspector”.

149 Subclause 36(2) of Schedule 7

Repeal the subclause, substitute:

(2) If the responsible person is the operator, the improvement notice
may be issued to the operator by giving it to the operator’s
representative at the facility.

(2A) If the responsible person is an employer (other than the operator)
of members of the workforce, but it is not practicable to give the
notice to that employer, the improvement notice may be issued to
the employer by giving it to the operator’s representative at the
facility and, if the notice is so issued, the operator must ensure that
a copy of the notice is given to the employer as soon as practicable
afterwards.
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150 Paragraph 36(3)(a) of Schedule 7

Omit “, in the investigator’s opinion,“, substitute “the OHS inspector believes”.

151 Paragraph 36(3)(a) of Schedule 7

Omit “opinion”, substitute “belief”.

152 Paragraph 36(3)(b) of Schedule 7

Omit “investigator’s”, substitute “OHS inspector’s”.

153 Subclause 36(5) of Schedule 7

Repeal the subclause, substitute:

(5) If the OHS inspector believes on reasonable grounds that it is appropriate to do so, the OHS inspector may, in writing and before the end of the period, extend the period specified in the notice.

154 Subclauses 36(7) and (8) of Schedule 7

Repeal the subclauses, substitute:

(7) If a notice is issued to an employer (other than the operator) of members of the workforce in circumstances other than the circumstance referred to in subclause 36(2A), the employer must immediately ensure that a copy of the notice is given to the operator’s representative at the facility.

(7A) If a notice is issued to the operator or to an employer (other than the operator) of members of the workforce, the operator’s representative at the facility must:

(a) give a copy of the notice to each health and safety representative for a designated work group having group members performing work that is affected by the notice; and

(b) cause a copy of the notice to be displayed in a prominent place at or near each workplace at which the work is being performed.

(8) Upon issuing a notice, the OHS inspector must give a copy of the notice to:

(a) if the notice is given to a member of the workforce who is an employee in connection with work performed by the employee—the employer of that employee; and
(b) if the notice relates to any workplace, plant, substance or thing that is owned by a person other than a responsible person or a person who is an employer referred to in paragraph (a)—that owner; and

(c) if the notice is issued to a person who owns any workplace, plant, substance or thing, because of which a contravention of this Schedule or the regulations has occurred or is likely to occur—the operator of the facility and, if the employer of employees who work in that workplace or who use that plant, substance or thing is a person other than the operator, that employer.

155 **Subclause 37(1) of Schedule 7**

Omit “investigator”, substitute “OHS inspector”.

156 **Subclause 37(1) of Schedule 7**

Omit “investigation” (wherever occurring), substitute “inspection”.

157 **Paragraph 37(1)(e) of Schedule 7**

Omit “an employer”, substitute “the operator of a facility”.

158 **Paragraph 37(1)(g) of Schedule 7**

Repeal the paragraph, substitute:

(g) the operator of the facility or any employer (other than the operator) who is affected by the decision; or

159 **Paragraph 37(1)(j) of Schedule 7**

Omit “that includes an employee”, substitute “having a group member”.

160 **Paragraphs 37(1)(k) and (m) of Schedule 7**

Repeal the paragraphs, substitute:

(k) a workforce representative in relation to the designated work group that includes a group member who is affected by the decision and who has requested the workforce representative to make the appeal; or

(m) if there is no such designated work group, and a member of the workforce affected by the decision has requested a workforce representative in relation to the member to make the appeal—that workforce representative; or
161 Subclause 37(2) of Schedule 7
   Omit “investigator”, substitute “OHS inspector”.

162 Subclause 37(2) of Schedule 7
   Omit “investigation”, substitute “inspection”.

163 Paragraph 37(2)(b) of Schedule 7
   Omit “an employer”, substitute “the operator of a facility”.

164 Paragraph 37(2)(c) of Schedule 7
   Omit “that includes an employee”, substitute “having a group member”.

165 Paragraphs 37(2)(d) and (e) of Schedule 7
   Repeal the paragraphs, substitute:
   (d) a workforce representative in relation to the designated work
       group that includes a group member who is affected by the
       decision and who has requested the workforce representative
       to make the appeal; or
   (e) if there is no such designated work group, and a member of
       the workforce affected by the decision has requested a
       workforce representative in relation to the member to make
       the appeal—that workforce representative.

166 Subclauses 37(5) and (8) of Schedule 7
   Omit “investigator” (wherever occurring), substitute “OHS inspector”.

167 Subclause 37(5) of Schedule 7
   Omit “investigation”, substitute “inspection”.

168 Clause 38 of Schedule 7
   Repeal the clause.

169 Subclause 39(1) of Schedule 7
   Omit “36(7)” (wherever occurring), substitute “36(7A)”.

170 Subclause 39(1) of Schedule 7 (penalty)
   Repeal the penalty, substitute:
   Penalty: 50 penalty units.
171 **Subclause 39(2) of Schedule 7 (note)**

Omit “Note”, substitute “Note 1”.

172 **At the end of subclause 39(2) of Schedule 7 (after the note)**

Add:

Note 2: See also Part 2.3 of the *Criminal Code* (circumstances in which there is no criminal responsibility).

173 **Division 3 of Part 4 of Schedule 7 (heading)**

Repeal the heading, substitute:

**Division 2—Reports on inspections**

174 **Subclauses 40(1), (2) and (3) of Schedule 7**

Repeal the subclauses, substitute:

(1) If an OHS inspector has conducted an inspection, the OHS inspector must, as soon as practicable, prepare a written report relating to the inspection and give the report to the Safety Authority.

(2) The report must include:

   (a) the OHS inspector’s conclusions from conducting the inspection and the reasons for those conclusions; and
   
   (b) any recommendations that the OHS inspector wishes to make arising from the inspection; and
   
   (c) such other matters, if any, as are prescribed.

(3) As soon as practicable after receiving the report, the Safety Authority must give a copy of the report, together with any written comments that it wishes to make:

   (a) to the operator of the facility to which the report relates; and
   
   (b) if the report relates to activities performed by an employee of, or to any plant, substance or thing owned by, another person—that other person.

Note: The heading to clause 40 of Schedule 7 is replaced by the heading “Reports on inspections”.

175 **Subclause 40(4) of Schedule 7**
Omit “The Designated Authority may, in writing, request the employer”, substitute “The Safety Authority may, in writing, request the operator or any other person to whom the report is given”.

176 Paragraph 40(4)(b) of Schedule 7

Omit “the employer”, substitute “the operator or that other person”.

177 Subclause 40(4) of Schedule 7

Omit “the employer must”, substitute “the operator or that other person must”.

178 Subclause 40(5) of Schedule 7

Repeal the subclause, substitute:

(5) As soon as practicable after receiving a report, the operator of a facility must give a copy of the report, together with any written comment made by the Safety Authority on the report:

(a) if there is at least one health and safety committee in respect of some or all of the members of the workforce—to each such committee; and

(b) if there is no such committee in respect of some or all of the members of the workforce, but some or all of those members (in respect of which there is no such committee) are in at least one designated work group for which there is a health and safety representative—to each such health and safety representative.

179 Subclause 41(1) of Schedule 7

Repeal the subclause, substitute:

(1) If, at or near a facility, there is:

(a) an accident that causes the death of, or serious personal injury to, any person; or

(b) an accident that causes a member of the workforce to be incapacitated from performing work for a period prescribed for the purposes of this paragraph; or

(c) a dangerous occurrence;

the operator must, in accordance with the regulations, give the Safety Authority notice of, and a report about, the accident or dangerous occurrence.
180 **Subclause 42(1) of Schedule 7**

Repeal the subclause, substitute:

(1) The operator of a facility must maintain, in accordance with the regulations, a record of each accident or dangerous occurrence in respect of which the operator is required by clause 41 to notify the Safety Authority.

181 **Subclause 43(1) of Schedule 7**

Omit “employers”, substitute “operators of facilities and employers (other than such operators) of members of the workforce at facilities”.

182 **Subclause 45(1) of Schedule 7**

Omit “employees or contractors at work”, substitute “members of the workforce at a facility”.

183 **Subclause 45(2) of Schedule 7 (note)**

Omit “Note”, substitute “Note 1”.

184 **At the end of subclause 45(2) of Schedule 7 (after the note)**

Add:

Note 2: See also Part 2.3 of the *Criminal Code* (circumstances in which there is no criminal responsibility).

185 **Clauses 46 and 47 of Schedule 7**

Repeal the clauses, substitute:

46 **Members of workforce not to be levied**

The operator of a facility, or an employer (other than the operator) of members of the workforce at a facility, must not levy, or permit to be levied, on any member of the workforce, any charge in respect of anything done or provided in accordance with this Schedule or the regulations in order to ensure the health, safety or welfare of persons at or near the facility.

Penalty: 250 penalty units.

186 **Subclause 48(1) of Schedule 7**
Schedule 1 Amendments relating to occupational health and safety
Part 2 Amendments relating to substantive occupational health and safety provisions

After “employer”, insert “(whether the operator or another person)”.

187 Paragraph 48(1)(f) of Schedule 7
Omit “investigation”, substitute “inspection”.

188 Paragraph 48(1)(g) of Schedule 7
After “paragraph 26(1)(b)”, insert “or (3)(c)”.

189 Subparagraph 48(1)(g)(ii) of Schedule 7
Omit “investigator”, substitute “OHS inspector”.

190 Subparagraph 48(1)(g)(ii) of Schedule 7
Omit “subclause 26(4)”, substitute “subclause 26(5)”.

191 Subclauses 49(1) and (2) of Schedule 7
Repeal the subclauses, substitute:

(1) Proceedings for an offence against this Schedule or against regulations set out in or prescribed for the purposes of subsection 140H(2) may be instituted by the Safety Authority or by an OHS inspector.

(2) A health and safety representative for a designated work group may request the Safety Authority to institute proceedings for an offence against this Schedule, or for an offence against regulations referred to in subclause (1), in relation to the occurrence of an act or omission if:
(a) a period of 6 months has elapsed since the act or omission occurred; and
(b) the health and safety representative considers that the occurrence of the act or omission constitutes an offence against this Schedule or those regulations; and
(c) proceedings in respect of the offence have not been instituted.

(2A) A workforce representative in relation to a designated work group may request the Safety Authority to institute proceedings for an offence against this Schedule, or for an offence against regulations referred to in subclause (1), in relation to the occurrence of an act or omission if:
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(a) a period of 6 months has elapsed since the act or omission occurred; and
(b) the workforce representative considers that the occurrence of the act or omission constitutes an offence against this Schedule or those regulations; and
(c) proceedings in respect of the offence have not been instituted; and
(d) a group member included in the group requests the workforce representative to request the Safety Authority to institute the proceedings.

(2B) A request under subclause (2) or (2A) must be in writing.

192 Subclause 49(3) of Schedule 7
Omit “Authority”, substitute “Safety Authority”.

193 Subclause 49(3) of Schedule 7
Omit “involved union”, substitute “workforce representative”.

194 Subclause 50(7) of Schedule 7
Omit “the regulations”, substitute “regulations set out in or prescribed for the purposes of subsection 140H(2)”.

195 Clauses 51 and 52 of Schedule 7
Omit “the regulations” (wherever occurring), substitute “regulations set out in or prescribed for the purposes of subsection 140H(2)”.

196 Paragraph 53(1)(a) of Schedule 7
Repeal the paragraph.

197 Paragraph 53(1)(b) of Schedule 7
Omit “employees”, substitute “members of the workforce at a facility”.

Petroleum (Submerged Lands) Amendment Bill 2003  
No. 99, 2003
Division 2—Transitional provisions

198 Inspections

(1) Clause 30 of Schedule 7 to the Petroleum (Submerged Lands) Act 1967 has effect, after the commencement of this item, as if the following paragraphs were inserted after each of paragraphs (1)(c) and (2)(c) of that clause:

(d) to ascertain whether the requirements of, or any requirements properly made under:

(i) this Schedule (as in force before the commencement of this paragraph); or

(ii) the regulations (within the meaning of this Schedule as in force before the commencement of this paragraph); were being complied with before the commencement of this paragraph; or

(e) concerning a contravention, or possible contravention, before the commencement of this paragraph, of:

(i) this Schedule (as in force before the commencement of this paragraph); or

(ii) the regulations (within the meaning of this Schedule as in force before the commencement of this paragraph); or

(f) concerning an accident or dangerous occurrence that has happened, before the commencement of this paragraph, in the performing of work (within the meaning of this Schedule as in force before the commencement of this paragraph).

(2) If an OHS inspector conducts an inspection under paragraph 30(1)(d), (e) or (f) or (2)(d), (e) or (f) of Schedule 7 to the Petroleum (Submerged Lands) Act 1967 in relation to a matter that was the subject of an investigation that was being conducted by an investigator under clause 30 of that Schedule immediately before the commencement of this item:

(a) the OHS inspector may have regard to anything that happened in the course of the investigation conducted by the investigator; and

(b) the investigator and the Designated Authority must take all reasonable steps to ensure that the OHS inspector is given, or
is provided with access to, all information, documents and
other material that:
(i) was obtained in the course of the investigation
conducted by the investigator; and
(ii) is relevant to the inspection conducted by the OHS
inspector.

199 Prosecutions

(1) Clause 49 of Schedule 7 to the Petroleum (Submerged Lands) Act 1967
has effect, after the commencement of this item, as if:
(a) each reference in that clause to Schedule 7 to that Act
included a reference to that Schedule as in force before the
commencement of this item; and
(b) each reference in that clause to regulations set out in or
prescribed for the purposes of subsection 140H(2) of that Act
included a reference to the regulations (within the meaning of
Schedule 7 to that Act as in force before the commencement
of this item).

(2) If:
(a) any proceedings mentioned in subclause 49(1) of Schedule 7
to the Petroleum (Submerged Lands) Act 1967, as in force
before the commencement of this item, had been instituted by
the Designated Authority or by an investigator; and
(b) those proceedings were pending in any court immediately
before the commencement of this item;
the Safety Authority is, by force of this item, substituted for the
Designated Authority or the investigator as a party to the proceedings.

200 State/Northern Territory occupational health and safety
laws ceasing to apply in the adjacent area

If, as a result of the amendments of section 9 or 11 of the Petroleum
(Submerged Lands) Act 1967 made by this Schedule, a law, or a part of
a law, of a State or the Northern Territory ceases to apply to a facility
located in the adjacent area of that State or Territory, section 8 of the
Acts Interpretation Act 1901 has effect as if:
(a) the law or part of the law, to the extent that it previously
applied, were an Act or a part of an Act; and
Schedule 1  Amendments relating to occupational health and safety
Part 2  Amendments relating to substantive occupational health and safety provisions

(b) the cessation were the repeal of that Act or that part of that Act, as the case may be.

201 Transitional regulations

The Governor-General may make regulations in relation to transitional matters arising out of the amendments of the Petroleum (Submerged Lands) Act 1967 made by this Schedule.
Schedule 2—Amendments relating to the GST component of certain fees

Petroleum (Submerged Lands) Act 1967

1 Paragraph 129(1)(a)
After “amount equal to”, insert “the non-GST component of”.

2 Subsection 129(1A)
Omit “equal to all moneys”, substitute “equal to the non-GST components of all amounts”.

3 At the end of section 129
Add:

(4) For the purposes of this section, the non-GST component of an amount is:

(a) if the amount includes a component that is attributable to goods and services tax—so much of the amount as does not consist of that component; or

(b) in any other case—the whole of the amount.

4 Application of amendments
The amendments of section 129 of the Petroleum (Submerged Lands) Act 1967 made by this Schedule apply to amounts that become payable under that Act after the commencement of this item.
Schedule 3—Amendments relating to data management

**Petroleum (Submerged Lands) Act 1967**

1 After section 122

   Insert:

122A Regulations about data management

   (1) The regulations may make provision for and in relation to:

      (a) the keeping of accounts, records and other documents in connection with operations in an adjacent area under:

         (i) a permit; or

         (ii) a lease; or

         (iii) a licence; or

         (iv) an infrastructure licence; or

         (v) a pipeline licence; or

         (vi) a special prospecting authority; or

         (vii) an access authority; or

         (viii) a consent under section 123; and

      (b) the collection and retention of cores, cuttings and samples in connection with those operations; and

      (c) the giving to the Designated Authority, or a specified person, of reports, returns, other documents, cores, cuttings and samples in connection with those operations.

Data management plans

   (2) In particular, the regulations may establish a scheme that:

      (a) applies in relation to operations in an adjacent area under:

         (i) a permit; or

         (ii) a lease; or

         (iii) a licence; or

         (iv) an infrastructure licence; or

         (v) a pipeline licence; or

         (vi) a special prospecting authority; or
(vii) an access authority; or
(viii) a consent under section 123;

held by a person (the **holder**); and

(b) requires the holder to prepare and submit a plan (a *data management plan*) that deals with any or all of the

following:

(i) the keeping of accounts, records and other documents in connection with those operations;

(ii) the collection and retention of cores, cuttings and samples in connection with those operations;

(iii) the giving to the Designated Authority, or to a person specified in the data management plan, of reports, returns, other documents, cores, cuttings and samples in connection with those operations; and

(c) empowers the Designated Authority to make decisions about the approval of:

(i) a data management plan; and

(ii) variations of a data management plan; and

(d) requires the holder to comply with an approved data management plan submitted by the holder.

(3) A scheme referred to in subsection (2) may provide that the holder must not commence the relevant operations unless:

(a) an approved data management plan is in force; or

(b) the Designated Authority gives consent to the commencement of those operations.

(4) Subsections (2) and (3) do not limit subsection (1).

*Directions are in addition to regulations*

(5) A requirement under section 122 is in addition to a requirement under regulations made for the purposes of this section.

### 2 Subsection 150(1) (at the end of paragraph (c) of the definition of *applicable document*)

Add “or regulations made for the purposes of section 122A”.

### 3 Subsection 150(1) (definition of *confidential information*)

Repeal the definition.
4 Subsection 150(1) (definition of *contested information*)
   Repeal the definition.

5 Subsection 150(1) (definition of *derivative information*)
   Repeal the definition.

6 Subsection 150(1) (definition of *excluded information*)
   Repeal the definition.

7 Subsection 150(1) (definition of *notice inviting objections to the disclosure*)
   Repeal the definition.

8 Subsection 150(1) (definition of *petroleum mining instrument*)
   Repeal the definition.

9 Subsection 150(1) (definition of *seismic data grid scaled in time*)
   Repeal the definition.

10 Subsections 150(2) to (5)
   Repeal the subsections.

11 Subsection 150(6)
   Renumber as subsection (2).

12 At the end of section 150
   Add:

   (3) Paragraph (2)(a) does not apply in relation to the drilling of a well unless the drilling of the well was, in the Designated Authority’s opinion, substantially completed before the commencement of this subsection.

   (4) Paragraph (2)(b) does not apply in relation to a geophysical or geochemical survey unless the geophysical or geochemical field work was, in the Designated Authority’s opinion, substantially completed before the commencement of this subsection.
13 Divisions 2 and 3 of Part IIA

Repeal the Divisions, substitute:

Division 2—Protection of confidentiality of information and samples

Subdivision A—Information and samples obtained by the Designated Authority

150B Protection of confidentiality of documentary information obtained by the Designated Authority

(1) This section restricts what the Designated Authority may do with documentary information.

(2) The Designated Authority must not:

(a) make the information publicly known; or
(b) make the information available to a person (other than a Minister, a Minister of a State or a Minister of the Northern Territory);

unless the Designated Authority does so:

(c) in accordance with regulations made for the purposes of this paragraph; or
(d) for the purposes of the administration of this Act or the regulations.

150C Protection of confidentiality of petroleum mining samples obtained by the Designated Authority

(1) This section restricts what the Designated Authority may do with a petroleum mining sample.

(2) The Designated Authority must not:

(a) make publicly known any details of the sample; or
(b) permit a person (other than a Minister, a Minister of a State or a Minister of the Northern Territory) to inspect the sample;

unless the Designated Authority does so:

(c) in accordance with regulations made for the purposes of this paragraph; or
(d) for the purposes of the administration of this Act or the regulations.

150D Designated Authority may make information or samples available to a Minister, a State Minister or a Northern Territory Minister

(1) The Designated Authority may make documentary information or a petroleum mining sample available to:

(a) a Minister; or
(b) a Minister of a State; or
(c) a Minister of the Northern Territory.

(2) The Designated Authority must make documentary information or a petroleum mining sample available to the Commonwealth Minister if the Commonwealth Minister requires the Designated Authority to make the information or sample available to the Commonwealth Minister.

Note 1: For protection of the confidentiality of information obtained by a Minister under this section, see section 150E.

Note 2: For protection of the confidentiality of a sample obtained by a Minister under this section, see section 150F.

Subdivision B—Information and samples obtained by a Minister

150E Protection of confidentiality of information obtained by a Minister

(1) This section restricts what a Minister may do with documentary information made available to the Minister under section 150D.

(2) The Minister must not:

(a) make the information publicly known; or
(b) make the information available to a person (other than a Minister, a Minister of a State or a Minister of the Northern Territory);

unless the Minister does so:

(c) in accordance with regulations made for the purposes of this paragraph; or
(d) for the purposes of the administration of this Act or the regulations.

150F Protection of confidentiality of petroleum mining samples obtained by a Minister

(1) This section restricts what a Minister may do with a petroleum mining sample made available to the Minister under section 150D.

(2) The Minister must not:
   (a) make publicly known any details of the sample; or
   (b) permit a person (other than a Minister, a Minister of a State or a Minister of the Northern Territory) to inspect the sample; unless the Minister does so:
   (c) in accordance with regulations made for the purposes of this paragraph; or
   (d) for the purposes of the administration of this Act or the regulations.

Subdivision C—Miscellaneous

150G Fees

(1) This section applies to regulations made for the purposes of any of the following:
   (a) paragraph 150B(2)(c);
   (b) paragraph 150C(2)(c);
   (c) paragraph 150E(2)(c);
   (d) paragraph 150F(2)(c).

(2) The regulations may make provision for fees relating to:
   (a) making information available to a person; or
   (b) permitting a person to inspect a sample.

150H Review by Minister

(1) This section applies to regulations made for the purposes of:
   (a) paragraph 150B(2)(c); or
   (b) paragraph 150C(2)(c).

(2) The regulations may make provision for the Minister to:
(a) review a decision of the Designated Authority under the
regulations; and
(b) make a decision:
   (i) confirming the decision reviewed; or
   (ii) revoking the decision reviewed and substituting another
decision for it.

150J Privacy Act

This Part does not override any requirements of the Privacy Act
1988. In particular, this Part is not to be taken, for the purposes of
that Act, to require or authorise the disclosure of information.

14 Subsection 152(1) (subparagraph (b)(ii) of the definition of
reviewable decision)

Repeal the subparagraph, substitute:
   (ii) regulations made for the purposes of paragraph
   150B(2)(c) or 150C(2)(c), where the decision is of a
   kind referred to in paragraph 150H(2)(b); or
   (iia) regulations made for the purposes of paragraph
   150E(2)(c) or 150F(2)(c); or

15 Transitional regulations

The Governor-General may make regulations in relation to transitional
matters arising out of the amendments of the Petroleum (Submerged
Lands) Act 1967 made by this Schedule.