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Date introduced: 4 December 2019
House: House of Representatives
Portfolio: Industry, Innovation and Science
Commencement: Various dates as set out in this Digest


When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.

All hyperlinks in this Bills Digest are correct as at February 2020.
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Purpose of the Bills

The purpose of the Offshore Petroleum and Greenhouse Gas Storage Amendment (Cross-boundary Greenhouse Gas Titles and Other Measures) Bill 2019 (the Main Bill) is to amend the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPGGS Act) including to:

• provide for single greenhouse gas titles that are partially located in Commonwealth waters and partially located in state and Northern Territory coastal waters and
• strengthen and clarify the monitoring, inspection and enforcement powers of the National Offshore Petroleum Safety Environmental Management Authority (NOPSEMA) during an oil pollution emergency originating in Commonwealth waters.

The purpose of the Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment (Miscellaneous Measures) Bill 2019 (the Regulatory Levies Bill) is to amend the Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003 (Levies Act) to clarify the application of levies in relation to cross-boundary greenhouse gas titles.

Structure of the Bills

The Main Bill contains four schedules:

• Schedule 1 contains amendments to provide for the administration and regulation of cross-boundary greenhouse gas titles (that is, titles that straddle the boundary between state or Northern Territory coastal waters and Commonwealth waters)
• Schedule 2 provides that the greenhouse gas provisions of the OPGGS Act and Regulations apply, and are taken to always have applied, to the states and the Northern Territory
• Schedule 3 makes minor policy and technical amendments and
• Schedule 4 amends the monitoring, inspection and enforcement powers of NOPSEMA within state and territory jurisdictions during an oil pollution emergency originating in Commonwealth waters.

The Regulatory Levies Bill contains three schedules:

• Schedule 1 clarifies that levies imposed by the Levies Act are effectively imposed on cross-boundary greenhouse gas titles
• Schedule 2 provides that the Levies Act binds, and is taken always to have bound, the Crown in right of each of the states and the Northern Territory and
• Schedule 3 makes a technical correction to section 2 of the Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment Act 2019.

Commencement

The provisions of the Main Bill will commence as follows:

• Parts 1 and 2 of Schedule 1 commence on a day to be fixed by Proclamation or, if the provisions do not commence within a six month period of Royal Assent, on the day after the end of that period
• Part 3 of Schedule 1 will commence either immediately after the commencement of Parts 1 and 2 of Schedule 1 to the Bill or immediately after the commencement of Schedule 2 of the Timor Sea Maritime Boundaries Treaty Consequential Amendments Act 2019 (Maritime Boundaries Treaty Act), whichever occurs later. However, Part 3 will not commence if Schedule 2 of the Maritime Boundaries Treaty Act does not commence
• Schedule 2, Division 1 of Part 1 of Schedule 3, and Part 2 of Schedule 3 all commence the day after Royal Assent
• Division 2 of Part 1 of Schedule 3 has a retrospective commencement of 26 July 2018
• Parts 1 and 3 of Schedule 4 commence at the start of the day after Royal Assent or on the commencement of Division 1 of Part 1 of Schedule 1 to the Offshore Petroleum and Greenhouse Gas Storage Amendment (Miscellaneous Amendments) Act 2019, whichever is later
• Part 2 of Schedule 4 commences on a day to be fixed by Proclamation. However, if the provisions do not commence within the period of six months of the commencement of the Part 1 of Schedule 4, they commence on the day after the end of that period
• Part 4 of Schedule 4 will commence either immediately after the commencement of Part 1 of Schedule 4 or immediately after the commencement of Schedule 2 to the Maritime Boundaries Treaty Act, whichever occurs later. However, Part 4 will not commence if Schedule 2 of the Offshore Petroleum and Greenhouse Gas Storage Amendment (Miscellaneous Amendments) Act does not commence.

The provisions of the Regulatory Levies Bill will commence as follows:
• Schedule 1 will commence at the same time as Part 1 of Schedule 1 of the Main Bill (but will not commence at all if that Part does not commence)
• Schedule 2 will commence at the same time as Schedule 2 of the Main Bill (but will not commence at all if that Schedule does not commence) and
• Schedule 3 has a retrospective commencement of 28 October 2019.

Background

**Regulating offshore petroleum and greenhouse gas activities in Australia**

Responsibility for the regulation of offshore petroleum and greenhouse gas storage activities in Australian waters is divided between the Commonwealth Government and state and territory governments. Under the Offshore Constitutional Settlement (OCS), the states generally have jurisdiction over activities in their own internal waters, and in the zone of ‘coastal waters’, which extends three nautical miles seaward of the territorial sea baseline.\(^1\) The Commonwealth Government has jurisdiction for the regulation of petroleum and greenhouse gas activities for offshore areas beyond coastal waters (generally those areas more than three nautical miles from the Territorial sea baseline).\(^2\) This area is referred to as ‘Commonwealth waters’.

The OPGGS Act regulates offshore petroleum exploration and production, and greenhouse gas injection and storage activities in Commonwealth waters. The OPGGS Act is supported by a range of Regulations covering matters such as safety and environmental performance.\(^3\) The offshore petroleum legislation, Regulations and guidelines are intended to provide for the exploration and production of petroleum and greenhouse gas resources, setting out a framework of rights, entitlements and responsibilities of government and industry.\(^4\)

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3. Relevant Regulations include, for example, the Offshore Petroleum and Greenhouse Gas Storage (Greenhouse Gas Injection and Storage) Regulations 2013; the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (Offshore Environment Regulations) and Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011 (the Wells Regulations).
Under this framework, the Australian Government administers the offshore regulatory regime together with relevant adjacent state and Northern Territory government involvement through 'Joint Authority' arrangements. In short, the Joint Authorities make certain major decisions under the OPGGS Act including releasing offshore petroleum exploration areas, granting and cancelling offshore petroleum titles, imposing or varying title conditions, as well as decisions about resource management.

The OPGGS Act also establishes two Commonwealth statutory authorities which perform regulatory functions under the OPGGS Act and Regulations:

- the National Offshore Petroleum Titles Administrator (NOPTA, also referred as the Titles Administrator), with responsibility for titles administration and data management functions in relation to offshore petroleum and greenhouse gas activities in Commonwealth waters and
- the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), which has functions relating to occupational health and safety (OHS) of offshore petroleum facilities and greenhouse gas storage activities, as well as structural integrity of facilities, wells and well-related equipment and environmental management.

**What is greenhouse gas storage?**

Greenhouse gas storage, also known as carbon capture and storage (CCS), is the process of capturing carbon dioxide (CO₂) from industrial processes and then transporting and injecting that CO₂ into a secure geological formation for long-term underground storage. The key aim of CCS is to prevent large amounts of CO₂ from being released into the atmosphere and hence to reduce greenhouse gas emissions which contribute to climate change.

CCS has been criticised as ‘technically complex and expensive’. However, the potential role of CCS in reducing greenhouse emissions and meeting international climate commitments has been acknowledged by both the International Energy Agency (IEA) and the Intergovernmental Panel on Climate Change (IPCC).

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5. Ibid.
7. NOPTA, ‘About NOPTA’, NOPTA website. NOPTA was established in 2012 by the Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Act 2011, which also expanded the former National Offshore Petroleum Safety Authority to become the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA).
**Offshore greenhouse gas storage legal framework**

The **OPGGS Act** regulates the exploration, assessment and testing of geological formations and the transportation to, and storage of, greenhouse gases in suitable geological formations in the seabed under Commonwealth waters.  

The **OPGGS Act** provides for the responsible Commonwealth Minister to grant a range of offshore greenhouse gas titles that allow the titleholder to explore for and develop greenhouse gas storage sites in offshore areas. NOPTA is then responsible for the day-to-day administration of these titles. Offshore greenhouse gas titles that may currently be granted under Chapter 3 of the **OPGGS Act** include:

- greenhouse gas assessment permits— which authorise exploration in the permit area for potential greenhouse gas storage formations and injection sites
- greenhouse gas holding leases— which authorise exploration in the lease area for potential greenhouse gas storage formations and injection sites. Holding leases are generally designed to allow certain existing titleholders exclusive rights in relation to an identified greenhouse gas storage formation, where they are not currently in a position to inject and permanently store a greenhouse gas substance, but are likely to be in such a position within 15 years
- greenhouse gas injection licences— which authorise the licensee to carry out greenhouse gas injection and storage operations in the licence area
- greenhouse gas search authorities— which authorise operations relating to the exploration for potential greenhouse gas storage formations or potential greenhouse gas injection sites (but not to make a well) and
- greenhouse gas special authorities— which authorise the holder to carry on certain greenhouse gas-related operations in the authority area (but not to make a well).

**Status of offshore greenhouse gas storage in Australia**

NOPTA advises that there have been two greenhouse gas acreage release rounds by the Australian Government for offshore greenhouse gas storage exploration, one in 2009 and the other in 2014. Currently, there are four active greenhouse gas assessment permits in Commonwealth offshore waters. All four permits are located in offshore Victorian waters, and were awarded to the ‘Crown in right of Victoria’ as the sole titleholder.

**CarbonNet Project**

The four Victorian permits are related to the CarbonNet Project, which is investigating the potential for establishing a commercial scale CCS network in the Latrobe Valley. The network would involve multiple CCS projects transporting CO₂ via a shared pipeline and injecting it into...
deep offshore underground storage sites in the offshore Gippsland Basin.\textsuperscript{20} CarbonNet’s prioritised site, Pelican, is located offshore from Ninety Mile Beach in Bass Strait. In 2018, a marine seismic survey was carried out to obtain additional geological information.\textsuperscript{21} The project commenced drilling an appraisal well in early December 2019. The aim of the drilling program is to confirm that the site is suitable for carbon storage.\textsuperscript{22} As the Assistant Minister indicated in her second reading speech, the proposed storage site under the CarbonNet Project straddles the boundary between Commonwealth waters and state coastal waters.\textsuperscript{23}

**Hydrogen Energy Supply Chain Project**

The CarbonNet Project is related to another project, the Hydrogen Energy Supply Chain Project.\textsuperscript{24} This project, in the Latrobe Valley in Victoria, is described as ‘a world first trial to demonstrate hydrogen production from brown coal and safe and efficient transport of liquefied hydrogen to Japan’.\textsuperscript{25}

Hydrogen has many potential uses, including to heat buildings and power vehicles, and many countries, including Australia, are investing in or supporting hydrogen due to its potential for decarbonising energy systems.\textsuperscript{26} However, hydrogen can be produced in a number of ways. ‘Clean’ or ‘green’ hydrogen is produced using renewable energy or fossil fuels with carbon capture and storage.\textsuperscript{27} Australia released a National Hydrogen Strategy last year which highlights the opportunities of the clean hydrogen export industry for Australia.\textsuperscript{28}

According to the second reading speech, the Bills ‘aim to help realise this opportunity for Australia’, in particular because the Hydrogen Energy Supply Chain project ‘relies on suitable carbon capture and storage that the CarbonNet Project will provide’ and the ‘two projects are highly interdependent’.\textsuperscript{29} The Assistant Minister further advised that the ‘Australian government has invested heavily in both the CarbonNet and Hydrogen Energy Supply Chain projects, providing total funding of almost $150 million’.\textsuperscript{30}

\begin{itemize}
\item[21.] Ibid.
\item[22.] DJPR, ‘Offshore appraisal well’, DJPR website, last updated 3 February 2020; see also DIIS and DJPR, CarbonNet Project – Offshore Appraisal Well Information sheet, DJPR, Melbourne, November 2019; NOPSEMA has accepted an environment plan relating to the appraisal well: see NOPSEMA, ‘CarbonNet Offshore Appraisal Well’, NOPSEMA website.
\item[26.] See further COAG Energy Council, Australia’s National Hydrogen Strategy, Commonwealth of Australia, Canberra, 2019; IEA, The future of hydrogen, June 2019
\item[30.] Ibid.
\end{itemize}
Committee consideration

**Senate Economics Committee**

The Bill was referred to the Senate Economics Legislation for inquiry and report by 7 February 2020.\(^{31}\) In its [report](#), the Committee noted that it had received five submissions, ‘all of which were generally supportive of the [B]ills’.\(^{32}\) However, the Committee did note the concerns raised by the Australian Petroleum Production and Exploration Association (APPEA) in relation to the oil spill emergency provisions. These concerns are discussed in further detail in the ‘Key issues and provisions’ section of this Digest. The Committee recommended the Bills be passed, but also that the Department of Industry, Science, Energy and Resources publicly respond to the concerns raised by APPEA in its submission.\(^{33}\)

Details of the inquiry can be found at the [inquiry webpage](#).

**Senate Standing Committee for the Scrutiny of Bills**

The Senate Scrutiny of Bills Committee had no comment on the Bills.\(^{34}\)

**Policy position of non-government parties/independents**

At the time of writing, non-government parties and independents do not appear to have commented on the current Bills.

**Position of major interest groups**

In its submission to the Senate inquiry, the Australian Petroleum Production and Exploration Association (APPEA) supported the polluter pays principle but nonetheless raised concerns about the amendments relating to oil spill emergencies.\(^{35}\) These are discussed in the ‘Key issues and provisions’ section of this Digest.

Although it does not appear to have commented directly on the Bill, The Australia Institute has expressed concerns about Commonwealth government funding being directed to the Hydrogen Energy Supply Chain project. As noted elsewhere in this Digest, the Bills will help to facilitate this project. The Australia Institute considers that that ‘public funds should not be used to produce coal- and gas-based hydrogen’ but should instead be directed to lowering the cost of renewable hydrogen production.\(^{36}\)

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33. Ibid., p. 15.
34. Senate Standing Committee for the Scrutiny of Bills, [Scrutiny digest](#), 1, 2020, The Senate, 5 February 2020, p. 41.
Financial implications
According to the Explanatory Memorandum, the Bills are expected to have nil financial impact. However, the Explanatory Memorandum also notes:

The amendments relating to the creation and administration of cross-boundary GHG [greenhouse gas] titles will enable the CarbonNet project to proceed with its proposed project site in the Gippsland Basin, offshore Victoria. The project could also facilitate a future commercial-scale Hydrogen Energy Supply Chain (HESC) project, which would produce hydrogen from brown coal resources, and requires suitable carbon capture and storage resources. The Australian Government has invested $96 million in the CarbonNet project and $50 million in the HESC project.

Statement of Compatibility with Human Rights
As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bills’ compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bills are compatible.

Parliamentary Joint Committee on Human Rights
The Parliamentary Joint Committee on Human Rights had no comment on the Bills.

Key issues and provisions
Cross-boundary greenhouse gas titles
Schedule 1 of the Main Bill amends the OPGGS Act to provide for the grant and administration of single greenhouse gas titles over areas that are partly located in Commonwealth waters and partly located in state or Northern Territory coastal waters (‘cross-boundary greenhouse gas titles’). This section of the Digest sets out a brief overview of some of the key relevant provisions relating to cross-boundary greenhouse gas titles and Cross-boundary Authorities. Many of the amendments in Schedule 1 are technical or are consequential to the introduction of cross-boundary greenhouse gas titles and Cross-boundary Authorities. These provisions are adequately explained in the Explanatory Memorandum to the Bill and are therefore not discussed in detail in this Digest.

Cross-boundary Authorities
Item 23 of Schedule 1 inserts a proposed Part 1.3A into the OPGGS Act in order to establish Cross-boundary Authorities, consisting of the responsible Commonwealth Minister and the relevant state or Northern Territory Resources Minister. This is similar to current Joint Authority arrangements for petroleum titles in Commonwealth waters, as outlined earlier in this Digest. Under proposed subsections 76A(6) and (7), a state or the Northern Territory must consent to being a member of the Cross-boundary Authority for the offshore area of the relevant state or the Northern Territory.

38. Ibid.
39. The Statement of Compatibility with Human Rights can be found at pages 7–12 of the Explanatory Memorandum to the Bills.
41. Proposed section 76A.
Under **proposed section 76B**, the Cross-boundary Authorities have the functions and powers that the Act or regulations confer on them. The main functions of a Cross-boundary Authority include the grant of cross-boundary greenhouse gas titles (these are discussed further below). **Proposed subsection 76D(2)** sets out certain decisions which must be made by consensus, including the decision to grant a cross-boundary title, specify a condition in a cross-boundary title, or to extend the term of the title: that is, both the Commonwealth Minister and the state or Northern Territory Minister must agree about the decision. Other decisions are made in the same way as the existing Joint Authorities, with the responsible Commonwealth Minister having the casting vote in the event of disagreement or if the responsible state or Northern Territory Minister does not communicate his or her opinion to the responsible Commonwealth Minister.

**Proposed section 76L** provides for any or all of the functions or powers of a Cross-boundary Authority to be delegated to a public service employee at the Senior Executive Service (SES) level or an employee of the relevant state or Northern Territory. However, delegation is possible only if there is one delegate for the Commonwealth member and one delegate for the state or Northern Territory member. Under **proposed subsection 76L(6)**, if the delegates are unable to agree on a matter, they must refer it to the Cross-boundary Authority.

**Cross-boundary greenhouse gas titles**

Chapter 3 of the **OPGGS Act** provides for the grant and administration of greenhouse gas titles over blocks in an offshore area. The different types of titles are outlined in the Background section of this Digest. Schedule 1 of the Main Bill amends a range of provisions in Chapter 3 of the **OPGGS Act** to provide for the grant and administration of the proposed cross-boundary greenhouse gas titles. This includes, for example, provisions for:

- the grant and renewal of cross-boundary greenhouse gas assessment permits
- the grant and renewal of cross-boundary greenhouse gas holding leases and
- the grant of cross-boundary greenhouse gas injection licences.

These new cross-boundary greenhouse gas titles can be granted over areas that are partly located in Commonwealth waters and partly in state or territory coastal waters. As the Assistant Minister stated in her second reading speech:

> Upon the grant of the cross-boundary title, the title area becomes Commonwealth waters for all purposes of the OPGGS Act. The title area will be regulated under the OPGGS Act in the same way as other greenhouse gas titles located in Commonwealth waters. NOPSEMA will have regulatory responsibility for environmental management, safety and well integrity. Titles administration will be undertaken by the National Offshore Petroleum Titles Administrator.

So, for example, under **proposed section 295B**, the entirety of the permit area of a cross-boundary greenhouse gas assessment permit is taken to be in the offshore area of the relevant state or the...

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42. Explanatory Memorandum, op. cit., p. 21.
43. **Proposed subsections 76D(3) and (4)**: see also Explanatory Memorandum, op. cit., p. 22.
44. Explanatory Memorandum, op. cit., p. 23.
46. See generally **items 62–108** of Schedule 1 of the Main Bill.
47. See generally **items 109–151** of Schedule 1 of the Main Bill.
Northern Territory, for all purposes of the OPGGS Act and regulations relating to greenhouse gas exploration, injection and storage. This includes the part of the permit area that is in state or Northern Territory coastal waters. The Explanatory Memorandum states that ‘this enables the cross-boundary permit to be effectively regulated under the GHG-related provisions of the OPGGS Act and regulations’. Proposed section 323B and proposed section 360A are the equivalent provisions for cross-boundary greenhouse gas holding leases and injection licences respectively.

**Example: cross-boundary greenhouse gas assessment permits**

Most of the proposed provisions relating to the grant and administration of cross-boundary greenhouse gas titles appear to be broadly similar to the existing provisions for other greenhouse gas titles under the OPGGS Act, with appropriate adjustments, for example, to recognise the role of the Cross-boundary Authorities. So, for example, under existing section 291 of the OPGGS Act, the responsible Commonwealth Minister may grant a greenhouse gas assessment permit subject to whatever conditions the Minister thinks appropriate. Proposed section 291A, inserted by item 28 of Schedule 1, would similarly enable the relevant Cross-boundary Authority to grant a cross-boundary greenhouse gas assessment permit subject to whatever conditions the Cross-boundary Authority thinks appropriate.

Proposed subsection 291A(3) is similar to existing subsection 291(3), in that it provides that cross-boundary assessment permits subject to a statutory condition that the permittee will not carry on ‘key greenhouse gas operations’ under the permit unless the responsible Commonwealth Minister has approved the operations under proposed section 292A (which is similar to existing section 292). In deciding whether to approve a key greenhouse gas operation, the Minister must have regard to a number of matters, including the potential impacts that the operation could have on petroleum exploration or recovery operations under existing or future petroleum titles, as well as the public interest (under proposed subsection 292A(8)). In this context, the Explanatory Memorandum gives the following examples:

> For example, the Minister might consider that there was a public interest in enabling an onshore electricity generation plant to be constructed on a zero-GHG [greenhouse gas] emissions basis. Or the Minister might consider that there was a public interest in ensuring that commerciality of a major new petroleum discovery was not compromised by drilling of GHG exploration wells.

**Validity of Victorian greenhouse gas titles**

Item 1 of Schedule 2 inserts proposed subsection 287A into the OPGGS Act to provide that the greenhouse gas provisions in the OPGGS Act (and relevant regulations) apply, and are taken to always have applied, to the States and the Northern Territory. Proposed subsection 287A(2) provides that this new subsection has effect in addition to section 35. Section 35 states that the OPGGS Act applies to individuals and corporations. This amendment is intended to remove any doubt about the validity of greenhouse gas assessment permits that have been granted to the Crown in right of Victoria.

49. Explanatory Memorandum, op. cit., p. 31.
50. Proposed section 323B is inserted by item 85 of Schedule 1. Proposed section 360A is inserted by item 117 in Schedule 1.
51. Proposed section 292A is inserted by item 31 of Schedule 1. **Key greenhouse gas operations** are defined in section 7 of the OPGGS Act and include, for example: making a well; seismic surveys; injecting greenhouse gases, air, petroleum, or water into a geological formation; or an operation specified in the regulations.
52. See proposed subsections 292A(4)–(12).
53. Explanatory Memorandum, op. cit., p. 27.
54. Ibid., p. 79.
**Enhanced oil spill emergency powers**

Schedule 2A of the *OPGGS Act* currently confers a range of powers on NOPSEMA inspectors for the purpose of monitoring compliance with the environmental management provisions of the offshore petroleum regime.

Schedule 4 of the Bill extends the monitoring, inspection and enforcement powers of NOPSEMA inspectors in Schedule 2A within state and territory jurisdictions during a declared oil pollution emergency. NOPSEMA stated in its submission to the Senate inquiry that these amendments ‘ensure that NOPSEMA is able to rapidly and comprehensively respond in the event of an oil pollution emergency originating in Commonwealth waters’.  

**Declaring an oil pollution emergency**

Oil pollution emergencies will be declared under **proposed clause 2A** in Schedule 2A of the *OPGGS Act*. Under **proposed clause 2A**, if the Chief Executive Officer (CEO) of NOPSEMA is satisfied that there is an emergency that has resulted, or may result, in oil pollution, and that the emergency is attributable to one or more petroleum activities of a petroleum titleholder, then the CEO may declare that there is a declared oil pollution emergency. Petroleum titles are issued under the *OPGGS Act* over areas in Commonwealth waters. However, under **proposed subclause 2A(16)**, it is immaterial whether the oil pollution is in Commonwealth waters, within the coastal waters of a state or the Northern Territory, or on land or in waters within the limits of a state or territory.

Under **proposed subclause 2A(2)**, NOPSEMA must publish a copy of the declaration on its website as soon as practicable after the declaration is made. NOPSEMA must also give a copy of the declaration to the relevant Commonwealth Departmental Secretary and the petroleum titleholder, and the ‘designated public official’ of the relevant state, Northern Territory or designated external territory (as appropriate). **Proposed clause 2A** also empowers the NOPSEMA CEO to declare that an environment plan is a ‘declared environment plan’.

An oil pollution emergency declaration must be revoked under **proposed subclauses 2A(8) to (14)** if the NOPSEMA CEO is satisfied that the emergency no longer exists. Again, NOPSEMA must publish a copy of the revocation instrument on its website as soon as practicable after an instrument of revocation is made and give a copy to the titleholder and relevant designated public officials.

In its submission to the Senate Committee inquiry, APPEA expressed concern that ‘a declared oil pollution emergency, enacted by the CEO of NOPSEMA, provides significant powers to NOPSEMA’, and considered that there is a ‘paucity of description’ in the Explanatory Memorandum as to what constitutes a declarable oil pollution emergency. APPEA suggested the Explanatory Memorandum should be amended to provide examples of a range of activities that would constitute an oil pollution emergency.

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56. As inserted by item 28 of Schedule 4 of the Main Bill.

57. Item 2 of Schedule 4 of the Main Bill inserts a **proposed section 33A** which defines ‘designated public official’ as the person who holds or performs the duties of head of the department of the state or Northern Territory that is specified in a written notice given to NOPSEMA by the responsible state or Northern Territory Minister. The relevant notice must be published on the NOPSEMA website (see **proposed subsection 33A(9)**).

58. That is, Norfolk Island, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands, or the Territory of Heard Island and McDonald Islands: **Item 1** of Schedule 4 inserts a definition of designated external Territory into section 7 of the *OPGGS Act*.

Memorandum should include ‘descriptions of events and or significance’ that would constitute a declared oil pollution emergency such as ‘circumstances of imminent significant risk to the safety of personnel, facilities and potential significant impact to the environment’.60

Oil pollution environmental inspections
During a declared oil pollution emergency, proposed subclause 3(2A) provides that NOPSEMA inspectors may conduct an inspection (called an oil pollution environmental inspection) to determine either or both of the following:

• whether the oil pollution emergency provisions of a declared environment plan have been, or are being, complied with and
• whether a significant incident direction has been, or is being, complied with.61

Oil pollution environmental inspections will be separate to the existing general power of NOPSEMA inspectors to conduct environmental inspections under existing subclause 3(2) of Schedule 2A of the OPGGS Act. However, the new oil pollution environmental inspection powers do not limit the general power to conduct an environmental inspection, and an oil pollution environmental inspection may be conducted concurrently with an environmental inspection.62

Emergency response premises
Clause 4 of Schedule 2A of the OPGGS Act currently enables NOPSEMA inspectors to enter (without a warrant) and search ‘offshore petroleum premises’.63 Item 32 extends this clause to empower NOPSEMA inspectors to exercise the powers specified in clause 4 at ‘emergency response premises’ during declared oil pollution emergencies.

‘Emergency response premises’ are defined in proposed clause 2B (inserted by item 28 of Schedule 4). Under proposed subclause 2B(1), for premises other than aircraft or vessels, emergency response premises are premises being (or proposed to be) used for:

• implementing the oil pollution emergency provisions of a declared environment plan
• planning, directing, coordinating, or providing logistical support for the implementation of the oil pollution emergency provisions of a declared environment plan
• compliance with a significant incident direction or
• planning, directing, coordinating, or providing logistical support for compliance with a significant incident direction.

Under proposed subclause 2B(2), for aircraft or vessels, emergency response premises are premises being used, prepared for use, or positioned for use, for:

• implementing the oil pollution emergency provisions of a declared environment plan
• observing, planning, directing, coordinating, or providing logistical support for the implementation of the oil pollution emergency provisions of a declared environment plan
• compliance with a significant incident direction or
• observing, planning, directing, coordinating, or providing logistical support for compliance with a significant incident direction.

60. Ibid.
61. Inserted by item 29 of Schedule 4 of the Main Bill.
62. Proposed subclauses 3(2D) and 3(2E). See also Explanatory Memorandum, op. cit., p. 96.
63. Explanatory Memorandum, op. cit., p. 97.
As the Explanatory Memorandum notes, **proposed subclause 2B(3)** of the definition:

... ensures that such inspections can be undertaken wherever response operations are located, whether in an offshore area, in or above the coastal waters of a State or the NT, or on, in or above the land or waters of a State or Territory (subclause 2B(3)). Response operations are typically managed at onshore coordination centres or forward operating bases, with operational response activities taking place wherever oil pollution has occurred or may occur.64

This definition also means that the Bill extends the kinds of places where NOPSEMA may conduct environmental inspections without a warrant.65 In its submission to the Senate Committee inquiry, APPEA expressed concern about warrant-free inspection and seizure powers, suggesting that warrant-free activities should be strictly limited and only authorised in very exceptional circumstances.66 However, the Explanatory Memorandum notes that the extension of the relevant powers by the Bill is ‘limited to extremely extenuating circumstances where an oil pollution emergency has been declared’ and ‘to premises directly in connection with the response to the declared oil pollution emergency’.67

**Items 36–37, 39–42 and 44** of Schedule 4 similarly modify the operation of other relevant clauses in Schedule 2A to extend the powers of NOPSEMA inspectors, and enable NOPSEMA inspectors to exercise the powers specified in the relevant clause at emergency response premises during declared oil pollution emergencies.

**Inspecting regulated business premises**

Clause 5 of Schedule 2A of the **OPGGS Act** enables NOPSEMA inspectors to enter (without a warrant) and search regulated business premises,68 if satisfied, on reasonable grounds, that documents or things are likely to be at those premises that are relevant to compliance with an environmental management law.

**Item 34** of Schedule 4 inserts **proposed subclause 5(1A)** to empower NOPSEMA inspectors to exercise the powers specified in that subclause at regulated business premises during declared oil pollution emergencies. The powers in **proposed subclause 5(1A)** are equivalent to the powers that a NOPSEMA inspector can exercise at regulated business premises during an environmental inspection.69 However, the inspector must be satisfied that there are likely to be at those premises plant, substances, documents or things that relate to compliance or non-compliance with the oil pollution emergency provisions of a declared environment plan or a significant incident direction given by NOPSEMA.70

**Power to require assistance**

**Item 35** inserts **proposed subclause 7(2A)** to provide that, if there is a declared oil pollution emergency, NOPSEMA inspectors may, to the extent reasonably necessary, require a titleholder to provide reasonable assistance and facilities for the purpose of conducting an oil pollution

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64. Explanatory Memorandum, op. cit., p. 95.
65. Ibid.
66. APPEA, Submission, op. c.it. pp. 2–3.
67. Explanatory Memorandum, op. cit., p. 95.
68. ‘Regulated business premises’ are currently defined in clause 2 of Schedule 2A as premises, other than offshore petroleum premises, that are occupied by the registered holder of a petroleum title and used, or proposed to be used, wholly or principally in connection with operations in relation to one or more petroleum titles, including that petroleum title.
69. Noting that clause 5 is to be amended by the Offshore Petroleum and Greenhouse Gas Storage Amendment (Miscellaneous Amendments) Act 2019 (see especially, Schedule 1, Item 178).
environmental inspection that relates to the titleholder’s petroleum title. Under proposed subclause 7(2B), reasonable assistance includes appropriate transport to or from emergency response premises, reasonable accommodation and means of subsistence while the inspector is at the premises, and arranging for the inspector to be present on an aircraft or vessel that is being deployed or used for or in relation to implementing the oil pollution emergency response provisions of an environment plan or complying with a significant incident direction.

**Extended geographical application of polluter pays obligations**

Part 6.1A of the *OPGGS Act* implements ‘polluter pays’ obligations by setting out a statutory duty which requires petroleum titleholders to take certain actions in the event of an escape of petroleum occurring as a result of operations within the title area. This duty, set out in section 572C, requires the titleholder to take reasonably practical steps to eliminate or control the escape of petroleum, clean up the escaped petroleum, remediate damage to the environment and carry out appropriate environmental monitoring of the impact of the escape. However, currently, the titleholder is only required to take these actions in the offshore area (that is, Commonwealth waters).\(^{71}\) This means the obligation does not currently extend to state or territory coastal waters.

**Items 3–5** of Schedule 4 of the Main Bill extend the geographical application of this obligation to the land and waters of a state, the Northern Territory or a designated external Territory.\(^ {72}\) This means that, under an amended subsection 572C(2), if any of the escaped petroleum has migrated to land or waters of a state, the Northern Territory or a designated external territory, the titleholder is also required, on that land or in those waters, to clean up the escaped petroleum, remediate any resulting environmental damage, and monitor the environmental impacts of the escape.

Under the existing sections 572D and 572E of the *OPGGS Act*, if the titleholder fails to comply with this duty, NOPSEMA or the responsible Commonwealth Minister may instead do ‘any or all of the things’ that they consider, on reasonable grounds, that the titleholder has failed to do. The costs and expenses incurred by NOPSEMA or the Commonwealth in doing those things are a debt due to NOPSEMA or the Commonwealth and are recoverable in a court of competent jurisdiction (such as the Federal Court).

In its submission to the Senate Committee inquiry, APPEA raised concerns about procedural fairness in sections 572D and 572E of the *OPGGS Act* which APPEA considered ‘seem to give NOPSEMA and the Minister near limitless authority to take whatever action they deem appropriate and seek reimbursement after the fact, without the need to consult the titleholder’.\(^ {73}\) However, these sections do require NOPSEMA or the Minister to base their decisions on reasonable grounds, and the actions that NOPSEMA and the Minister can take are also limited to the actions set out in subsection 572C(2) (cleaning up escaped petroleum, remediating environmental damage and monitoring the environmental impacts of the escape).

In light of the extended geographical application of the polluter pays obligations, items 6 and 7 of Schedule 4 also amend sections 572D and 572E to require NOPSEMA and the responsible Commonwealth Minister respectively to consult the designated public official of the relevant state on reasonable grounds.

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\(^{71}\) *OPGGS Act*, section 8 defines ‘offshore area’.

\(^{72}\) That is, Norfolk Island, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands, or the Territory of Heard Island and McDonald Islands: see item 1 of Schedule 4 which inserts a definition of designated external Territory into section 7 of the *OPGGS Act*; Explanatory Memorandum, op. cit., p. 84.

\(^{73}\) APPEA, [Submission](#), op. cit., p. 2.
or territory prior to taking any action within the jurisdiction of the state or territory where a titleholder has failed to comply with their polluter pays obligations.

Similarly, under section 572F, if a state or territory (or an agency or authority acting on behalf of the state or territory) incurs costs or expenses in cleaning up the petroleum, remediating environmental damage caused by the escaped petroleum or carrying out environmental monitoring of the impacts, those costs or expenses are a debt due to the state or territory and are recoverable in a court of competent jurisdiction. **Items 8 to 13** of Schedule 4 make minor amendments to section 572F which do not change the operation of the section.

**Item 14** of Schedule 4 inserts **proposed section 572G** to clarify that the polluter pays provisions in Part 6.1A of the OPGGS Act are not intended to exclude or limit the operation of any state or territory law, where that law is capable of operating concurrently with Part 6.1A. As the Explanatory Memorandum notes:

States and Territories will therefore have the ability to exercise any relevant powers in their own legislation, utilising their own spill response capacity in their jurisdiction.74

**Directions for significant offshore petroleum incidents**

Section 576B of the OPGGS Act provides that, if there is a **significant offshore petroleum incident** (as defined in section 576A) in a petroleum title area, NOPSEMA may give a specific direction to the titleholder to deal with the escape of petroleum resulting from the incident, whether within or outside the title area. Currently, these directions can only require a titleholder to take an action, or not to take an action, in an offshore area (that is, in Commonwealth waters).75

**Items 17 and 18** of Schedule 4 amend section 576B to enable the extended geographical application of significant incident directions to land and waters of a state, the Northern Territory or a designated external Territory during declared oil pollution emergencies.

**Item 17** amends subsection 576B(5) to clarify that, in the absence of a declared oil pollution emergency,76 the current geographical limitation to Commonwealth waters will continue.

**Item 18** repeals and replaces subsection 576B(6) to provide that, if there is a declared oil pollution emergency that relates to the title,77 the direction may require the titleholder to take an action (or not take an action) anywhere within or outside the title area, including anywhere on or in land or waters of a state, the Northern Territory or a designated external territory. This item also inserts **proposed subsections 576B(6A) and (6B)**, which apply if a direction requires the titleholder to take action in an area held by another Commonwealth, state or territory petroleum titleholder. In this case, NOPSEMA is required to give a copy of the direction to the other titleholder as soon as practicable after the direction is given to the titleholder that is subject to the direction.

**Proposed subsection 576C(2A)**, inserted by **item 20** of Schedule 4, clarifies the relationship between directions made under section 576B and environment plans made under Offshore Environment Regulations. Under **proposed subsection 576C(2A)**, if the oil pollution emergency

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74. Explanatory Memorandum, op. cit., p. 88. **Item 14** also inserts **proposed sections 572H and 572J** which set out the Commonwealth constitutional powers which provide support for Part 6.1A.

75. **OPGGS Act**, subsection 576B(5); see also Explanatory Memorandum, op. cit., p. 89.

76. As discussed earlier, and as defined by **proposed clause 2A** of Schedule 2A, inserted by item 28 of Schedule 4.

77. **Proposed subsection 576B(8) and (9)**, inserted by **item 19** of Schedule 4, clarify when a declared oil pollution emergency ‘relates to a title’: that is, if it is attributable to one or more petroleum activities of the titleholder.
provisions of an environment plan are inconsistent with the direction, then the environment plan will have no effect to the extent of the inconsistency.

**Item 22** of Schedule 4 inserts **proposed section 576E** to clarify that the provisions relating to directions for significant offshore petroleum incidents in Division 2A of Part 6.2 of the *OPGGS Act* are not intended to exclude or limit the operation of any state or territory law, where that law is capable of operating concurrently. As the Explanatory Memorandum notes:

> States and Territories will therefore have the ability to exercise any relevant powers in their own legislation, utilising their own spill response capacity in their jurisdiction.\(^78\)

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\(^78\) Explanatory Memorandum, op. cit., p. 92. **Item 22** also inserts **proposed sections 576F and 576G** which set out the Commonwealth constitutional powers which provide support for Division 2A of Part 6.2.