2002 - 2003

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PETROLEUM (SUBMERGED LANDS)

AMENDMENT BILL 2003

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Industry, Tourism and Resources, the Honourable Ian Macfarlane MP)
The Petroleum (Submerged Lands) Amendment Bill 2003 will establish a National Offshore Petroleum Safety Authority (NOPSA) to regulate safety in Commonwealth waters and State and Northern Territory coastal waters in accordance with the commitment by the Government and agreed by the Commonwealth, States and Territories. The offshore petroleum industry is strategically important to Australia and any serious disruption to this supply through an accident would have major economic consequences. While unlikely, the costs of such a disruption would be high.

The Authority, to be established by Commonwealth legislation, will deliver a uniform national safety regulatory regime for Australia’s offshore petroleum industry and will reduce the regulatory burden faced by industry participants. It is to be an independent agency accountable to the Commonwealth, States and Northern Territory ministers and will be established via amendment to the Petroleum (Submerged Lands) Act 1967 (‘the Act’).

The Bill also contains amendments to Schedule 7 of the Act ("Occupational health and safety"). These amendments will improve safety administration and outcomes for offshore petroleum facilities and pipelines, and also reduce risks to the environment. Amendments in the Bill, when ‘mirrored’ by the State and Northern Territory legislation, will also provide a consistent safety regulatory regime across all Commonwealth waters and State and Northern Territory coastal waters by the application of the amended Schedule 7, and the disapplication of numerous State and Northern Territory occupational health and safety Acts and regulations.

There are two further sets of amendments in the Bill.

Schedule 2 seeks to amend section 129 of the Act to rectify an anomaly whereby the full amount of fees paid by the offshore petroleum industry needs to be redirected back to the States and Northern Territory, yet the goods and services tax (GST) legislation requires GST deductions from some of these fees.

Schedule 3 seeks to amend the data management provisions in the Act. These cover the submission of data by petroleum owners to the regulator and the later release of some of those data to the public. The amendments will enable the machinery provisions covering both submission and release of these data to be placed in new objective-based data management regulations under the Act.
Background

Since 1967, the Act has provided for the regulation of all aspects of offshore petroleum mining, including titles, exploration, production, pipelines and safety regulation.

Following a High Court decision in 1975 that confirmed Commonwealth jurisdiction offshore (i.e. below low water mark), in June 1979, the Commonwealth and the States agreed to a division of offshore powers and responsibilities known collectively as the Offshore Constitutional Settlement (OCS). The purpose of the OCS was to generally maintain the States role in the management of offshore areas, particularly on “….topics which history, common sense and the sheer practicalities of the matter mark out for State administration rather than Commonwealth administration, in the absence of overriding national or international considerations.”

In relation to offshore petroleum arrangements post OCS, the States and Northern Territory have been granted by the Commonwealth, title to all waters (including seabed) landward of the three nautical mile limit and have the same power to legislate over these coastal waters as they do over their land territory. Another significant outcome of the OCS was an amendment to confine the application of the Commonwealth Act to waters outside the three nautical mile limit, with the States and Northern Territory enacting mirror legislation applying in waters landward of that boundary. Beyond the coastal waters, cooperative governance of the Commonwealth’s legislation vests executive powers jointly in a ‘Joint Authority’, (which is the Commonwealth Minister and the relevant State or Northern Territory Minister in respect of each adjacent area) on all major decisions affecting petroleum exploration and development (with the Commonwealth Minister’s view to prevail in the event of disagreement). Day-to-day administrative duties and regulatory functions have been exercised by the ‘Designated Authority’, who is the relevant State/NT Minister.

Until the Safety Authority commences operations on 1 January 2005, safety regulation will continue to be administered under the existing legislation and this Joint Authority/Designated Authority arrangement as it stands. A particular feature of the Act in its present form (prior to 1 January 2005) is that the occupational health and safety (OHS) requirements in Schedule 7 of the Act do not apply to Commonwealth waters adjacent to a State or the Northern Territory if the law of that State or Territory “provides, to any extent, for matters relating to the occupational health and safety of persons employed in the area”. In that case, the OHS laws of the State or Territory apply.

As a result, each jurisdiction except Western Australia has applied its own State or Northern Territory OHS law in its own coastal waters and that law was applied by the Commonwealth Act in Commonwealth waters. Western Australia has relied on the application of Schedule 7 of the Act. Each of these laws is different. Consequently, companies with offshore facilities in more than one State or in the Northern Territory adjacent area have had to meet the requirements of these different laws. Furthermore, those companies operating mobile facilities such as drilling rigs, have had to comply with different requirements as their rigs move from job to job around Australia.
In response to the 1988 Piper Alpha disaster in the North Sea, the Act was amended in 1992 to include Schedule 7 and in 1995 to provide for the implementation by regulations of a safety case regime. The term "safety case" is used to describe a sophisticated, comprehensive and integrated risk management system. This is characterised by an acceptance that the direct responsibility for the ongoing management of safety on individual facilities is the responsibility of the operators and not the regulator, whose key function is to provide guidance as to the safety objectives to be achieved and an assessment of performance against those objectives.

The operators can achieve those objectives by developing systems and procedures that best suit their needs and agreeing these with the regulator. This "safety case" then forms the rules by which the operation of the facility is governed. The safety case includes details of safety management arrangements and risk assessment studies, which, once submitted to and accepted by the regulator, sets both the standards to be achieved and the mechanism for achieving them.

The safety case also forms the basis for ongoing audits of the facility and its operation throughout its life. Key aspects of inspection/auditing by the regulator are to monitor the effectiveness with which the commitments in the safety case are being implemented, monitor the effectiveness of both the safety management system and the operators’ internal audits of them, and critically examine the efforts made by management to actively involve the workforce in the safety case process.

The safety case regime has been fully operational since 1996, when detailed safety case regulations under the Act, underpinned by guidelines for their preparation and submission, came into effect. The safety case regime remains as it is and is not altered by this Bill. (While it is proposed to revise the regulations that establish the safety case regime, this will be solely to clarify the operation of the regulations themselves and not to change the safety case regime.)

In August 2001, the Commonwealth Government report on offshore safety, *Future Arrangements for the Regulation of Offshore Petroleum Safety*, was delivered to the former Minister for Industry, Science and Resources. The primary conclusion of the review was "...that the Australian legal and administrative framework, and the day to day application of this framework, for regulation of health, safety and environment in the offshore petroleum industry is complicated and insufficient to ensure appropriate, effective and cost efficient regulation of the offshore petroleum industry. Much would require improvement for the regime to deliver world-class safety practice."

In particular, an independent review that formed part of the above report, recommended that a national petroleum regulatory authority should be developed to oversee the regulation of safety in Commonwealth offshore waters. The Commonwealth view, strongly supported by industry and employees, was that it would be more efficient and effective as well as reducing the regulatory burden to have a single national agency covering both Commonwealth waters and States and Northern Territory coastal waters, a view subsequently shared by States and the Northern Territory. The Ministerial Council on Mineral and Petroleum Resources subsequently endorsed a set of principles for regulation of safety of petroleum activities in Commonwealth waters and State and Northern Territory coastal waters in Australia and agreed that the Council’s Standing Committee of Officials would
examine how best to improve offshore safety outcomes primarily through a single joint national safety agency. This work led to an agreement upon which this Bill is based.

*Jurisdictional areas in which the Safety Authority will operate and outline of the legislative basis for its operations in those areas*

The Safety Authority will function as regulator of occupational health and safety in relation to offshore petroleum facilities and offshore petroleum diving operations in the following jurisdictional areas.

(a) *‘Commonwealth waters’* – these are the waters covered by the Commonwealth Petroleum (Submerged Lands) Act, i.e. waters of the continental shelf outside the 3 nautical mile territorial sea. In these waters, the Safety Authority’s general functions and powers will be derived from new Part IIIC of the Commonwealth Act and its specific regulatory functions and powers will be derived from the occupational health and safety regime in Schedule 7 to the Commonwealth Act and from regulations under the Act relating to safety cases and other occupational health and safety matters.

(b) *‘Designated coastal waters’* of each State and the Northern Territory – these are the waters covered by the State and Northern Territory Petroleum (Submerged Lands) Acts, i.e. the first 3 nautical miles of the territorial sea adjacent to each State and the Northern Territory, plus (in the case of Western Australia) some title areas landward of the territorial sea baseline but external to the State. In these waters, the Safety Authority’s general functions and powers will be derived from the Petroleum (Submerged Lands) Act of the relevant State or the Northern Territory and its specific regulatory functions and powers will be derived from provisions of that State or Territory Act, and regulations made under it, that ‘mirror’ Schedule 7 and the Commonwealth occupational health and safety regulations.

(c) Individual States or the Northern Territory may also confer powers on the Safety Authority under the ‘onshore’ legislation of the State or Territory in respect of particular petroleum operations and, where this occurs, this Bill authorises the Authority to exercise those powers. In acting under State or Northern Territory ‘onshore’ legislation, the Authority will be entirely subject to the governance arrangements established by that legislation.
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Department of Industry Tourism and Resources
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REGULATION IMPACT STATEMENT

Formation of a National Statutory Authority to Regulate Safety in the Offshore Petroleum Industry

FOREWORD
This Regulation Impact Statement draws on material contained in the following documents located at www.industry.gov.au:
- Future Arrangements for the Regulation of Offshore Petroleum Safety; and

STATEMENT OF THE PROBLEM

Background
1. Since the commencement of offshore petroleum activity, the Petroleum (Submerged Lands) Act 1967 (PSLA) has legislated all aspects of offshore petroleum mining, including titles, production, environment, and safety. The Act itself is supplemented and extended by regulations, directions and guidance documents.

2. In June 1979, the Commonwealth and the States agreed to a series of constitutional issues known collectively as the Offshore Constitutional Settlement (OCS) and in 1980 the PSLA was amended to give effect to relevant aspects of the OCS. The purpose of the OCS was to generally maintain the States role in the management of offshore areas, particularly on “…topics which history, common sense and the sheer practicalities of the matter mark out for State administration rather than Commonwealth administration, in the absence of overriding national or international considerations.

3. In summary, post OCS offshore petroleum arrangements have the following significant features:
   - the States/NT have title to all waters landward of the three nautical mile limit and have the same power to legislate over these coastal waters as they do over their land territory;
   - laws on both sides of the three mile jurisdictional boundary are identical in structure, thereby continuing to provide a high degree of uniformity and consistency in administration of the offshore petroleum regime;
   - within coastal waters executive powers are vested in the State or Territory Minister; and
   - beyond the coastal waters, cooperative governance of the Commonwealth’s legislation vests executive powers jointly in Commonwealth and State/Territory Ministers (the “Joint Authority” (JA) in respect of each adjacent area) on all major decisions affecting petroleum exploration and development (with the Commonwealth Minister’s view to prevail in the event of disagreement) and
allows the State/Territory Ministers (the “Designated Authority” or DA) to exercise a range of day to day decision making powers on the Commonwealth’s behalf.

4. In the main, the legislation confers on the Designated Authority (DA) the day to day administration duties and regulatory functions, with the Joint Authority (JA) not ordinarily involved in administrative matters. The JA does however have a specific role and the Commonwealth Minister can veto motions with a casting vote in matters of contention.

5. In response to the 1988 Piper Alpha disaster in the North Sea, the Australian Government established the tripartite Consultative Committee on Safety in the Offshore Petroleum Industry, which in 1991 recommended that key outcomes of the UK Committee of Inquiry into the Piper Alpha disaster chaired by Lord Cullen be implemented in Australia, and in particular that:

- a safety case regime be adopted in Australia; and
- new performance based regulations replace the existing prescriptive safety rules contained in the PSLA.

6. The PSLA was amended in 1992 to require safety cases for all facilities. The safety case regime has been fully operational since 1996, when detailed safety case regulations under the Act, underpinned by guidelines for their preparation and submission, came into effect. The PSLA also includes provisions for penalties and enforcement measures to ensure compliance.

7. In 1998, the Minerals and Petroleum Resources Policy Statement, committed the Government to “look for opportunities to further improve Australia’s offshore safety record by commissioning an independent evaluation of all aspects of Australia’s safety case regime”. The safety case regime had been in operation for six years and a comprehensive review of its administration was appropriate.

The Problem

8. Following the 1979 Offshore Constitutional Settlement (OCS), the PSLA was amended to give practical effect to the OCS. A particular feature of the PSLA is that the occupational health and safety (OHS) requirements in the PSLA need not apply if the States/NT have their own OHS law so long as it is not inconsistent.

9. As a result each Designated Authority (except Western Australia) applies its own State/NT OHS law in its own waters and Commonwealth waters. Each of these laws is different. Consequently, companies with offshore facilities in more than one jurisdiction have to meet the requirements of these different laws. Furthermore those companies operating mobile facilities such as drilling rigs, have to comply with different requirements as their rigs move from job to job around Australia.
10. In 1999, the Government commissioned an independent review of offshore safety by a team of international experts as part of the Government’s 1998 commitment to review the Australian offshore safety case regime and Commonwealth concerns as to the adequacy of the current regulatory arrangements. The review report *Future Arrangements for the Regulation of Offshore Petroleum Safety* was delivered to the Minister for Industry, Science and Resources in August 2001. The primary conclusion of the review was:

“The Review Team is of the opinion that the Australian legal and administrative framework, and the day to day application of this framework, for regulation of health, safety and environment in the offshore petroleum industry is complicated and insufficient to ensure appropriate, effective and cost efficient regulation of the offshore petroleum industry”

*Much would require improvement for the regime to deliver world-class safety practice.*

11. The Independent Review Team found that:

- there are too many acts, directions and regulations regulating offshore petroleum activities, their boundaries are unclear and application is inconsistent, different sets of legal documents apply for each of the different States/NT and there are overlaps in legislation
  - Given the level of uncertainty about what constitutes optimum safety regulation, it is inevitable that autonomous jurisdictions will develop different styles of regulation and different enforcement strategies. For companies that operate across jurisdictions, as most companies dealing with major hazards do, this causes administrative difficulties and additional costs. Moreover this complexity decreases the transparency of regulation both for the regulated and for others wishing to scrutinise the process. All parties concerned with the regulation of major hazards therefore have an interest in developing consistent, or harmonised regulation across relevant jurisdictions. For this reason, in a federal jurisdiction like the United States, industries such as coal mining, coastal activities and nuclear power are controlled by federal legislation and federal regulators. In Europe, the Seveso directives represent an effort to harmonise legislation in relation to major hazards
  - In Australia consistency of approach in offshore safety regulation is potentially made more difficult by the Federation and the dis-aggregated nature of the current regulatory system involving the Designated Authorities.

- the State/NT safety regulators lacked regulatory skills, capacity and consistency and did not have a clear view of their role and the Review Team made the following findings and recommendations with regard to the current regulatory arrangements
  - the role of the Designated Authorities is unclear and undefined
  - the regulators appear to have inconsistent philosophies, procedures and approaches to regulation, both in regard to the discharge of their role in safety case development and assessment, and in regard to auditing activities
- the use of consultants to assess safety cases can potentially cause a conflict of interest if they or other consultants have been involved in the safety case preparation. Also consultants have closer ties with the companies than with the regulators
- the work processes of regulators are not sufficiently transparent
- the role of the regulator should be agreed and committed to paper and the processes employed should be as transparent as possible
- The regulators should keep a little distance between themselves and the companies - especially on long term assignments
- some regulators are light in resources in terms both of number and competence of personnel, and salary levels make it difficult to recruit and retain critical mass.

- the Commonwealth did not have sufficient resources, technical expertise, credibility and authority to drive the required changes.

12. In particular, it recommended that a national petroleum regulatory authority should be developed to oversee the regulation of safety in Commonwealth offshore waters.

THE OBJECTIVE

The Process

13. Simply put, the objective of the proposed regulatory changes is to improve the current offshore safety regulatory arrangements by establishing an appropriate regulatory body to bring consistency, efficiency and effectiveness to this activity. This will be done by reducing the number of regulatory bodies from three (or more) to one and similarly reducing the number of occupational health and safety laws.

14. The offshore petroleum industry is by its nature, an extremely high-cost, high-risk activity with extremely significant health and safety, revenue and interruption to supply consequences of accidents on offshore installations (the explosion on the P36 platform offshore Brazil in March 2001 resulted in eleven deaths, the loss of the platform valued at US$800m, loss of oil production and revenue and the need to replace the lost production with imports - the Brazilian regulatory system is currently being redeveloped).

15. The offshore petroleum industry operates in several jurisdictions where universal application of safety regulation is required to ensure that operating companies face the same regulation regardless of where their facilities are located. The process of achieving that objective was initiated at the first Session of the Ministerial Council on Mineral and Petroleum Resources (MCMPR) held in Melbourne on 4 March 2002, the Council endorsed a set of principles for regulation of safety of petroleum activities in Commonwealth and State/NT offshore waters in Australia. These principles state that:

- An enhanced and continuing improvement of safety outcomes in the Australian offshore petroleum industry is a priority for Governments, industry and the workforce.
A consistent national approach to offshore safety regulation in both Commonwealth and State/NT waters is essential for the most cost-effective delivery of safety outcomes in the offshore petroleum industry.

The safety case approach is the most appropriate form of regulation for the offshore petroleum industry to deliver world class safety by developing appropriate behaviour within the industry.

Efficient and effective safety regulation requires:
- a legislative framework that is clear and enforceable and that requires operators to discharge their responsibilities for safety;
- competent and experienced personnel forming a critical mass of appropriate skills;
- structure and governance of the regulatory agency that demonstrates independence, transparency, openness and cost efficiency;
- an independent approach in implementing legislative responsibilities and in dealings with industry; and
- agreed performance criteria.

The industry and its workforce must be empowered to identify and report potential hazards and to ensure that appropriate control measures are implemented.

Approval processes in safety, titles, environment and resource management must be streamlined and coordinated to ensure no undue delay to project development in the offshore petroleum industry.

16. Ministers agreed that the Council’s Standing Committee of Officials would implement a work program to examine how best to improve offshore safety outcomes primarily through a single joint national safety agency to be assessed against the agreed set of principles. The Council identified critical issues to progress this initiative namely:
- the legislative changes required to support improved offshore safety outcomes and the establishment of a single national authority;
- structural, governance and funding aspects of such an authority;
- implications for the existing multiple regulator approach; and
- to consider the other recommendations of the Independent Review Team report on enhanced safety outcomes.

17. The Council’s decision addressed concerns raised in a number of reviews about the effectiveness of current offshore oil and gas health and safety regulation, the last (described above) in 2000 by an Independent Review Team of international experts. The Review Team recommended that safety outcomes can be significantly improved through a national safety regulator for petroleum activities in Commonwealth waters. Industry and employees strongly support a single offshore regulator.

18. A further stimulus to deliver improvements in offshore safety was given by a specific election commitment by the Coalition in 2001, and the Government’s allocation in the 2002-03 Budget of $6.1m over three years to establish a new administration for offshore safety by 2004.
19. Three Working Groups were formed to progress the work, under the auspices of an Implementation Steering Committee. The Working Groups have investigated the options for the institutional form and nature of the authority and also the legislative and technical changes necessary to improve safety outcomes.

**Legislative Changes**

20. An example of the legislative changes that need to be addressed is provided by the features of the existing system in relation to the regulation of OH&S across jurisdictions.

21. The regulation of offshore safety for petroleum facilities and operations in waters under Commonwealth jurisdiction at present takes place under the *PSLA*. The *PSLA* and regulations under that Act establish a comprehensive regime for the granting and administration of offshore petroleum titles. Those titles include exploration permits, retention leases, production licences, infrastructure licences and pipeline licences. Operations carried out under any of these forms of title appear capable of giving rise to conditions requiring management of risks to safety of individuals.

22. Regulation of offshore safety of petroleum facilities and operations in the State/NT coastal waters is administered under the relevant State/NT PSLA.

23. At present, the risk of major hazards in Commonwealth waters is covered by the *PSL. (Management of Safety on Offshore Facilities) Regulations*. OH&S is dealt with by sections 140H and 140I of the *PSLA*, together with the Commonwealth’s OH&S regime in Schedule 7 of the *PSLA*. Section 140H contains a ‘roll-back’ provision which provides that Schedule 7 does not apply in the adjacent area in respect of a State or Territory that has its own legislated OH&S regime that is capable of applying in the territorial sea. It should be noted that some, but not all, jurisdictions have such legislation. That legislation is applied in the adjacent area of the relevant State or Territory as Commonwealth law by sections 9 and 11 of the *PSLA*. In the adjacent areas of the remaining States, Schedule 7 of the *PSLA* applies.

24. While there is at present a single legislative regime in respect of major hazards in Commonwealth waters, a different legislative regime applies in respect of OH&S in each of the areas under Commonwealth jurisdiction adjacent to the States and the Northern Territory. This means that facility operators in Commonwealth waters and under a Commonwealth Act must comply with OH&S standards and administrative processes that vary according to the location of the facility.

**Technical Changes**

25. In parallel to the planned legislative and organisational changes, enhancements are being made to the way the existing State/Territory based Designated Authorities operate. These are referred to as “Technical Changes.”

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1 In WA petroleum facilities and activities in waters and on islands internal to the State are covered under the Petroleum Act 1967 or Petroleum Pipelines Act 1969 and the State PSLA. The WA Petroleum Safety Act 1999 is to apply to all petroleum sites and activities when proclaimed.

2 It should be noted that this feature also exists in the Building and Construction industry where it has been found that the existence of 11 separate state and federal industrial relations and occupational health and safety systems was responsible for creating confusion in the industry, and that one national set of laws should be adopted. (Royal Commission into the Building and Construction Industry, Discussion Paper 6.) It should be further noted that the multiplicity of legislative regimes is seen as a factor in poorer OH&S performance than would otherwise be the case.
26. These changes are intended to improve the effectiveness and consistency of the existing processes. Work has only just begun but examples of the type of work to be undertaken include, developing nationally consistent systems and procedures for safety case assessment, auditing and investigation. At present each of the jurisdictions have their own procedures which vary in the extent of their coverage. Similarly each jurisdiction has its own method of collating data on safety performance. It is intended that a single national system will be adopted which will be able to provide better quality feedback to stakeholders.

27. It is important to note that these technical changes are independent of the changes related to establishing the authority and would take place whether or not the changes described in this Regulation Impact Statement are implemented. They are not dependent on any legal or organisational changes that are the subject of this Regulation Impact Statement and they will be progressed by a tri-partite Technical Working Group.

OPTIONS

28. The Ministerial Council terms of reference required that the preferred form and nature of a national offshore safety authority be developed and for this to be assessed against the MCMPR principles described above and other options. In conjunction with representatives of all stakeholders a set of criteria were developed to give practical effect to the Ministerial principles and against which possible organisational models could be assessed.

29. The Institutional Form Working Group, which included Steering Committee members and industry and workforce representatives, met and decided to consider four key options:

Option A Single National Agency

30. This option involves the creation of a single agency with a specific responsibility to deliver safety regulation of all petroleum activity in Australian offshore waters; including diving, pipelines and drilling activities.

31. It is envisaged that this single agency would be resourced to such an extent that it has the critical mass of competencies to cover the total offshore safety regulatory task. It is envisaged that the national safety agency would be managed flexibly to meet the changes in the locus of regulation demand and to use resources most cost effectively through staff and skills mobility across the country.

32. The single national safety agency is envisaged to report jointly to Commonwealth and State/NT Ministers regarding incidents and safety issues in all Australian offshore waters. Jurisdictional divides would for most purposes not limit the operations of the agency. The single agency would implement a single set of policies and procedures to ensure consistent operation in both Commonwealth and State/NT coastal waters.

33. The concept for the national safety agency differs from the preferred proposal (Model 3) presented in the Report of the Safety Case Independent Review Team. The previous proposal was to have a central role for Commonwealth staff centred in a National HSE Authority which also housed high level technical staff. The current concept has a single agency formed with a spread of expertise and resources in a
number of offices based in the most appropriate locations servicing industry needs and communicating with both Commonwealth and State/NT Ministers.

34. The authority for the single agency would be by way of statutory remit through appropriate Commonwealth and State/NT legislation.

**Option B  Added Competence Model**

35. This model is envisaged to be based on the existing DA structure. It has a National Office which manages contracts or Service Level Agreements (SLAs) with the State/NT DAs. In operating to the SLAs the DAs would conduct regulatory functions in their respective State/NT coastal water and the adjacent Commonwealth water.

36. Consistency is to be deliverable through the aegis of the common SLAs.

37. The model is called ‘Added Competence’ because it is envisaged that there would be an appropriate increase in resourcing to the staff in the DAs to ensure that overall there would be satisfactory skills and competences delivering a higher degree of regulatory operations than is currently the case.

38. The mechanism whereby staff are mobile between DAs to deliver cost efficiencies across the total skills base would be embodied in the SLAs, however, the mechanism by which decisions taken in the national context are made is uncertain as there is no central clearing house for such decisions. To overcome this deficiency a central decision making or coordinating agency would be required. Such a feature is presented in Option C.

**Option C  Cooperative model**

39. The cooperative model was canvassed in the Issues Paper under section 3.2.7. It proposed having a separate and independent national safety agency with defined working arrangements with the current DA structures. It is envisaged that the National Safety Agency would conduct safety case evaluations and investigations of major incidents with the DAs providing local office functions including minor investigations.

40. The cooperative model would be delivered through SLAs between the national high level Commonwealth body and the State/NT DAs.

**Option D  Privatisation model**

41. The privatised or fully outsourced model is envisaged to be an arrangement between a single government Department and relevant private sector expert providers.

42. To give effect to this arrangement in all Australian waters would require an appropriate devolution of powers to a single government, and thence to the single department. The private sector operators would operate under contract to the single government department. The contracts would hold the key to managing the need for flexible and mobile operations of offshore safety regulation.

**Assessment Criteria**

43. The criteria developed to assess these options are presented in Table 1. The symbol, v, in Table 1 indicates the agreement between the criteria used to evaluate the options and the Ministerial Council Principles, and the relevance of each to industry
(APPEA) and workforce (ACTU) concerns. Additionally, the criteria used to assess the options include consideration of the attitude of the industry and workforce and legal aspects of each option. In line with the need to consider the implications of any change on jurisdictions, the criteria also consider whether any change is better at minimising the impact on the Commonwealth and the States and Northern Territory.

### Table 1: Assessment Criteria for Institutional Arrangements

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Principles</th>
<th>APPEA</th>
<th>ACTU</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capacity to improve safety outcomes (better than now, continuing to improve)</td>
<td>v (1, 3, 5)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Consistency</td>
<td>v (2, 4a)</td>
<td></td>
<td></td>
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<tr>
<td>(application of national offshore petroleum safety legislation)</td>
<td>v</td>
<td></td>
<td></td>
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<tr>
<td>(Other Major Hazard legislation/ OHS)</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Efficiency and Effectiveness</td>
<td>v (2, 4c)</td>
<td></td>
<td></td>
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<tr>
<td>Independence and Confidence</td>
<td>v (4c, 4d)</td>
<td></td>
<td></td>
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<tr>
<td>Capacity to perform</td>
<td>v</td>
<td>v</td>
<td></td>
</tr>
<tr>
<td>1. Funding (sourcing and coverage of operations)</td>
<td>(4b)</td>
<td>v</td>
<td></td>
</tr>
<tr>
<td>2. Skilled, motivated people</td>
<td>(4c)</td>
<td>v</td>
<td></td>
</tr>
<tr>
<td>3. Locations</td>
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<tr>
<td>4. Flexibility &amp; ability to perform full scope of work</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Accountability (governance, quality, performance standards etc)</td>
<td>v (4e)</td>
<td></td>
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<tr>
<td>Legal constraints</td>
<td></td>
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<tr>
<td>Cooperation from Industry / does it meet industry objectives</td>
<td>v (5)</td>
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<td></td>
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<tr>
<td>Cooperation from Workforce / does it meet workforce objectives</td>
<td>v (5)</td>
<td></td>
<td></td>
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<tr>
<td>Integration/ Interface /Coordination</td>
<td>v (6)</td>
<td>v</td>
<td>v</td>
</tr>
<tr>
<td>Minimisation of Impact on States/NT and Commonwealth</td>
<td>(6)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Assessment of Options

1. Having defined the Criteria, the Working Group, on 21 May 2002, undertook a problem solving approach to assess each option. The assessment of the options is contained in Table 2. An ordinal, quasi-scoring of options against the criteria using a full (F), partial (P) and No (or Minimal) (N) scale was adopted by the jurisdictions. From Table 2 and the analysis in this section it emerges that Option A, the single national safety agency, displaces the other options. Each option is assessed against each criterion in the discussion below.

### Table 2: Assessment of Options

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Option A</th>
<th>Option B</th>
<th>Option C</th>
<th>Option D</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capacity to improve safety outcomes (better than now)</td>
<td>F</td>
<td>P</td>
<td>P/F</td>
<td>P</td>
</tr>
</tbody>
</table>

3 The APPEA position was based on the content of a letter from the APPEA Executive Director to the Commonwealth Minister and the ACTU was represented in the Working Group.
consistency (application of national offshore petroleum safety legislation) (Other Major Hazard legislation/OHS)

<table>
<thead>
<tr>
<th>Consistency</th>
<th>F</th>
<th>P/F</th>
<th>F/^</th>
<th>P</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Efficiency and Effectiveness</th>
<th>F</th>
<th>P</th>
<th>P</th>
<th>P</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Independence and Confidence</th>
<th>F</th>
<th>P</th>
<th>F/P</th>
<th>P/N</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Capacity to perform</th>
<th>F,</th>
<th>P,</th>
<th>F/P,</th>
<th>F,</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) funding (sourcing and coverage of operations)</td>
<td>F,</td>
<td>P,</td>
<td>F,</td>
<td>F/P/N,</td>
</tr>
<tr>
<td>(ii) skilled, motivated people</td>
<td>F,</td>
<td>F,</td>
<td>F,</td>
<td>P,</td>
</tr>
<tr>
<td>(iii) locations</td>
<td>F/^</td>
<td>P</td>
<td>F/P/^</td>
<td>P</td>
</tr>
<tr>
<td>(iv) flexibility &amp; ability to perform full scope of work</td>
<td>F,</td>
<td>F,</td>
<td>F,</td>
<td>F/P</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Accountability (governance, quality, performance standards etc)</th>
<th>F</th>
<th>P,</th>
<th>F/P</th>
<th>F</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal constraints</td>
<td>F</td>
<td>P</td>
<td>P/F</td>
<td>N</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Cooperation from industry / does it meet industry objectives</th>
<th>F</th>
<th>P</th>
<th>P/F</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cooperation from Workforce / does it meet workforce objectives</td>
<td>F</td>
<td>N</td>
<td>N</td>
<td>N</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Integration / Interface / Coordination</th>
<th>P</th>
<th>F</th>
<th>F</th>
<th>P</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Minimisation of Impact on States/NT</th>
<th>P</th>
<th>F</th>
<th>F</th>
<th>P/N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimisation of Impact on Cwlth</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>P/N</td>
</tr>
</tbody>
</table>

* denotes some contention rather than consensus.
Subscripts C, S/NT refer to respective jurisdictions: Commonwealth and States/NT.
Multiple scores indicate split support for an Option.

Capacity to Improve Safety Outcomes
1. The capacity for each alternative institutional arrangement to deliver improvements in safety outcomes was assessed under this criterion. As the first of the Principles agreed to by Ministerial Council, the capacity to improve safety outcomes is clearly a vital element in judging alternative institutional arrangements. This criterion also picks up Principle 3 the delivery of world class safety. The empowerment of industry and workforce to identify and report potential hazards (Principle 5) contributes greatly to the capacity to improve safety outcomes. In addition to contributing to the avoidance of catastrophic occurrences in this hazardous industry, improved safety outcomes is at the heart of the regulation of safety.

2. Continued use of the safety case approach helps deliver world class safety. In terms of whether any option is better able to assess safety cases, it would appear that Options A, C and D with centralised safety case assessment would deliver a common approach to assessments. Option B would be able to assess safety cases, but there would be a greater chance for different assessment philosophies and outcomes to emerge between the DAs despite the SLAs. The prospect of different approaches detracts from Option B being the best at delivering improved safety outcomes in terms of this criterion.

3. Assessing whether any option is more likely to empower industry and workforce to identify and report potential hazards is difficult. At one level, the singular identity of the national offshore safety agency under Option A would appear to be an advantage. Option B would have localised identity which could favour industry and workforce empowerment. Option C, by contrast, with its dual structure and its multiple regulators pose some complexities which might leave workforce and industry wondering to whom the report should be made. Similarly, Option D contains within its structure a complexity for reporting potential hazards. Whether reports are to be made to the Department or the contractors are some of the difficulties facing the
workforce and industry under Option D. There may be added difficulties if a number of firms provide the regulatory function.

4. Option A with its singular focus and with a developed and common culture is considered best able to promote industry learnings and thereby enhance and improve safety outcomes. This institutional arrangement has the advantage that it is not distracted by non-safety issues and hence has an advantage over Options B and C.

5. Options B and C with the multiple reporting frameworks and with differing philosophies driven by jurisdictional considerations would be less able to provide the focus that industry and workforce require to enhance safety outcome. It must be remembered that this is a relative rather than an absolute statement and does not deny that safety has improved through the efforts of the existing regulators.

6. Option D would be less inclined to promote improved safety performance as the commercial imperatives to minimise costs and the emphasis on increasing shareholder value of the firm engaged as the safety regulator would seem to provide contrary incentives.

7. The assessment of the options against the ability to improve safety outcomes including the application of the safety case and empowering the workforce and industry supports the view that Option A would be best able to improve safety outcomes.

**CAPACITY TO IMPROVE SAFETY: PREFERRED OPTION: OPTION A**

**Consistency**

8. Principles 2 and 4a have at their heart the concept of consistency of operations. This consistency relates to two areas where there are delineations in regulatory modes. First is the boundary between the Commonwealth and State/NT coastal waters and second is the boundary between jurisdictions. Industry and workforce strongly support a single regime across all offshore waters and consistency in regulatory requirements and decisions. The capacity of each alternative arrangement to deliver consistent treatment across all offshore waters is considered under this heading.

9. In addition to consistent application of safety legislation to all offshore petroleum activity there was some interest in the ability of the institutional arrangement to have consistency with other major hazard legislation and with OH&S legislation. While this was a secondary issue, some aspects of developing consistency with OH&S legislation rests more with the Legislation Working Group than as a consideration of the institutional form of the safety agency. In the same vein, while the concept of having consistency between the offshore petroleum safety regime and onshore major hazard regimes may have some merit, it is beyond the scope of this report. Nonetheless, it should be noted that the Commonwealth and States/NT are working together under the auspices of the Work Place Relations Ministerial Council to develop national consistency of regulation of major hazards. The Major Hazards
Facilities Working Group, which is chaired by the Commonwealth National Occupational Health and Safety Commission (NOHSC), includes a member of the ITR Safety and Security Section which has key responsibility for promoting the improvement of safety in the offshore petroleum industry. As a consequence there are already mechanisms which promote consistency of onshore and offshore major hazards. Only Victoria currently has an effective regulatory system for major hazard facilities. Other States, notably Queensland and New South Wales are in the process of developing their legislation and regulators' organisations. It is likely to be some considerable time before there is a significant degree of consistency onshore. WA has since 1996 applied the safety case approach to onshore petroleum production facilities and transmission pipelines. WA has also for a number of years applied the safety case approach to major hazard facilities.

10. The institutional arrangement strongest at promoting consistency of application of the offshore safety regulation is the single national safety agency. As a single agency it is best able to develop, maintain and implement a consistent culture and regulatory philosophy. Regulators working as employees of a number of different states are unavoidably subject to the system, procedures and ethos of the State or Territory concerned. Inevitably this makes consistency of approach more difficult to achieve. The Commonwealth shares some of the responsibility for the lack of consistency between jurisdictions in that it has not provided sufficient input to procedures and guidelines. Recent improvements have occurred where, for example, NT is now adopting similar systems to those in WA.

11. The manner, in which safety cases are assessed, incidents investigated and audits undertaken in the one organisation would best deliver a consistent outcome in all Australian offshore waters. Should the national offshore safety agency be engaged to undertake safety regulation in the internal water of a State/NT then safety in that context would also be consistent with safety regulation in offshore water.

12. In WA inconsistency and inefficiency may arise where petroleum projects offshore in Commonwealth or State waters are linked to petroleum facilities on the WA islands, if these are not administered by the same regulator. Currently safety for all petroleum facilities and activities in WA is covered under consistent legislation and a single regulator.

13. Option B, in the event of the Commonwealth taking a much more hands on approach, could take steps to improve consistency. This could be done by agreeing more detailed performance standards for the regulatory work eg safety case assessment, incident investigation etc. Combined with a more active monitoring role eg making offshore visits to monitor performance, more frequent and detailed assessment of incident investigations, safety case assessments and audits should lead to greater consistency. However, the regulators would still be working for a variety of different employers, with different priorities, budgetary and otherwise, different cultures and philosophies. Whilst consistency can be improved in this way, it is still unlikely to provide the same level of consistency as a single national authority. This is reflected in the 'between Full and Partial' assessment for this option.

14. While some considered Option C to be capable of providing an equivalent level of consistency of application of offshore safety law as Option A, there was disagreement on this point. On the point of the disagreement Option C is critically flawed by the assumption that a meaningful distinction can be made between the 'minor' and other incidents. It has long been recognised in the major hazards
industries that any distinction made on the seriousness of an incident based on 'consequences' is flawed. A gas release from a pressure flow line 'caused' by corrosion may result in a small gas release that is quickly detected and the faulty flow line isolated, depressurised and repaired. The consequences are minor. Alternatively, the gas release goes undetected, gas accumulates, is ignited and a fire and explosion ensues. The explosion may damage more pipework, releasing more gas which fuels the fire resulting in the platform being lost. The consequences here are serious, but the immediate cause, corrosion, is the same. Consequently 'minor' incidents need to be managed in the same way as major ones, if the major ones are to be prevented. This is as true for the companies themselves as it is for regulators. In practice both need to apply themselves vigorously to preventive strategies to identify 'latent' failures in managerial systems, such as in this hypothetical example, the corrosion management system. On the basis of the discussion about separating minor incidents from other incidents and other regulatory activities Option C has a much lesser capability than Option A in delivering consistent offshore safety regulation.

15. Option D was not considered capable of delivering a consistent safety regime because the potential turnover of firms delivering safety brings with it the prospect of inconsistencies developing over time. It is felt likely that with changeover of firms successful in tendering for the role of offshore safety regulator there will be changes in approach and philosophy. As such Option D was scored lowest on this criterion. Option A is therefore the institutional arrangement capable of delivering the best degree of consistency in offshore regulation.

**CONSISTENCY: PREFERRED OPTION: OPTION A**

**Efficiency and Effectiveness**

16. Efficiency and effectiveness of the institutional arrangements are not simply what arrangement is the cheapest. These concepts are the key to Principle 4.

17. Effectiveness as a concept encompasses many of the attributes in Principle 4. In particular, an option which delivers the greatest improvement in safety outcome would clearly be more effective than an institutional option which does not. Similarly, effectiveness is greater the more those safety outcomes can be improved. Within the Australian context where there are multiple regulatory philosophies and disjunctions in the legislative arrangements between jurisdictions, effectiveness is likely to be higher when the regulatory philosophy is consistent and when there are fewer legislative disjunctions.

18. Efficiency can be considered as the output of safety regulation per unit of inputs. For simplicity this is often expressed in money terms. The most efficient arrangement could be considered as one which produces the highest level of safety (regulation) for a given cost. In terms of criteria, the output of safety from each option depends on features such as ‘capability to perform’, the level of ‘confidence’ and the ‘capacity to improve safety outcomes’. The higher the capability to perform the safety regulation, the greater the level of confidence there is in the regulatory arrangement and the
greater the capacity to improve safety outcomes, then the greater is the level of output for that option. Further an institutional arrangement that has a high level of accountability is likely to produce a higher safety output.

19. Bringing each of these characteristics together holistically is somewhat problematic because there is likely to be some interaction between effects, yet each criterion is presented separately. Interactions are not considered directly in this evaluation.

20. The following criteria each contributes positively to the ‘output’ of safety:

- capacity to improve safety (section 2.3.1);
- consistency (section 2.3.2);
- confidence of stakeholders (section 2.3.4);
- capacity to perform (section 2.3.5); and
- accountability (section 2.3.6).

21. In these terms the greater the increased performance under any of the criteria the higher is safety output.

22. From the discussion against each criterion of Section 2.3 Option A is assessed as the most efficient and the most effective when considered from first principles. The interaction of each criterion may be multiplicative in effect and it would seem to cumulate the outcome of the simple additive process conducted here. Since all the criteria in the list above point in the same direction it can be assumed that the interactions, if any, will reinforce each other. Option A is considered to provide the most efficient and effective delivery of safety outcomes. Since Option B requires SLAs to improve effectiveness it is thus not likely to be as efficient as Option A and therefore is unable to attain the same level of effectiveness as Option A.

23. On the matter of cost effectiveness, this is discussed in Section 5 in the context of evaluating the benefits and costs and financial considerations of the preferred option.

**EFFICIENCY AND EFFECTIVENESS: PREFERRED OPTION: OPTION A**

*Independence and confidence*

24. Independence and confidence relate to the extent to which the safety regulator is not influenced by factors other than those related to achieving improved safety outcomes. With an independent safety agency all stakeholders will have confidence in the ability of the safety regulator to operate impartially to ensure good safety outcomes. Industry and workforce perceive this feature as very important in a safety regulator. This criterion picks up the Principles 4c and 4d.

25. Option A is considered to be best able to deliver an independent approach. As an agency separate from those aspects of the State/NT and Commonwealth
administration of titles or resource development the national safety agency would avoid being captive to internal conflicts. This conflict was highlighted in the Safety Review and the IRT findings. Overseas experience points to the importance of safety not being apparently, or in fact, compromised by the imperatives for resource development.

26. Option B is least able to meet the challenge of safety decisions being influenced by development interests. The co-location of safety and resource development, resource management and titles regulators carries with it the perception of a lack of independence at the very least. There is anecdotal information that conflicts can arise. While no adverse safety outcome has been caused in Australia to date by this tension between these two arms of regulation, the appearance of conflict should be avoided if confidence in the independence of the safety regulator is to be maintained.

27. Option C which has both a national 'office' delivering 'major' safety regulation and lesser safety functions carried out by the DAs is perhaps not so susceptible as Option B to possible influence from having resource management and safety regulation managed within the same Department of State (and often in the same Division of a Department). This is because the potential for compromise of safety is lessened by virtue of the smaller and necessarily more minor safety matters to be handled by the DAs under this option. The danger to safety could come if information is not discovered or passed to the national office. The data analysis function is a vital element in the regulator combining with industry and workforce in preventing major incidents.

28. Option D carries with it the danger of a different style of conflict of interest. The individuals or firms, which might be successful in gaining a contract to deliver safety services to the government and industry, are likely to have a history of operation within the industry. Where the firms have no guarantee that regulatory contracts will be renewed, then the firm's existence depends on future work with industry. In this context a firm engaged as the regulator faces a moral hazard. It is difficult to see how such a business arrangement might be constructed to avoid such dependence. The perception of dependence on the offshore petroleum industry would obviously lead to significant diminution of the confidence that industry; workforce and governments might have in this institutional arrangement.

29. To summarise, as far as independence and confidence as a regulator is concerned, the best option is the single national safety agency.

**INDEPENDENCE AND CONFIDENCE: PREFERRED OPTION: OPTION A**

**Capacity to perform**

30. Capacity to perform has a number of dimensions encompassing the ability to source funds, and to fund all necessary operations of the safety regulator, to engage and retain skilled staff. Capacity to perform also relates to the regulator’s relationships with industry, its flexibility and its ability to perform the full range of work required.
31. On one level the ability to source funds is consistent across all options as it is envisaged that coercive powers provides an equal capacity. There are however, limitations for some of the options suggesting others might be better able to guarantee that funding is directed towards safety administration. The mechanisms by which the funding can be gathered and directed to safety differ. As discussed in Section 5, Option A has the advantage of being able to have as part of its establishment the identification of a safety fee. Option B, which is based primarily on the existing DA approach, may create difficulties if safety fees remain within the general offshore administration fees. Current funding arrangements do not hypothecate any portion of the fees towards safety administration. The ability of Option C to gain full funding is complicated by its two tier structure. Option D’s ability to gain funding depends on the ability of the central office to gain funds presumably through the Departmental budget perhaps reimbursed by fees.

32. In the same vein the ability of each option to engage and retain high calibre staff depends in part on whether there is flexibility in pay scales. Under Option B restraints that public service pay conditions impose on staffing may remain. Should this limit be overcome through employment under contracts outside the public sector arrangements then Option B can be as capable as Option A to recruit and retain quality staff. However, Option B with smaller and isolated offices does not provide the career choices that the larger single agency under Option A offers.

33. Under the presumption that the central office of Option C would be as capable as Option A in staffing then Option C is close to Options A and B. There is a concern that in retaining public service conditions in the DAs there would be unhealthy competition between states and the central office. The central office, paying higher salaries, would outbid the DAs in the market place.

34. It is not obvious that Option A with its greater flexibility to attract and retain staff would be best at meeting this dimension of the capacity to perform because Options B and C, if freed from public service pay conditions, could deliver equally high quality staffing.

35. The third dimension of capacity to perform relates to the location of the agency. Since Options A, B and C have a presence close to operations and the head office of petroleum companies they are equally likely to meet this criterion. Option D, however, has no guarantee that it would be necessarily located across the nation. It might be that under one set of contracts the service is delivered from Melbourne, under another, the service might be delivered out of Perth. Alternatively, it is conceivable that in some instances the decision makers under Option D might be based overseas.

36. Options B and D were considered to not perform as well as Options A and C when flexibility and fullness of scope of operations were considered. Option B was considered less able because it is confined to jurisdictional boundaries and accountabilities. Resource sharing would be less of a feature under Option B, than Option A, because local regulators would look to meet the needs within their jurisdictional boundary first. Option D would require quite complex contract negotiations to deliver the flexibility and scope of Option C or A. It is considered likely that such contractual arrangements would be quite expensive. Option A by contrast is considered best able to deliver the flexibility of services across the nation. It is also considered that with a national focus it can be more flexible in its operations. Option C might deliver the flexibility in major components of the regulatory service
however; the State/NT focus of the minor components would introduce similar jurisdictional inflexibilities that apply to Option B.

37. On balance and taking into account the various dimensions of the capacity to perform Option A is best able to provide safety performance to the highest level. Options B and D have different weaknesses but both trail Option C in regards to the capacity to perform the regulatory service across the country. The smaller scale of each regulator retards Option C’s performance.

CAPACITY TO PERFORM: PREFERRED OPTION: OPTION A

Accountability
38. Accountability relates to the alignment of the responsibilities of an organisation with the incentive structures established to ensure those responsibilities are naturally going to be met. This criterion best delivers Principle 4(e). Governance issues and mechanisms to measure the performance of the organisation in delivering on its responsibilities are key to accountability. Features of organisations that contribute clear accountabilities include the clarity of vision and goals of the organisation, the directness of lines of reporting and the alignment of organisational structure with the resources and funding arrangements.

39. Option A as a single body has a single focus in the head of the organisation. This person can be required to report directly to the Commonwealth and State Ministers. The Board of a single national agency will also be accountable to Parliament and Ministers. As a single body it will be driven by a single goal to improve safety performance in the offshore petroleum industry. Resources and personnel with a single focus will be best at delivering safety outcomes within a single management structure. As such, the single national safety agency can be held to a strict degree of accountability. This is important when, under the various PSLA acts, Ministers carry the ultimate accountability. In this regard it is highly desirable that Ministers have a statutory duty to conduct at least a quinquennial review of the effectiveness of the agency in achieving its objectives. A simple line of communication between the organisation and Commonwealth and States/NT Ministers will contribute to them meeting statutory accountabilities.

40. Option B with its multiple structure meets the accountabilities of State/NT jurisdictions individually, but leaves the Commonwealth Minister exposed. The style and philosophy of reporting is likely to differ between jurisdictions. Even decisions on what to report are likely to differ between jurisdictions. Such inconsistency will not provide the best accountability of safety regulation.

41. Under Option C, the national office might be able to emulate Option A but within the States/NT there could be conflicts in accountability as the DAs and the National office might report to State/NT Ministers on the same matter. At any level of reporting, it would be impossible to differentiate between major and minor responsibilities. It seems most likely that State Ministers would request briefing from their own regulatory officials before seeking a report from the National office. This
dual reporting prospect would limit the capacity for best accountabilities to be delivered.

42. The capacity of Option D to deliver a comparable level of accountability depends crucially on the manner of the contractual arrangements. Well-structured contracts could ensure a firm engaged as the safety regulator is as accountable as the single national safety agency.

43. Options A and D are considered capable of delivering comparable degrees of accountability. Neither Option B nor Option C guarantees the focussed accountability of Option A.

ACCOUNTABILITY: PREFERRED OPTION: OPTION A

Legal constraints
44. The Department of ITR requested that the Australian Government Solicitor provide advice on legal aspects of the various institutional options.

45. In summary, the Australian Government Solicitor’s advice provides most support for Option A.

46. It is found that under Option B (a national office with SLAs between it and the DAs to provide the appropriate level of regulatory service.) there is no guarantee that the intended uniformity of regulation would be deliverable. Based, as it would be under the current legislative arrangements the Commonwealth would be left with no legal or practical ability to ensure uniform and consistent regulation across all Australian waters. The statutory powers and responsibilities remain with the DAs. The Commonwealth either through the Minister or through the Joint Authority, has no statutory powers or responsibilities under the PSLA in relation to safety. The Commonwealth therefore cannot use the threat of withdrawing from the arrangement as a means of inducing a Designated Authority to meet its responsibilities under the SLA, as withdrawal by the Commonwealth would leave the Designated Authority in full possession of its powers. Secondly, the funding will continue to be paid to the Designated Authorities unconditionally, regardless of whether they carry out their responsibilities under the SLA. The SLA will therefore be essentially ‘toothless’.

47. Option C (a cooperative model with and National Office undertaking major safety issues and the DAs conducting minor safety issues under SLAs) has a major practical difficulty associated with the effectiveness of such an arrangement. Safety Case assessment cannot be practically separated out from the other aspects of safety regulation, whilst maintaining effectiveness. Knowledge and experience gained from regular offshore visits to carry out audits and investigate incidents is essential if effective safety case assessment is to be undertaken. Likewise audits and incident investigation cannot be effective without detailed knowledge of the safety case. The Australian Government Solicitor advised that it is unlikely to be possible to divide the statutory responsibilities between the National Agency and the Designated
Authorities in any workable manner that would not distort the practical operations of the bodies involved.

48. Option D (the privatised model) has a range of practical difficulties. One difficulty on which the Australian Government Solicitor focussed is that the persons who carry out monitoring inspections and investigations will need to exercise coercive statutory powers — eg power to enter premises, to seize property and documents and to seal off the site of an incident. Those powers cannot be conferred by contract, but must be conferred by statute. The Australian Government Solicitor is not aware of any precedent for the Commonwealth conferring coercive statutory powers on private individuals. Although it is noted that, in the case of employees of the private organisations that operate Commonwealth immigration detention centres, each such employee is made a Commonwealth officer by the legislation, and exercises powers in that capacity. There would need to be special circumstances to warrant the Commonwealth conferring coercive statutory powers by onto private individuals, the Australian Government Solicitor is of the view that there would be no such special circumstances in the case of offshore safety.

49. In terms of Option A (the single national safety agency) the Australian Government Solicitor advises that in combination with certain changes to the existing legislation, a single national agency can have all the relevant powers conferred on it by both the Commonwealth and the States/NT to ensure that a single consistent and uniformly adopted national offshore safety scheme can be developed. The Australian Government Solicitor provided advice that if formed as a Commonwealth Statutory Authority, Option A has advantages in that:

- it establishes a separate corporate entity on which functions and powers can be conferred by Commonwealth and State legislation;
- it has a Board to provide a ‘buffer’ between the regulator and the Minister;
- it has actual and perceived independence from political influence and from departmental controls in relation to operational matters but also has an appropriate level of accountability to Government and the Parliament; and
- it is a legal entity that can employ its own staff under terms and conditions it establishes rather than under the Public Service Act.

50. A further advantage of a single national safety agency is that there is nothing to prevent new legislation providing for the National Agency to enter into contracts with a State or a State agency for the exercise of powers on behalf of the State. As a consequence the national safety agency can report separately to Commonwealth and State/NT Ministers. State/NT Ministers for matters in State waters, and Commonwealth (and State/NT) Ministers for activity in Commonwealth waters.

51. In summary, legal issues would appear to limit the potential of Options C and D. Option B faces concern regarding the effectiveness of the arrangement to deliver a consistent arrangement across all offshore water as the Commonwealth has limited powers to produce such an outcome as the DAs are not directly accountable to the Commonwealth for safety administration.
Industry considerations

52. The offshore petroleum industry favours a single safety regime across all Australian offshore waters. Such an approach produces a nationally consistent and transparent safety regime. This provides the advantage of industry and its workforce, of having a single, consistent national safety regime. The costs of operation are reduced as firms and operators do not have to apply multiple rules nor do they have to contend with multiple philosophies and a multiplicity of legislation. The compliance costs for firms operating in water adjacent to several jurisdictions, will be reduced because, for example, the operational safety case for mobile offshore drilling units (MODUs) would be the same irrespective of where the activity is undertaken around Australia.

53. Industry is supportive of measures which will improve the safety performance of offshore petroleum activities. Industry also seeks a solution which promotes independence and consistency across all jurisdictions. In terms of efficiency, industry seeks a safety regulator which will not have underemployed resources. Industry sees sharing of resources across the nation as a beneficial approach to the operations of the safety regulator. As seen above Option A best promotes improvements in safety outcomes, and consistency, independence both from potential internal jurisdictional pressures and from the potential for capture by industry. A single national agency, Option A, is also more able to overcome jurisdictional issues which limit sharing of resources.

54. While elements of legislative change will be needed to solve industry’s call for clarification of where State/NT law applies in adjacent Commonwealth water, industry is concerned that continuation of different legislative approaches would lead to greater prescription to deliver common outcomes. However, industry is concerned that the prescriptive approaches would not sit well with the objective based safety case regime. By extension from the analysis in other parts of Section 2.3 it might be inferred that Option A best meets this test from industry because this Option has the best capacity to deliver consistency across all offshore petroleum activities.

55. The industry peak body, APPEA, submission was not the only response from the industry. The International Association of Drilling Contractors in response to the Issues Paper provided a submission which supported a single national safety agency located in Perth, Melbourne and Darwin formed as a Commonwealth statutory authority.

MEETS INDUSTRY REQUIREMENTS BEST: OPTION A
**Workforce considerations**

56. Through its representatives, the workforce has taken a keen interest in the regulation of the offshore petroleum industry. This is not surprising, because it is the offshore workforce that has most to lose from any failures on the part of industry to maintain safe operations. Effective and efficient safety administration plays an important part in encouraging and when necessary enforcing appropriate safety measures.

57. The workforce has expressed its views in a number of ways over many years. The National Oil and Gas Advisory Committee (NOGSAC) is a tri-partite committee providing advice on offshore petroleum safety to the Commonwealth Minister for Industry and Resources. The workforce representatives have repeatedly expressed their desire for a single national agency to regulate offshore petroleum safety. Similar views have been expressed by workforce representatives in the Consultative Committee on Safety in the Offshore Petroleum Industry (COSOP) which reported in 1991 and to the Independent Review Team as part of the Commonwealth Review, “Future Arrangements for the Regulation of Offshore Petroleum Safety” which reported in 2001.

58. A recent letter from the Australian Council of Trade Unions in response to the Issues Paper reaffirms this view. Submissions by individual members of the workforce provide further support for this position. Workforce representatives have argued that an independent national safety agency best meets the requirement for the regulator to be (and to be seen to be independent) of other government interests in the promotion and development of the offshore petroleum industry. This independence means that the workforce can have greater confidence that important decisions which affect their health and safety are demonstrably not inappropriately influenced by other factors. As noted in **Appendix B** workforce strongly support a single national authority.

59. There have also been views expressed by individual members of the workforce in face to face meetings, (Public Seminar 1 August 2002) that the independent national safety authority could also administer those environmental responsibilities of the current Designated Authorities in the States/NT. However they also said that the priority is to establish a safety authority and decisions on widening its remit must not delay the establishment of the safety authority.

60. The principal advantages of a single, independent national safety authority is that it is independent from other government processes enabling it to focus on safety, be seen to be independent of other interests and a single organisation makes it more likely that the workforce will find consistent standards of safety administration wherever they work in Australian offshore waters. A single organisation, they argue will find it easier to establish and maintain appropriate standards of safety regulatory practice, as compared with three or more Designated Authorities.

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**MEETS WORKFORCE REQUIREMENTS BEST: OPTION A**
Integration of Interfaces and impacts on jurisdictions
61. The implications for jurisdictions of each option are examined generally within this section 2.3.10. A more detailed discussion of these factors is presented in paragraphs 117-128.

62. It would seem obvious that there would be least disruption to the States/NT from applying Option B. This is because it is an enhanced version of the existing DA operations. It is enhanced in terms of the extra resources and coverage of safety regulation and includes a central office in the Commonwealth to manage SLAs. Option C, with its dual structure is similar to Option B and also produces limited impact on State/NT arrangements although the impact is likely to be greater. These limited impacts under Options B and C are based on the degree of integration of titles administration, resource management and environmental regulation and on the fact that these options are based on the existing DA structures.

63. Option A, by contrast, would require a defined coordination process between State/NT administrators of titles, resource managers and environmental regulators. Such coordination is currently implicit in the process maps of the various State/NT DAs, so is not a new demand imposed on the various administrative functions, rather it is a matter of degree as to the convenience of the linkages.

64. Option D is considered as having a greater adverse impact on the State/NT interfaces of titles, resource management and environmental regulation, as the contractors are answerable in the first instance to the engaging (Commonwealth) Department.

65. While for the State/NT administrators Options B (and C though perhaps to a lesser extent) present the least disruption. Development of a single national agency will create a requirement for change.

66. No option presents the Commonwealth with a minimal change strategy. For the Commonwealth factors such as the ability to provide assurance in regard to safety regulation and the delivery of improved safety outcomes outweigh the disruption to existing administrative arrangements.

INTEGRATION OF INTERFACES: PREFERRED OPTION: OPTION B OR C
IMPACT ON STATE/NT: PREFERRED OPTION: OPTION B OR C
IMPACT ON COMMONWEALTH: NO OPTION MINIMISES IMPACT ON COMMONWEALTH

Summary
67. The problem solving approach adopted by the Institutional Form Working Group during its meeting in Canberra on 20 and 21 May 2002 supported Option A. From the analysis presented in section 2.3 above, Option A was found to be superior in terms of capacity to improve safety outcomes, consistency, efficiency and cost effectiveness, independence, general capacity to perform, and accountability. Advice
from the Australian Government Solicitor demonstrates a number of legal shortcomings for Options B, C and D.

68. Assessed against industry and workforce expectations, the single national safety agency was better than the other options. Option A is the most favoured option according to the Stakeholder feedback presented in Appendix B.

69. The only major drawback of the single national safety agency is that it would not minimise the impact on the States/NT and their existing administrative arrangements between safety, titles management, resource management and environmental regulation. It is acknowledged that well articulated coordination strategies would need to be developed to ensure streamlined and coordinated approvals processes between any separate single national safety agency.

70. Balancing the assessment of each criterion in Section 2.3 revolves around the balance between the negative impacts on the existing administrative arrangements and the prospect of significantly enhanced safety outcomes, whether measured by a capacity to improve safety outcomes, consistency and independence or the capacity to perform the safety regulation function.

71. It seems that the slightly adverse impact on the existing administrative arrangements within the DAs is a small price to pay for the prospect of improved safety outcomes. At each turn Option A overwhelms the other Options.

72. On the basis of assessments presented in Section 2.3 Option A generally is the preferred institutional arrangement.

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**Preferred Institutional Arrangement: Option A**

**Assessing Separation of Safety Administration from Designated Authorities**

73. The implications of removing safety administration from the existing Designated Authority arrangements is an important aspect of the Terms of Reference provided to the Institutional Form Working Group.

74. In addition to safety administration, the existing DAs have teams engaged in titles and licensing, resource management and environmental regulation. The organisational arrangements for administering these activities differ between each DA, but broadly speaking many of the activities are carried out by the same personnel in a combined team, although there are some demarcations between safety and environment regulation. It is clear that for administrative purposes the various regulatory arms of the jurisdictions are co-located and in most cases subject to the same upper level management.

75. This arrangement can create synergies in that people have the skills to carry out a number of tasks. For example the personal skills needed to conduct an environmental incident investigation are similar to those required for a safety related incident. A hydrocarbon release is usually both a safety and environmental incident. A field development proposal has resource management, safety and environmental
considerations, and must be examined from all these aspects. Some companies have combined safety and environmental cases and management systems. In other situations the technical knowledge and interpersonal skills of a safety regulator can be utilised in environmental or resource management proposals or titles issues (NORM, well plans).

76. Whilst tangible synergies exist, the use of safety staff for non-safety activities in some jurisdictions detracts from their safety related work. A finding of the IRT and recent Commonwealth safety administration audits is that the DAs are under-resourced. If staff are having to carry out extra, non-safety duties then it is reasonable to conclude that this will negatively impact on their safety duties and therefore impair their effectiveness as safety regulators. Also, by giving specialist staff more generalist duties, this has the potential to dilute expertise and again have a negative influence on safety outcomes.

77. An issue raised by the IRT for creating a separate safety administration involved the concern that a jurisdiction’s interests in organisational benefits of co-location can lead to perceptions of conflict of interest. For example the pull of development promotion might impact on safety outcomes. While the IRT did not find evidence of conflict of interest, it remains a concern that safety regulation not only has to be conducted transparently, it has to be seen to be conducted transparently. Regulatory functions are therefore best kept separate from resource promotion.

78. The States/NT rightly argue that they provide a “one stop shop” for industry in terms of licenses, consents and approvals. In terms of the processes involved, process maps do not demonstrate any unbreakable bond between safety and other aspects of the administration of the petroleum industry.

79. The establishment of a safety regulator separate from other aspects of offshore petroleum regulation should not discourage companies from producing integrated health, safety and environment plans. In practice there are already separate legal processes for safety and environmental risks and separate staff with particular competencies in these areas. Safety staff can assess integrated HSE plans, but focus on the safety aspects. Likewise so can those with environmental responsibilities. This separation already exists to some extent both within the DA teams and with a split in responsibility between Commonwealth and the States/NT. In other highly effective safety case regimes, elsewhere in the world, safety and environment are totally separate. Whatever, the system for considering safety and environmental aspects, effective administration arrangements are required to promote adequate consultation between the two.

80. Separating safety from general petroleum administration will remove the synergies but will also remove the potential for influence from development objectives. Ultimately, the separation of safety from other petroleum administration hinges on the issue of improved safety outcomes. By ensuring that staff are independent and seen to be so will improve safety outcomes. The additional cost in potential administrative inefficiencies that may arise is outweighed by the benefits.

81. Examination of other models of offshore safety regulation indicates that integration of offshore safety and other regulatory aspects is not a necessary precondition for effective regulation of offshore petroleum activities. In some countries it is integrated or partly so. In others it is not.
82. For both industry and jurisdictions the formation of a separate safety agency presents a coordination issue. Within this context it is important for coordination arrangements, either Memorandums of Understanding (MoUs), service level agreements (SLAs) or other protocols to be developed. Such working arrangements will be a key aspect of a separate safety agency’s culture. Defined working arrangements between the safety agency and the Designated Authorities and Joint Authorities would be needed. At present these coordination arrangements are internalised. Under the prospect of a separation of safety from titles, resource management and environment regulation such implicit coordination will need to be made explicit. From a company perspective there is already a need for coordination of meetings with a number of different agencies and regulators in developing drilling or development proposals. It is companies’ responsibilities to ensure that they comply with all aspects of the law. In delivering the regulatory services to companies jurisdictions should endeavour to provide as streamlined a process as possible.

83. There are also interfaces between the existing DAs and other safety agencies within each State/NT. Currently, coordination exists either by written procedures or by tradition and practice. The creation of a separate safety agency will bring with it a need for similar processes and procedures to be developed. Whereas traditions take time to evolve, a new organisation will have to develop a coordination culture as a matter of course and as a matter of urgency to ensure interfaces with other agencies are forged. The extent of these relationships may be promulgated in legislation establishing boundaries between the different OH&S agencies. Alternatively they may be developed in a consultation process. Whichever approach or formulation exists has implications for the culture and operational aspects of any separate safety agency.

84. It would appear that the existing integration of regulatory functions does not provide a persuasive case to prevent separation of safety from other DA functions.

**Optimum Institutional Arrangement?**

85. The option of the single national agency with strengths in safety case assessment, investigation and audit, and safety monitoring, spread across the country and operated under matrix management structure, is assessed as superior to all other options. It has the greatest capacity to deliver independent, uniformly consistent safety regulation in all Australian offshore waters (Commonwealth and State/NT). It would be able to drive safety improvements in industry and the workforce, and has the flexibility and capability to provide full service offshore safety regulation.

86. This option has a capacity to source funds to recruit, maintain and retain expert staff of high competence and skill and best meets the principles that Industry and workforce place on a new single national offshore safety agency.

87. The assessment criteria were based around Principles agreed by the Ministerial Council. In assessing the options against the criteria they are also being assessed against the Ministerial Principles established on 4 March 2002.

88. The major drawback of option B is that it is not seen to be fully independent and may deliver inconsistent outcomes and does not have the confidence of industry or the workforce. Also it does not enable accountability to the Commonwealth Minister.
89. Option C, which is a hybrid of Options A and B, fails to guarantee consistency and has a complex reporting and employment structure with blurred lines of accountability.

90. The privatised agency model, option D, fails on all counts. Primarily the self interest of commercial agents introduces questionable independence. Contract renewals introduce asymmetrical bargaining pressures leaving governments exposed to being held to ransom under threat of service withdrawal. Transitions from one contractor to another could be difficult to manage. There are also legal difficulties in conferring coercive powers under a contractual arrangement.

| On the basis of the assessments presented above, the problem solving analysis conducted in Canberra on 20 and 21 May, and advice from the Australian Government Solicitor Option A emerges as the best institutional arrangement. Option A is the most supported institutional arrangement by Stakeholders. |

IMPACT ANALYSIS

91. The proposed changes will reduce the number of offshore petroleum safety regulators from three (or more), to one and reduce the numbers of Occupational Health and Safety (OHS) laws similarly. These changes will directly affect Governments and industry and indirectly the general population. The indirect economic impacts on the general population are negligible and are not considered further. However, it should be noted that there is a general public aversion to disasters, which have a large loss of life and/or significant effects on their day to day life. The proposed changes are intended to reduce the probability and consequences of these types of events.

Impact on Governments

92. The changes will affect the Commonwealth Government and the Governments of the States/NT. At the Commonwealth level, Government will be able to demonstrate to all stakeholders that it has provided a level of assurance on safety outcomes in the offshore petroleum industry, comparable with good practice in other developed countries and which meets the expectations of industry and the workforce. Industry and the workforce have pointed out the deficiencies in the existing system, which have been confirmed by independent experts in this field. The development of a national offshore petroleum safety regulator was a specific Coalition election commitment in 2001. The impacts of the changes are beneficial.

93. As a result of the changes, Government will be able to demonstrate that those activities generally accepted as being appropriate for an authority regulating offshore petroleum safety are being effectively discharged. These are:

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4 Indeed some submissions argued that the single national safety agency should also cover onshore petroleum activities. Such an extension is beyond the scope of the Terms of Reference for this Working Group, though the option is available should State or Territory governments seek to utilise the Safety agency in such an endeavour.
• assessment of safety cases produced by operators of facilities,
• ongoing auditing of operators, to check (on a selective basis) that they are doing what they said (in their safety case) they would do,
• investigation of incidents and complaints,
• the provision of industry wide information on safety performance and trends to industry, Governments and the wider public.

94. The effect of these changes is to demonstrate to stakeholders that the Government is discharging its responsibilities effectively. In turn this will reduce the probability of a serious event occurring and if unfortunately one were to occur, reducing its consequences. These effects are achieved by applying a more professional regulatory approach, which will play a part, in conjunction with industry, in delivering an enhanced safety performance. The effects of an enhanced regulatory approach will have some impact on industry, which is discussed later in this section.

95. The costs of making the change are minimal. Funding of $6.1m was provided for in the 2002-03 budget (over three years) to manage the change. It is anticipated that the on-going running costs of the new authority will be less than $7m (2001 prices) per annum.

96. At the State/Territory level, the major impact will be the removal of the need to provide a small (and relatively expensive) group of highly specialised regulatory staff. In practice they have found it difficult to recruit and retain appropriately experienced staff. Although the States/NT will be freed from the burden of maintaining these staff, the new authority will have arrangements for governance, which will allow them to maintain their role in overseeing offshore petroleum safety in waters adjacent to their States/NT and in Commonwealth waters.

97. The costs of the change will involve some loss of economies of scale from not being able to apply the expertise of the regulatory staff to other functions. However this is believed to be small given the highly specialised nature of the staff and a continuing need on the part of the states to regulate their onshore petroleum industries. (The Authority is being designed to allow the States/NT to contract the Authority to discharge certain safety responsibilities onshore, should they wish to do so). Should this occur, there is the probability of increased efficiencies for both Commonwealth and States/NT.

**Impact on Industry**

98. The impacts on business are predominantly beneficial. At present those petroleum companies operating in more that one State/NT adjacent waters, have to deal with a different regulator for each State/NT who in turn apply their own OHS laws. The complexity of the existing arrangements was discussed above in paragraphs 20 to 24. The replacement of multiple regulators with one, applying a single OHS law rather than three or more, will simplify the regulatory structure without reducing safety outcomes. The advantage in these changes is self-evident and welcomed by industry. However, it has not proved possible to quantify the benefit.

99. It is also likely that an improved regulator will identify further improvements that can be made by companies in their operations. These will have costs and benefits.
Compliance costs could increase but so will the benefits. The workforce benefit in a very direct and personal way by a reduction in the risk of being harmed.

100. Exploitation of offshore hydrocarbons is a very high cost activity but one producing very high returns both for industry and the nation as a whole. From a safety perspective, it is characterised by a relatively low probability of major events but ones, which have dramatic effects in terms of loss of life, economic consequences, public aversion and international reputation. The North Sea disasters, Alexander Kielland, (123 dead), Piper Alpha (167 dead), the Brazilian loss of the P36 platform in 2001 and the Longford gas plant explosion all demonstrate (in different proportions) the human and economic consequences of poor safety performance.

101. No significant change is anticipated in compliance costs for industry. The legislative architecture is not changed in principle and nor are the methods by which the regulatory body will seek to monitor compliance. What will change is a reduction in the quantity and complexity of the law, a reduction in the number of regulatory bodies, to one national authority for offshore petroleum safety in Australia, and improvements in the quality of the regulatory activities.

102. Auditing, investigation of incidents and safety case assessment will all improve. Any change in the number of these activities, which it is believed will be marginal, will be more than offset by the quality of the activities. From the industry’s perspective the cost of handling an audit will be much the same after the change as it was before. Although, it can be expected, that for those companies operating in more than one of the existing jurisdictions, with different laws and regulatory bodies, compliance costs will reduce slightly.

103. Although the costs to industry (of dealing with audits for example) will not change, the quality of the activity will improve. In essence this improvement of regulatory work provides an opportunity for industry to get more out of the regulatory bodies activities and provide more confidence to Government that this strategically important industry has effective safety systems in place. This goes to the heart of the changes - to improve the effectiveness of the regulatory body, as efficiently as possible. Industry is a significant beneficiary of improved regulatory activities and has been a consistent supporter of improving regulatory effectiveness.

104. The total annual running costs are estimated to be less than $7m. The 1988 Piper Alpha disaster is reported to have cost in excess of two billion pounds and a similarly large sum is attributed as the cost of the Longford disaster. An improved safety regime will reduce the probability of these sorts of events.

Cost Recovery

105. The cost of the authority’s activities will be recovered through industry safety fees. Once enacted, the Petroleum (Submerged Lands) Amendment Bill 2003, will authorise the authority to charge a fee-for-service to recover the cost of assessing and approving safety case applications. A separate bill, the Offshore Petroleum (Safety Levies) Bill 2003, will authorise the authority to charge operators of offshore facilities an annual safety case levy.

106. The final level of cost recovery and the level and structure of the safety fees to be set out in regulations, will be determined in accordance with the Government’s cost recovery policy through the preparation of a Cost Recovery Impact Statement. This
process will be completed prior to the authority commencing operations on 1 January 2005.

107. Despite industry’s strong support for the establishment of a single national authority, it is opposed to a fully industry funded regulator on the grounds that: such regulation results in a public good; it could potentially lead to perceptions of a conflict of interest or comprise the regulator’s independence; and it would be cost inefficient.

108. In response the Government notes that the industry has a duty of care to its employees and also a community obligation to protect the environment. There would be no need for a safety regulator if the industry was not operating. The rationale behind establishing a national authority is to enable the industry to better protect its workforce from accidental injury or death and to do so more efficiently than under alternative regulatory arrangements. In achieving this, the better management of risks of a major incident also enables the industry to better meet its community environment obligations and better safeguard industry’s investment in offshore petroleum facilities and infrastructure.

109. The benefit of a much improved safety outcome will flow directly to the workforce and the operators and owners of the offshore petroleum facilities and infrastructure. The Authority will not primarily be undertaking policy related activities for governments and in order to ensure its independence and avoid any potential conflicts of interest, the Government has agreed to establish the authority as an independent Statutory Authority.

110. As discussed above, the impacts on industry of full cost recovery including consistency with the Governments cost recovery policy, will be addressed through a cost recovery impact statement prior to determining the final level and structure of the industry safety fees.

**Structural Improvement**

111. Reducing the multiple jurisdictions to one, even taking into account the higher salaries needed will be cheaper than staffing up the existing structure so that they have the required competencies. The annual operating costs of the proposed authority are estimated at A$6.6m. Developing the existing DA system to provide an equivalent level of performance is estimated to cost A$10.5m.

112. The costs of the proposed authority are based on the premise that higher pay levels will be needed to attract and retain appropriately qualified staff. However, fewer staff are needed in one organisation operating across Australia than is the case for each State/NT based regulator trying to provide all the required competencies. This they have not been able to do. The cost base of the current system, presented in the table below, assumes that the DAs are staffed at the level needed to achieve Government objectives and not on the current staff in post. The new structure will be significantly more effective.
### Table: Cost Estimates of Enhanced DA Case Delivering Offshore Safety Regulation.

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<th>State</th>
<th>Regulatory Staff</th>
<th>Cost of Operations</th>
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<td>Current* (FTE)</td>
<td>Additional (FTE)</td>
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<tr>
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<tr>
<td>Northern Territory</td>
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<tr>
<td>Total Cost</td>
<td></td>
<td>Estimated extra resources required to enhance DAs</td>
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<td>Total Cost</td>
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### Notes:
1. *Figures provided to Commonwealth on 25 July 2002 during teleconference.
2. Table 3 assumes the enhanced DA model is able to offer contracts to employees outside of the public service pay constraints.
3. The numbers in Tasmania reflect the quantum of resource devoted to the Tasmanian regulatory function by Victoria, as assessed by Victoria.
4. No attempt has been made to allocate the extra resources against any particular State. Implicit in this is an assumption that there might be an element of sharing in this model. To completely isolate each DA would require more staff as each regulator seeks to employ the full complement of resources assessed as delivering the critical mass of staff. As a consequence the assessed annual cost of over $10.5 million is conservative.
5. The cost of the single national safety authority has been developed in a similar manner to that used in assessing the enhanced DA costs. The same average salary has been adopted as the basis for salaries in the new authority. Similarly, the overhead factor of 2.45 has been used. The cost estimate deviates from the case of the enhanced DA by virtue of including a separate line item for the CEO. Just as there was an assumption in the enhanced DA case of regulators embodying a number of skills and competencies this assumption is also made for the staff of the national authority. Assuming a core team of 24 regulators and CEO salary and on-costs of $400 000, it is estimated that cost of the single national safety authority could be as low as $6.6 million.
6. On the basis of these two estimates the single national safety authority is cheaper by $4 million than the enhanced DA model. The national safety authority brings efficiencies in the form of savings on the number of regulators required relative to the number the DAs currently employed. It represents a significant saving on the number of regulators, which would be required, if the DA system were required to provide a much-enhanced level of performance.

### Consultation
Industry and workforce representatives formed part of the Review Steering Committee for this work. Since then as the work has progressed there have been numerous communications on the developing issues through tripartite National Oil and Gas Safety Committee (NOGSAC) and via meetings with the Australian Petroleum Production and Exploration Association's (APPEA) Health, Safety and Operations committee.

8. Following the MCMPR decision on 4 March 2002 the Commonwealth States/NT have worked together and consultation with both the industry and its workforce has been given high priority and a strategy was developed to ensure that recommendations from the Steering Committee and working groups are transparent and have tripartite ownership. The Steering Committee has directly consulted with industry and workforce representatives, providing regular updates on progress.

9. As a first step, the Steering Committee produced an *Issues Paper* with the purpose of inviting comment from interested parties on the matter of improving safety in the offshore petroleum industry. The *Issues Paper* outlined approaches to improving offshore petroleum safety arrangements including possible changes to the institutional arrangements, transitional technical arrangements and improving the existing legislative arrangements.

10. Less formal methods of consultation have also been utilised to ensure broad coverage of stakeholder groups.

11. The Resources Division produces a bi-monthly offshore safety newsletter that is sent (electronically and in hard copy) to over 150 international and local contacts. The newsletter concept was established at the inaugural steering committee meeting and is currently in its third edition. The newsletter provides a brief outline of the main issues and refers readers to Department officers and the website for further information.

12. An electronic bulletin board system for offshore health and safety representatives is also maintained, and informs the offshore workforce of developments in the establishment of the national safety authority. This stakeholder group is kept up to date with the project by regular e-mail correspondence and postings to the bulletin board.

13. The Internet is also used extensively to publish steering committee documents and Ministerial Council press releases and Communiques.

14. The Committee invited both the industry and workforce representatives to participate in the working groups. The workforce was represented in the Institutional form working group. At an early stage in the work APPEA nominated industry representatives to participate in the technical and legislative working groups but made a deliberate decision not to participate in the institutional form working group. APPEA and workforce representatives have received the written outputs of all working groups.

15. There is strong support from both industry and the workforce for the establishment of a single national authority to regulate safety offshore. Industry is a significant beneficiary of improved regulatory activities and has been a consistent supporter of improving regulatory effectiveness.

16. Notwithstanding industry’s support for the establishment of a single national authority, it is opposed to full cost recovery through an industry safety fee. This issue
will be addressed when regulations including the level and structure of industry safety fees are developed through the preparation of a cost recovery impact statement.

17. There have been two public seminars, one in Canberra and the other in Perth, as well as a workforce seminar in Perth organised by APPEA. Since March there have been two NOGSAC meetings, both focusing on progress of the working groups.

18. The phase of the project leading up to the decisions of the MCMPR on 13 September 2002 is the beginning of a two to three year process. Consultation will continue to be a central element of the Steering Committee's activities and the working groups will maintain industry representation during the implementation of the recommendations.

CONCLUSION
19. Based on the above, the preferred option is a single national authority. A national safety authority was accepted over the other options because it will:

- empower industry and workforce to identify and report potential hazards;
- have a singular identity with a common culture and philosophy;
- assess safety cases, investigate incidents, and audit in a consistent fashion;
- be the most cost effective and therefore efficient option;
- have actual and perceived independence from political influence and from departmental controls in relation to operational matters but also has an appropriate level of accountability to Government and the Parliament;
- be funded by a specific safety fee, (which is estimated to be less expensive than making the current system work);
- attract and retain quality staff;
- be located nearest to industry activity;
- have clear accountability;
- establish a separate corporate entity on which functions and powers can be conferred by Commonwealth and State legislation;
- have a Board to provide a ‘buffer’ between the regulator and the Minister;
- be a legal entity that can employ its own staff under terms and conditions it establishes rather than under the Public Service Act;
- have the support of industry and employees;
- cost less to run than the other options; and
- share learnings nationwide.

20. Proposed changes to the legislation to enact a single piece Occupational Health and Safety legislation to underpin the safety case regulations will simplify legislation,
remove inconsistencies between jurisdictions and greatly reduce industry compliance costs.

IMPLEMENTATION AND REVIEW

22. The proposed option of a single national authority, will, of necessity, see the safety regulatory function transfer from the existing Joint Authority system whereby Designated Authorities (State and Territory Ministers) administer offshore safety regulation on the Commonwealth's behalf, to the National Authority. Given that the Commonwealth and State Petroleum (Submerged Lands) Acts give effect to this system, appropriate amendments would be required to both empower the national authority and remove the responsibility for management of offshore safety from Designated Authorities.

23. It will be essential that an appropriate transitional plan be implemented after agreement by all jurisdictions, which minimises adverse impacts on staff, industry and regulatory responsibilities and liabilities to the DAs. It will be necessary that the Commonwealth and States/NT work with the new Chief Executive Officer (CEO), when appointed, to develop detailed transition plans and conditions for the creation and commencement of the national offshore safety authority, including mechanisms to ensure continuing effective regulation of safety through until the new safety authority commences.

24. Ministers will have joint responsibility and the Authority will be accountable to all Ministers. A regular review of the Authority by Ministers (probably every three years) is to be incorporated in the legislation establishing the Authority under the PSLA.
FINANCIAL IMPACT STATEMENT

As the expected annual operating costs of the National Offshore Petroleum Safety Authority initially estimated to be around $6.6 million (based on 2000-01 levels of offshore petroleum activity) are to be fully recovered by industry fees, the Bill will not have any financial impact on Commonwealth revenue or expenditure.

The Petroleum (Submerged Lands) Amendment Bill 2003 provides for the structure and level of the fees for services provided by the Authority to be established in the regulations and similarly, the Offshore Petroleum (Safety Levies) Bill 2003 provides for the structure and level of the fees for inspections undertaken by the Authority to be established in the regulations.

By virtue of the amendments in Schedule 2 relating to the GST component of certain fees, the saving to the Commonwealth Budget would be an annual amount of about $0.3m. Without these amendments, either the Commonwealth Treasury or the Industry, Tourism and Resources Portfolio could be legally liable to find this amount from funds not contributed by the petroleum industry.

The financial impact of the data management amendments in Schedule 3 is expected to be positive, in that some long term savings for industry and government are expected via administrative efficiencies, cost effective data management and a more streamlined process.
A Bill for an Act to amend the *Petroleum (Submerged Lands) Act 1967*, and for other purposes

NOTES ON INDIVIDUAL CLAUSES

Clause 1 Short title
The short title of this Act is the *Petroleum (Submerged Lands) Amendment Act 2003*.

Clause 2 Commencement
This clause provides that sections 1, 2 and 3 of this Act and any other provision not specifically mentioned by this provision commences on assent.

Schedule 1 Part 1, which contains the principal provisions that will establish the Safety Authority and provide for its general functions and powers, its corporate governance, administration and financial management, commences on assent.

Schedule 1 Part 2, which disapplies State and Northern Territory occupational health and safety laws in Commonwealth waters and applies in their place the occupational health and safety regime set out in the amended Schedule 7 of the *Petroleum (Submerged Lands) Act 1967* (PSLA), commences on 1 January 2005. It is Schedule 7, together with the occupational health and safety regulations made under the PSLA (which will also be amended with effect from 1 January 2005), that will confer substantive regulatory functions and powers on the Safety Authority and its occupational health and safety (OHS) inspectors.

One reason for the delayed commencement of the substantive occupational health and safety provisions in Part 2 of Schedule 1 is that the period between assent and the date when the Safety Authority commences regulatory operations is needed for the selection and appointment of the Chief Executive Officer (CEO) and the selection and training of inspectors and other staff. It is intended that the Authority will operate with a small but highly trained staff of professionals who will have the specialist skills necessary for the effective safety regulation of the offshore petroleum industry.

The other reason for the delayed commencement of the specific regulatory functions and powers of the Safety Authority is that time must be allowed for the States and Northern Territory to enact ‘mirror’ legislation to apply Schedule 7 and the occupational health and safety regulations in the State and Northern Territory coastal waters.

Schedule 2, which rectifies an anomaly in the application of goods and services tax (GST) to payments to the States and Northern Territory, commences on the first day of the month following the month in which assent occurs.

Schedule 3, which relates to data management, commences on a day to be proclaimed, or after 6 months, whichever is the later.

Clause 3 Schedule(s)
This clause gives effect to the provisions in the Schedules to this Act.
SCHEDULE 1 – AMENDMENTS RELATING TO OCCUPATIONAL HEALTH AND SAFETY

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

The purpose of this Part is to amend the PSLA to establish the Safety Authority and to establish the governance, administrative and financial arrangements for the new body.

Item 1

Items 1, 2 and 3 amend section 140AA of the PSLA. Section 140AA confers an immunity from suit upon the persons and bodies who perform functions and exercise powers under the PSLA. Item 1 repeals paragraphs 140AA(1)(d) and (e) and replaces those paragraphs with new paragraphs (d) to (i). The effect of this is to add to the list of persons and bodies covered by the immunity:

1.1.1. the Safety Authority;
1.1.2. the Chief Executive Officer of the Safety Authority;
1.1.3. an OHS inspector appointed under new Part IIIC; and
1.1.4. a person acting under the direction or authority of the Safety Authority or the Chief Executive Officer.

Item 2

Subsection 140AA(3) at present provides that the immunity from suit in subsection 140AA(1) does not apply to a person or body merely because that person or body is acting in accordance with a proposal or plan (however described) that has been approved by or on behalf of the Joint Authority or the Designated Authority.

The purpose of item 2 is to ensure that this exclusion from the coverage of subsection 140AA(1) extends to persons acting in accordance with a proposal or plan that has been consented to or accepted etc by or on behalf of the Safety Authority. For example, a person is not covered by the immunity from suit merely because the person is acting in accordance with a safety case that has been accepted by the Safety Authority.

Item 3

Item 3 adds a new subsection 140AA(7) which provides that ‘Safety Authority’ in the amended section 140AA means the National Offshore Petroleum Safety Authority.

Item 4

Item 4 inserts a new Part IIIC into the PSLA.
Part IIIC — National Offshore Petroleum Safety Authority

DIVISION 1—INTRODUCTION

Section 150XA - Simplified outline
This section sets out a simplified outline of Part IIIC.

Section 150XB - Definitions
This section defines terms used in Part IIIC that are relevant to the establishment, administration and functions of the Safety Authority.

1.2. **Board** means the National Offshore Petroleum Safety Authority Board established by section 150XL. The Board is to give advice and make recommendations to the Chief Executive Officer about the operational policies and strategies to be followed by the Safety Authority. It is also to give advice and make recommendations to Ministers and the Ministerial Council on Mineral and Petroleum Resources (‘MCMPR’).

1.3. **Board member** means a member of the Board, including the Chair. Board members are selected for appointment by MCMPR.

1.4. **CEO** means the Chief Executive Officer of the Safety Authority.

1.5. **Commonwealth waters** means the adjacent areas of each State and of each Territory. The adjacent areas are established by section 5A of the PSLA and together make up the jurisdictional area to which the Commonwealth PSLA applies. The adjacent area of each State and the Northern Territory is so much of the area described in Schedule 2 to the PSLA with reference to that State or the Northern Territory as comprises waters of the sea that are:

   a. not within the outer limit of the (former) 3 nautical mile territorial sea; and
   b. within the outer limits of the continental shelf; and
   c. (in the case of Western Australia and the Northern Territory) not within the Joint Petroleum Development Area. (This is the area established in Article 3 of the Timor Sea Treaty set out in Schedule 1 to the Petroleum (Timor Sea Treaty) Act 2003.)

1.6. The adjacent area of the Territory of Ashmore and Cartier Islands is so much of the area described in Schedule 2 with reference to that Territory that comprises land and water that are:

   a. within the outer limits of the continental shelf; and
   b. not within the Joint Petroleum Development Area.

1.7. **designated coastal waters** in relation to a State or the Northern Territory has the meaning given by section 150XC. These are the waters to which the State and Northern Territory Petroleum (Submerged Lands) Acts apply – i.e. the waters of the (former) 3 nautical mile territorial sea, together with some areas landward of the territorial sea baseline that are covered by titles under a State Petroleum (Submerged Lands) Act. (These titles are related to pre-1982 exploration permits...
1.8. **facility** has the meaning that it will have in Schedule 7 and in the State and Northern Territory ‘mirror’ provisions when the amendments to Schedule 7 made by this Bill, and the State and Territory ‘mirror’ provisions, come into force on 1 January 2005. A ‘facility’ therefore means a ‘facility’ located in Commonwealth waters or in the designated coastal waters of a State/Territory that has enacted provisions that ‘mirror’ Schedule 7. ‘Facility’ is a term that is fundamental to the occupational health and safety regime in Schedule 7 that is established by this Bill, and also to the safety case regime established by the *Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996* (‘MSOF Regulations’). Schedule 7 and the MSOF Regulations are concerned primarily with ensuring the occupational health and safety of persons at or near a ‘facility’. Clause 2A of Schedule 7 to the PSLA will set out the categories of vessel or structure that are taken to be ‘facilities’. ‘Facility’ includes an ‘associated offshore place’.

1.9. ‘**offshore petroleum operations**’ describes the scope of the petroleum operations in respect of which the Safety Authority will exercise safety regulatory functions under the Commonwealth and State/Northern Territory PSLAs. The operations covered by the definition are:

a. diving operations (whether at a facility or not); and

b. operations at a facility;

1.10. that relate to exploration for petroleum, or the recovery, processing, storage, offloading or transportation by pipeline of petroleum and that take place in ‘Commonwealth waters’ or ‘designated coastal waters’. ‘Offshore petroleum operations’ do not equate to all offshore petroleum-related activities carried on under a title issued under Part III of the PSLA. This is because, apart from offshore petroleum-related diving, the Safety Authority’s functions are confined to operations at a ‘facility’. The vessels and structures that are ‘facilities’ have been selected on the basis that they present a safety risk to a significant number of people because of the presence of hydrocarbons (oil and gas).

1.11. ‘**OHS inspector**’ means an inspector appointed by the Chief Executive Officer under 150YL. Schedule 7 and the occupational health and safety regulations will confer monitoring and enforcement powers directly on OHS inspectors that are exercisable in ‘Commonwealth waters’. The same powers will be conferred on OHS inspectors by the ‘mirror’ legislation of the States and the Northern Territory, to be exercised in the ‘designated coastal waters’ of the relevant State or Territory. The appointment of an OHS inspector is made only under the Commonwealth Act, but the powers will be conferred by or under the Commonwealth, State and Northern Territory Acts.

1.12. ‘**operation**’, as used in the term ‘offshore petroleum operations’ in Part IIIC, includes an activity to which provisions of a State or Northern Territory PSLA that substantially correspond to Part III of the Commonwealth PSLA apply. This definition is necessary in Part IIIC because ‘operation’ is defined in section 5 of the PSLA as ‘an activity to which Part III applies’. Part III of the
Commonwealth PSLA only applies to activities in the adjacent area, i.e. in Commonwealth waters. The definition of ‘offshore petroleum operations’ for Part IIIC needs to extend to activities in State or Territory designated coastal waters, as well as to activities in Commonwealth waters.

1.13. **responsible Northern Territory Minister** and **responsible State Minister** mean the Minister responsible for the Northern Territory PSLA or State PSLA, as the case requires.

1.14. **Safety Authority** means the National Offshore Petroleum Safety Authority (the Safety Authority) established by section 150XD.

1.15. **Safety Authority waters** means ‘Commonwealth waters’ and ‘designated coastal waters’. These are the waters covered by the Commonwealth, State and Northern Territory PSLAs.

1.16. **Safety Levies Act** means the *Offshore Petroleum (Safety Levies) Act 2003*. This Act imposes an annual safety case levy, an annual pipeline safety management plan levy and a safety investigation levy. These levies, together with the fees collected under the PSLA, will fund the safety regulatory activities of the Safety Authority under the Commonwealth, State and Northern Territory PSLAs.

1.17. **section 140H OHS laws** are the laws listed in, or prescribed under, subsection 140H(2). These are the substantive occupational health and safety laws that it is proposed will be ‘mirrored’ by or under the State and Northern Territory PSLAs.

1.18. **staff** for the purposes of section 150XI (which enables the conferral of powers under State or Northern Territory ‘onshore’ legislation) and for the purposes of section 150YP (which allows the payment of remuneration out of money standing to the credit of the National Offshore Petroleum Safety Account) includes a person appointed as an OHS inspector under section 150YL, whether or not the person is a member of the staff of the Safety Authority referred to in subsection 150YH(1).

1.19. **State PSLA** and **Territory PSLA** mean the State and Northern Territory Acts set out in these definitions.

Section 150XC - Designated coastal waters

The purpose of this section is to ensure that the area comprising the ‘designated coastal waters’ in relation to a State or the Northern Territory for the purposes of Part IIIC corresponds exactly to the area to which the relevant State or Northern Territory PSLA applies from time to time. While the area described in Schedule 2 to the Commonwealth PSLA in relation to the States and the Northern Territory commences at the coastline, the State and Northern Territory PSLAs generally apply only to the first 3 nautical miles of the territorial sea, which commences at the territorial sea baseline.

However, the Northern Territory PSLA and most State PSLAs allow for the fact that there may have been permits issued under the Commonwealth PSLA, prior to the commencement of the State or Territory PSLA, in respect of title areas situated in an area landward of the territorial sea baseline but seaward of the coastline of the State or Territory. Upon commencement of the State or Territory PSLA, those titles were
continued in force under the State or Territory PSLA. To the extent that those titles, or titles derived from those titles, are still in force, the title areas are still covered by the State or Territory PSLA. Paragraph 150XC(1)(b) therefore includes those title areas in the term ‘designated coastal waters’ in relation to the relevant State or Territory.

The effect of subsection 150XB(2) is that, if such a title area has at any time ceased, or in future ceases, to be covered by a title under the relevant State or Territory PSLA (so that the continuity of the titles is broken), the area is taken to have ceased to be part of the ‘designated coastal waters’ of that State or Territory for the purposes of Part IIIC. This mirrors the effect of the State and Territory PSLAs, which deem such an area no longer to be covered by the Act.

DIVISION 2—ESTABLISHMENT, FUNCTIONS AND POWERS OF THE SAFETY AUTHORITY

Section 150XD Establishment of the National Offshore Petroleum Safety Authority

This section establishes the Safety Authority.

Section 150XE Safety Authority’s functions

This section confers general functions on the Safety Authority. Specific safety regulatory functions will be conferred on the Safety Authority and on its OHS inspectors by Schedule 7 and the Commonwealth regulations listed in, or prescribed under, subsection 140H(2) for Commonwealth waters, and will be conferred by the State and Northern Territory ‘mirror’ provisions for State and Northern Territory coastal waters.

The functions of the Safety Authority are all concerned with the occupational health and safety of persons engaged in ‘offshore petroleum operations’. ‘Offshore petroleum operations’ are a subset, albeit a large subset, of the activities that make up the offshore petroleum industry. The term as defined in section 150XB comprises offshore petroleum-related diving activities and other offshore petroleum activities that take place at a ‘facility’. The safety of some petroleum-related activities will therefore not be regulated by the Safety Authority. For example seismic survey vessels are not ‘facilities’, so that the operations carried out on those vessels, except for diving activities, will not be within the Safety Authority’s regulatory functions and powers. The activities that will be regulated by the Safety Authority are, generally speaking, those activities that pose a health and safety risk to a significant number of people because of the presence of hydrocarbons (oil and gas).

Section 150XE, together with section 150XI, sets out the basis of the cooperative legislative scheme that will be enacted by the Commonwealth, the States and the Northern Territory. Section 150XE provides for the offshore functions of the Safety Authority, under the Commonwealth, State and Northern Territory PSLAs.

Paragraph 150XE(a) provides that the Safety Authority has the functions conferred on it by or under ‘this Act’ (i.e. the Commonwealth PSLA) in relation to offshore petroleum operations in Commonwealth waters. As far as the Commonwealth PSLA
itself is concerned, the Safety Authority’s offshore functions are conferred by Part IIIC and Schedule 7 of the PSLA. The reference to functions conferred ‘under this Act’ is a reference to functions conferred by or under the regulations referred to in subsection 140H(2). These regulations, together with Schedule 7, make up the ‘section 140H OHS laws’ which are to be ‘mirrored’ by the States and Northern Territory. (In the event that there were other regulations under the Commonwealth PSLA that conferred Commonwealth functions on the Safety Authority in relation to offshore petroleum operations in Commonwealth waters, paragraph 150XE(a) would pick these up also.)

Paragraph 150XE(b) provides that the Safety Authority has the functions conferred on it by or under a State PSLA or the Northern Territory PSLA in relation to offshore petroleum operations in the designated coastal waters of that State or Territory. This paragraph provides the authorisation of the Commonwealth Parliament that is necessary to enable the States and the Northern Territory to confer functions on the Safety Authority. The Parliament’s authorisation is necessary because the Safety Authority is a Commonwealth statutory authority. The intended effect of paragraphs (a) and (b) of section 150XE, in combination, is that the Safety Authority will be able to exercise its safety regulatory functions, in a seamless manner, in all offshore waters. This will only occur, however, to the extent that States and the Northern Territory enact the necessary amendments to their PSLAs and enact the ‘mirror’ substantive occupational health and safety laws (‘the section 140H OHS laws’).

In order to implement the cooperative legislative scheme, it is intended that the States and the Northern Territory will ‘mirror’ paragraphs 150XE(b), (c), (d), (e), (f), (g) and (h) in their PSLAs. This will require that the reference to ‘Commonwealth waters’ in subparagraph (e)(i) be changed so that it refers to the waters covered by the State or Northern Territory PSLA.

Paragraphs 150XE(d) and (e) confer functions in relation to Commonwealth waters.

Paragraph (d) confers the function of developing and implementing effective monitoring and enforcement strategies to secure compliance by persons with their occupational health and safety obligations under this Act (i.e. the Commonwealth PSLA) and the regulations.

Paragraph (e) confers the function of:

a. investigating accidents, occurrences and circumstances that may affect the occupational health and safety of persons engaged in offshore petroleum operations in Commonwealth waters; and

b. reporting, as appropriate, to Commonwealth, State and Northern Territory Ministers on those investigations.

This is a broad investigatory and reporting function that goes well beyond the categories of accidents and events that an operator of a facility is required to notify to the Safety Authority under clause 41 of Schedule 7. It enables the Safety Authority to enquire into anything that has, or may have, consequences for the occupational health and safety aspects of offshore petroleum operations.
Paragraphs 150XE(c), (f), (g) and (h) confer a range of promotional and reporting functions on the Safety Authority in relation both to Commonwealth and State/Northern Territory waters.

Paragraph 150XE(c) confers a function of promoting the occupational health and safety of persons engaged in offshore petroleum operations.

Paragraph 150XE(f) confers a function of advising persons on occupational health and safety matters relating to offshore petroleum operations. These paragraphs give the Safety Authority broad powers to gather and disseminate information and advice on occupational health and safety issues to persons engaged in relevant operations, whether on a general or individual basis. The Safety Authority does not have any function or power to provide consultancy services on a fee-paying basis.

Paragraph 150XE(g) confers a function of making reports, including recommendations, to stakeholder Ministers relating to occupational health and safety of persons engaged in offshore petroleum operations.

Paragraph 150XE(h) confers a function of cooperating with other Commonwealth, State and Northern Territory agencies having functions relating to offshore petroleum operations. This is seen as an important aspect of the Safety Authority’s role. The functions and powers conferred on the Safety Authority by or under the Commonwealth and State/Northern Territory PSLAs will overlap to a significant extent the functions conferred by these same Acts on other agencies. In the case of the Commonwealth PSLA, those functions are functions of the Designated Authorities (who are the same State and Northern Territory Ministers as the ‘responsible’ State and Northern Territory Ministers under Part IIIC.) The functions of the Designated Authorities relate to resource development, operations and environment protection. Clearly, there is the capacity for decisions made on these matters to impact on health and safety and vice versa. It is not practicable, and nor is it desirable, for the legislation to quarantine these functions from the occupational health and safety functions of the Safety Authority. It will therefore be necessary that there be a considerable degree of cooperation and coordination between the Safety Authority and the Designated Authorities to ensure that conflict is avoided as far as is practicable, consistent with the performance of the Safety Authority’s occupational health and safety functions.

Section 150XF Policy principles

Section 150XF provides for the giving of policy principles to the Safety Authority about the performance of its functions. MCMPR agreed that decisions as to the broad policy framework within which the Safety Authority was to operate should be made at governmental level, but that operational policy and strategy should be decided at CEO/Board level. This section implements that agreement.

The section also establishes the role of State and Northern Territory Ministers in the giving of policy principles. This is one of the key provisions of the Bill that establishes the accountability of the Safety Authority to Commonwealth, State and Northern Territory Ministers. This is important, as policy principles that relate to operations in the waters of one jurisdiction, have the ability to affect operations in the
waters of other jurisdictions. In particular, policy principles that relate to operations in Commonwealth waters have the ability to affect operations in State and Northern Territory coastal waters.

Subsection 150XF(1) provides for the Commonwealth Minister to give written policy principles to the Safety Authority. Subsection 150XF(3) requires that, before giving a policy principle of general application, the Commonwealth Minister must give each State or Northern Territory Minister the opportunity to enter into consultations about it with the Commonwealth Minister.

Subsection 150XF(2) requires the agreement of each affected State or Territory Minister before the Commonwealth Minister can 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 those States/Territory.

Subsection 150XF(4) requires that a copy of any policy principles be tabled in each House of the Parliament within 15 sitting days after the day on which they were given.

Subsection 150XF(5) requires the Safety Authority to comply with any policy principles when performing its functions.

Section 150XG Safety Authority’s ordinary powers
Subsection 150XG(1) provides that 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.

Subsection 150XG(2) provides that the powers conferred by subsection (1) include, but are not limited to, the following:

- (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;
- (d) the power to occupy, use and control any land or building made available by the Commonwealth;
- (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.

In relation to paragraph 150XG(2)(b) above, the Safety Authority will have the ordinary powers of an incorporated statutory authority to enter into contracts. This would include, for example, a power to enter into a contract with a State or Territory, or a State or Territory body for the provision of services to the Safety Authority. However, a person could not, under such a contract, exercise any statutory powers on behalf of the Safety Authority unless the person was properly authorised under this
legislation to exercise such powers, eg by the holding of a delegation or by
appointment as an OHS inspector.

Subsections 150XG(3) and (4) provide that any property held by the Safety Authority
is taken to be the property of the Commonwealth and that any money received by the
Safety Authority is taken to be received by the Authority on behalf of the
Commonwealth. These provisions reflect the status of the Authority as a body to
which the Financial Management and Accountability Act 1997 applies. The Safety
Authority therefore does not hold money or property on its own behalf.

Section 150XH References to functions and powers of the Safety Authority

Section 150XH makes clear that any reference in Part IIIC (other than in section
150XI) to the functions or powers of the Safety Authority includes a reference to the
functions or powers conferred on the Authority by or under a State or Territory PSLA,
as well as to the functions or powers conferred by or under the Commonwealth PSLA.
(This is one of the intended effects of paragraph 150XE(b), but section 150XH is
included for the avoidance of doubt.) As a consequence, all of the provisions of Part
IIIC relating to the corporate governance of the Safety Authority (for example, policy
principles, advice and recommendations by the Board to the CEO, corporate plans,
ministerial directions), and any other provisions that relate to the functions and
powers of the Safety Authority (except section 150ZE) apply to all of the Authority’s
offshore operations, whether in Commonwealth waters or State/Northern Territory
coastal waters. This is not the case in relation to powers exercised by the Safety
Authority or its OHS inspectors under State or Northern Territory ‘onshore’
legislation (see section 150XI). Provisions of Part IIIC (other than section 150XI) do
not apply to the exercise of powers under ‘onshore’ legislation, unless the provision
refers expressly to section 150XI.

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

This section gives the Commonwealth Parliament’s authorisation for the States or the
Northern Territory to confer powers on the Safety Authority or its staff, including
OHS inspectors, under ‘onshore’ State or Territory legislation. The powers that may
be conferred under this ‘onshore’ legislation must be powers in relation to the
occupational health and safety of persons who do work in connection with petroleum
exploration, recovery, processing, storage or offloading, or petroleum pipelines. The
geographical areas in which these ‘onshore’ powers may be exercisable may be:

1.19.2. an area or areas of land or water within the territorial limits of the State
or Territory (including internal waters); or

1.19.3. an area or areas of sea between the territorial sea baseline and the
coastline that is/are not covered by the State or Territory PSLA.

Subsection 150XI(1) provides that where a State or the Northern Territory confers
such powers, the Safety Authority and its staff (including OHS inspectors) may
exercise those powers but are not obliged to do so.
The governance regime established by Part IIIC for the carrying out by the Safety Authority of its functions and the exercise of its powers does not apply to the exercise of powers by the Safety Authority and its inspectors under State or Territory ‘onshore’ legislation. For example, the power of the Commonwealth Minister to give directions in section 150YX does not apply. The governance regime established by the State or Territory ‘onshore’ legislation would apply in full to the exercise of these powers.

Subsection 150XI provides that ‘onshore’ powers may only be conferred on the Safety Authority or on its staff/inspectors in relation to a vessel or structure that is owned or controlled, or that is being constructed, operated or decommissioned, by a corporation to which section 51(xx) of the Constitution applies. There is no requirement that the vessel or structure be a ‘facility’ within the meaning of Schedule 7.

Subsection 150XI(3) requires that there be an agreement between the Commonwealth and the State or Territory concerned as to the fees payable by the State or Territory for the exercise of powers by the Safety Authority or its staff/inspectors under ‘onshore’ legislation. It is intended that there will be service level agreements between the Commonwealth and the State or Territory concerned providing for the making available of the Authority’s services.

Section 150XK Safety Authority is a body corporate
Section 150XK provides that the Safety Authority is a body corporate, that it must have a seal and that it may sue and be sued. The section includes standard provisions with respect to the seal.

DIVISION 3—NATIONAL OFFSHORE PETROLEUM SAFETY AUTHORITY BOARD
Division 3 of Part IIIC provides for the establishment, functions and membership of the National Offshore Petroleum Safety Authority Board, the Board’s procedures and the terms and conditions of Board members.

Subdivision A—Establishment, functions and membership

Section 150XL Establishment of Board
This section establishes the National Offshore Petroleum Safety Authority Board (‘the Board’).

Section 150XM Functions of the Board
This section confers functions on the Board in respect of advising and making recommendations to various persons and bodies.

Paragraph 150XM(1)(a) provides that it will be a function of the Board to advise and make recommendations to the CEO of the Safety Authority in relation to operational policies and strategies to be followed by the Authority in the performance of its functions.
Paragraph 150XM(1)(b) provides that a further function of the Board will be to give advice and make recommendations to the responsible Commonwealth, State and Northern Territory Ministers and the Ministerial Council for Minerals and Petroleum Resources (MCMPR), as defined in section 150XB of the PSLA, in relation to:

1.19.4. the performance by the Authority of its functions; and
1.19.5. policy or strategic matters in relation to the occupational health and safety of persons engaged in offshore petroleum operations.

The responsible Commonwealth Minister may specify additional functions to be undertaken by the Board by means of a written notice to the Chair pursuant to paragraph 150XM(1)(c). Pursuant to subsection 150XM(2) any such notice will be a disallowable instrument within the meaning of section 46A of the *Acts Interpretation Act 1901* and will thereby be subject to the requirements contained in section 48, section 48A, section 48B, section 49, section 49A and section 50 of that Act relating to tabling in Parliament, disallowance, remaking and repeal.

Subsection 150XM(3) requires that the Commonwealth Minister must be given a written copy of any advice or recommendation provided by the Board to a responsible State or Northern Territory Minister or to the MCMPR.

*Section 150XN Powers of the Board*

This section confers powers on the Board by reference to its functions as set out in section 150XM. The Board has power to do all things necessary or convenient for, or in connection with, the performance of its functions.

*Section 150XO Membership*

Section 150XO relates to the membership of the Board. Board members are appointed by the Commonwealth Minister on the recommendation of MCMPR.

Subsection 150XO(1) provides that the Board will consist of a Chair and four or six other members. Subsection 150XO(2) provides that the performance of functions or exercise of powers by the Board will not be affected by a vacancy on the Board.

Subsection 150XO(3) requires that appointments to the Board be made by the Commonwealth Minister in writing. Subsection 150XO(4) provides that Board members must first be selected for appointment by the MCMPR.

*Subdivision B - Board procedures*

*Section 150XP Board procedures*

Subsection 150XP(1) provides that the Commonwealth Minister may determine, in writing, certain matters relating to the operation of the Board. A non-exhaustive list of matters which the Minister may determine is set out in paragraphs 150XP(1)(a) to (f). These matters include disclosure of interests. It is not envisaged that the holding by a Board member of a financial or other interest in an entity whose activities are regulated by the Safety Authority would necessarily preclude a person from holding
office as a Board member. A Board member may in fact be appointed because of his or her knowledge of, or experience in, the petroleum industry. A person with such knowledge or experience may well have interests that could raise a conflict of interest. It is envisaged that the Minister’s determination would set conditions relating to disclosure of such interests and impose rules to be followed in the case of an actual conflict arising.

Subsection 150XP(2) enables the Board to determine the manner of its procedural operation if there is no relevant Ministerial determination is in force.

Subsection 150XP(3) provides that any Ministerial determination made pursuant to subsection 150XP(1) will be a disallowable instrument within the meaning of section 46A of the *Acts Interpretation Act 1901* and will thereby be subject to the requirements contained in section 48, section 48A, section 48B, section 49, section 49A and section 50 of that Act relating to tabling in Parliament, disallowance, remaking and repeal.

**Subdivision C - Terms and conditions for Board members**

*Section 150XQ Term of appointment and related matters for Board members*

This section provides that Board members are to be appointed on a part-time basis for the period, not exceeding three years, as specified in the instrument of appointment. In accordance with section 33(4A) of the *Acts Interpretation Act 1901*, the power to appoint members of the Board in subsection 150XO(3) includes the power to re-appoint. Board members may therefore hold office for successive terms.

*Section 150XR Remuneration and allowances of Board members*

This section sets out the means by which the remuneration and allowances of Board members are to be determined.

Subsection 150XR(1) provides that the remuneration of Board members is to be determined by the Remuneration Tribunal. However, if no determination by the Tribunal is in operation, a Board member’s remuneration will be paid pursuant to a determination by the Commonwealth Minister.

Subsection 150XR(2) provides that that notwithstanding subsection 150XR(1), remuneration will not be paid to Board members who are full-time employees of a State or the Northern Territory or an instrumentality of a State or the Northern Territory. (There is no need to make equivalent provision in relation to full-time employees of the Commonwealth or a Commonwealth instrumentality, as subsection 7(11) of the *Remuneration Tribunal Act 1973* already does so.)

Subsection 150XR(3) provides that a Board member is to be paid the allowances prescribed in the regulations.

Subsection 150XR(4) provides that the operation of this section is subject to the *Remuneration Tribunal Act 1973*. 
Section 150XS Leave of absence of Board members

Section 150XS provides that the Commonwealth Minister may grant leave of absence to the Chair and other Board members and determine the terms and conditions of such leave.

Section 150XT Resignation of Board members

This section requires written notice to be provided by a Board member wishing to resign his or her position.

Section 150XU Termination of appointment of Board members

Section 150XU sets out the circumstances under which the Commonwealth Minister may terminate the appointment of a Board member, including the Chair. The grounds are:

1.19.6. misbehaviour or physical or mental incapacity;
1.19.7. circumstances relating to bankruptcy and insolvency which are listed in subparagraphs 150XU(2)(a)(i) to (iv);
1.19.8. absence from three consecutive Board meetings unless the member is on approved leave of absence;
1.19.9. failure to disclose interests in accordance with requirements determined under section 150XP if the member does not provide a reasonable excuse;
1.19.10. the Commonwealth Minister is satisfied that the Board Member’s performance has been unsatisfactory for a significant period.

Subsection 150XU(3) requires the Commonwealth Minister to consult with all responsible State and Northern Territory Ministers before terminating the appointment of a Board member.

Section 150XV Other terms and conditions of Board members

This section enables the Commonwealth Minister to determine terms and conditions not covered by the PSLA in regard to Board members.

Section 150XW Acting Board members

This section sets out arrangements in respect of the appointment of acting Board members. Section 33A of the Acts Interpretation Act 1901 contains further provisions with respect to acting appointments.

DIVISION 4—CHIEF EXECUTIVE OFFICER AND STAFF OF THE SAFETY AUTHORITY

Section 150XX Appointment of the CEO

Subsection 150XX(1) establishes the office of the CEO.
Subsection 150XX(2) provides for the CEO to be appointed by the Commonwealth Minister by written instrument.

Subsection 150XX(3) requires that any person appointed to the office of CEO by the Commonwealth Minister must first be recommended to the Commonwealth Minister by the MCMPR.

Subsection 150XX(4) provides that the CEO is to be appointed on a full-time basis.

Subsection 150XX(5) provides that the appointment of a CEO will be for a term, not exceeding five years, as specified by the Commonwealth Minister in the instrument of appointment. However, in accordance with section 33(4A) of the Acts Interpretation Act 1901, the CEO can be re-appointed.

Section 150XY Duties of the CEO

Subsection 150XY(1) provides that the CEO is responsible for managing the Safety Authority. This confers on the CEO the ordinary management responsibilities of a CEO. It is proposed that the Safety Authority will be prescribed by regulation under the Financial Management and Accountability Act 1997 (‘FMA Act’) as a ‘prescribed Agency’ for the purposes of the FMA Act and that the CEO will be identified as the ‘Chief Executive’ of the Safety Authority for the purposes of that Act. The outcome will be that the CEO has responsibility under the FMA Act for the management of the financial resources of the Authority.

Subsection 150XY(2) provides that 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. Since the Authority is a body corporate without members, this is the means by which the Authority will perform its functions and exercise its powers. The subsection confers power on the CEO to act in the name of the Authority or on its behalf. This power can be delegated by the CEO under section 150YG.

Section 150XZ Working with the Board

This section establishes the working relationship between the CEO and the Board.

Subsection 150XZ(1) requires the CEO to request the Board’s advice on strategic matters relating to the performance of the functions of the Authority. Subsection 150ZZDA(2) requires the CEO to have regard to that advice, but does not require the CEO to follow it.

Subsection 150XZ(3) requires the CEO to keep the Board informed about the Authority’s operations and to give the Board such reports, documents and information as the Chair requires.

Section 150Y Remuneration and allowances of the CEO

This section sets out the means by which the remuneration and allowances of the CEO are to be determined.
Subsection 150Y(1) provides that the remuneration of the CEO is to be determined by the Remuneration Tribunal. However, if no determination by the Tribunal is in operation, the CEO’s remuneration will be paid pursuant to a determination by the Commonwealth Minister. Subsection 150Y(2) provides that the CEO is to be paid those allowances which are prescribed. Subsection 150Y(3) provides that the operation of this section is subject to the Remuneration Tribunal Act 1973.

Section 150YA Leave of absence of the CEO
Subsection 150YA(1) provides that the CEO will have recreation leave entitlements as determined by the Remuneration Tribunal. Subsection 150YA(2) provides that the Commonwealth Minister may grant the CEO a leave of absence other than in accordance with subsection 150YA(1) on the terms and conditions determined by the Commonwealth Minister.

Section 150YB Resignation of the CEO
This section provides for the CEO to resign by giving the Commonwealth Minister a written resignation.

Section 150YC Notification of a possible conflict of interest
This section sets out the requirements for the CEO to notify the Commonwealth Minister of any conflict or potential conflict of interest he or she may have. While it is envisaged that a Board member may be appointed who has financial or other connections with entities that carry on activities that are regulated by the Safety Authority, the CEO must not have any interest that poses a significant risk of a conflict of interest.

The CEO must notify the Commonwealth Minister in writing immediately if he or she:

1.19.11. acquires; or
1.19.12. becomes aware that he or she has already acquired; or
1.19.13. becomes aware that he or she is likely to acquire

a pecuniary or other interest which could conflict with the proper performance of the duties of the CEO.

Section 150YD Termination of CEO’s appointment
Section 150YD sets out the circumstances under which the Commonwealth Minster may terminate the appointment of the CEO. These are:

1.19.14. misbehaviour or physical or mental incapacity;
1.19.15. a number of circumstances relating to bankruptcy and insolvency which are listed in subparagraphs 150YD(2)(a)(i) to (iv);
1.19.16. absence from duty for 14 consecutive days or 28 days in any 12 month period excepting on approved leave of absence;
1.19.17. engaging in paid employment outside the duties of the office without the approval of the Commonwealth Minister;

1.19.18. failure to comply with the notification requirement in section 150YC in relation to conflicts of interest, without a reasonable excuse;

1.19.19. the Commonwealth Minister is satisfied that the CEO’s performance has been unsatisfactory for a significant period.

Subsections 150YD(3) to (5) set out procedures for handling potential conflicts of interest in respect of the CEO.

Subsection 150YD(3) provides that if the Commonwealth Minister becomes aware, by means of section 150YC or otherwise, that the CEO has an interest which could conflict with the proper performance of his or her duties, the Commonwealth Minister must make a written determination as to whether the interest poses a significant risk of a conflict of interest. The Commonwealth Minister is not required to make any such determination in respect of any possible future interests of the CEO.

Subsection 150YD(4) provides that if the Commonwealth Minister determines that the CEO holds an interest which poses a significant risk of conflict with the proper performance of the CEO’s duties, the Commonwealth Minister must require the CEO to dispose of the interest within a specified period.

Subsection 150YD(5) provides that if the Commonwealth Minister requires the CEO to dispose of an interest pursuant to subsection 150ZZI(4), and the CEO refuses or fails to comply with the requirement, the Commonwealth Minister must terminate the appointment of the CEO.

**Section 150YE Other terms and conditions**

This section enables the Commonwealth Minister to determine terms and conditions not covered by Part IIIC in relation to the CEO.

**Section 150YF Acting appointments**

This section makes provision for the appointment a person to act as the CEO. Further provisions in relation to acting appointments are contained in section 33A of the *Acts Interpretation Act 1901*.

**Section 150YG Delegation by the CEO**

The range of persons to whom the CEO may delegate functions or powers (including the power in subsection 150XY(2) to act in the name of the Safety Authority or on its behalf) reflects the legislative history of the Commonwealth PSLA. On its establishment, the Safety Authority will be taking over the safety regulatory function in Commonwealth waters from the State and Northern Territory Designated Authority staff who have been administering occupational health and safety in those waters under the Commonwealth PSLA for over 20 years. The power of delegation in section 150YG will enable the Safety Authority to call on the regulatory experience and expertise that is available among State and Territory employees, when required.
Subsection 150YG(1) provides that the CEO may delegate any of his or her powers or functions (except the power to appoint OHS inspectors pursuant to section 150YL) to a person listed in paragraphs 150YG(1)(a) to (c), i.e.:

(a) a member of staff of the Safety Authority
(b) an employee of the Commonwealth or of a Commonwealth authority; or
(c) an employee of a State or the Northern Territory or of an authority of a State or the Northern Territory.

Subsection 150YG(2) requires that persons exercising powers under a delegation made pursuant to subsection 150YG(1) must do so in accordance with any directions of the CEO.

Delegations given under section 150YG will have effect in accordance with section 34AB and section 34A of the Acts Interpretation Act 1901 which relate to the effect of delegations and set out certain procedural matters.

Section 150YH Staff of the Safety Authority

The staff of the Authority must be persons engaged under the Public Service Act 1999. For the purposes of that Act, the CEO and those employees constitute a Statutory Agency and the CEO is the Head of that Statutory Agency.

Section 150YI Consultants and persons seconded to the Safety Authority

This section provides that the CEO of the Authority 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. The Safety Authority will determine in writing the terms and conditions of such engagements.

This section also provides that the Safety Authority may be assisted by officers and employees of Commonwealth Agencies or authorities, or by officers and employees of State or Northern Territory, or of an authority of a State or Northern Territory.

The purpose of allowing such engagement or secondment is that offshore petroleum activities are diverse in nature, whilst effective regulation of each activity may require highly specific and detailed knowledge of that activity. The staff of the Authority will be selected so as to provide both breadth and depth of knowledge, but occasions may still arise when there is a need to supplement the knowledge of the available staff members. These occasions might include periods of absence of Authority staff having a particular area of expertise, or they might include investigations into incidents where highly specialised knowledge is needed.

DIVISION 5—CORPORATE PLANS

This Division sets out the requirements for the preparation by the CEO of corporate plans and the governance requirements in relation to the approval of those plans, including the role of State and Northern Territory Ministers in that process. This is a
further provision that makes the Safety Authority accountable to Commonwealth, State and Northern Territory Ministers.

Section 150YJ Corporate plans

Subsection 150YJ(1) requires that the CEO prepare a corporate plan at least once every three years and provide it to the Commonwealth Minister. Subsection 150YJ(2) requires that a corporate plan cover a period of at least three years. Subsection 150YJ(3) requires that the CEO inform the Commonwealth Minister of any significant changes to a corporate plan or any matters which may arise which would significantly affect the Authority’s capacity to meet the objectives of a corporate plan.

Paragraphs 150YJ(4)(a) to (f) set out those matters which are required to be included in the corporate plan. Subsection 150YJ(5) provides that the Commonwealth Minister may require that other matters, or additional details about matters set out in paragraphs 150YJ(4)(a) to (f), be included in the corporate plan.

Section 150YK Commonwealth Minister’s response to the corporate plan

Subsection 150YK(1) requires that on receipt of a corporate plan, the Commonwealth Minister must circulate it to the responsible State and Northern Territory Ministers and consult with them on the contents of the plan. Subsection 150YK(2) requires the Commonwealth Minister to provide a response to the CEO in respect of a corporate plan as soon as practicable after consultation with the responsible State and Northern Territory Ministers is complete.

In responding to a corporate plan, the Commonwealth Minister may provide a written direction to vary the corporate plan pursuant to subsection 150YK(3). However, such a direction may not be given in respect of particular offshore petroleum operations. If a direction is given, a revised version of the plan must be provided to the Commonwealth Minister within 30 days.

Subsections 150YK(6) and (7) provide that before approving, or directing the variation of, a part of a corporate plan relating specifically to the operations of the Authority in the designated coastal waters (as defined in section 150XC of the PSLA) of one or more States or the Northern Territory, the Commonwealth Minister must obtain the approval of each of the affected State or Territory Ministers.

DIVISION 6—OHS INSPECTORS

The range of persons who can be appointed as OHS inspectors reflects, again, the legislative history of the Commonwealth PSLA and the context in which the Safety Authority is taking over the regulation of occupational health and safety in Commonwealth and State/Northern Territory coastal waters. See the clause note to section 150YG.

OHS inspectors appointed under section 150YL will exercise functions and powers in State and Northern Territory coastal waters under the State and Territory PSLAs, as well as in Commonwealth waters. It is therefore appropriate that there be the capacity
to appoint State and Territory staff as OHS inspectors. Moreover, State and Territory staff will continue to carry out the day-to-day administration of the Commonwealth PSLA in Commonwealth waters, in relation to matters other than safety - eg in relation to resource conservation and environment protection.

Persons who are not staff of the Authority nor State or Territory employees may be appointed temporarily as OHS inspectors for specific functions. This power to appoint OHS inspectors is expected to be used only rarely, where specific expertise is required for a particular task or tasks that is not otherwise available to the Safety Authority.

Section 150YL Appointment of OHS inspectors
Section 150YL provides that the CEO may appoint as OHS inspectors:

(d) members of the Safety Authority’s staff;

(e) employees of the Commonwealth or of a Commonwealth authority; or

(f) employees of a State or the Northern Territory.

There is, additionally, a power to appoint persons not falling within any of these categories, but the appointment must be temporary and for specified function(s).

Subsection 150YL(4) provides that, in addition to the powers, functions and duties conferred or imposed by or under this Act, an OHS inspector has the powers functions and duties that are conferred or imposed by or under a State PSLA or the Northern Territory PSLA. This subsection provides the authorisation of the Commonwealth Parliament for the States and Northern Territory to confer powers and functions and to impose duties on an OHS inspector appointed under the Commonwealth Act.

Section 150YM Identity cards
This section imposes requirements in relation to identity cards issued to OHS inspectors.

Subsection 150YM(3) makes it an offence for a person who has been issued with an identity card, and who ceases to be an OHS inspector, to fail to return the identity card as soon as is practicable. Subsection 150YM(4) provides that the person is not guilty of the offence if the card was lost or destroyed. The evidential burden in relation to loss or destruction of the card is placed upon the defendant, because the circumstances of loss or destruction will be peculiarly within the knowledge of the defendant.

DIVISION 7—NATIONAL OFFSHORE PETROLEUM SAFETY ACCOUNT
This Division provides for amounts raised by way of fees and charges in respect of the regulatory activities of the Safety Authority to be credited to an account established by section 150YN and for money standing to the credit of that account to be expended in the carrying out by the Safety Authority of its functions under the Commonwealth PSLA and the State/Northern Territory PSLAs.
Section 150YN National Offshore Petroleum Safety Account

This section establishes the National Offshore Petroleum Safety Account. It is a Special Account for the purposes of the Financial Management and Accountability Act 1997 (‘FMA Act’). Fees and charges collected by the Safety Authority are received by the Authority on behalf of the Commonwealth and therefore form part of the Commonwealth Consolidated Revenue Fund referred to in section 81 of the Constitution. The money is, however, accounted for separately by means of the Special Account arrangement.

Section 150YO Credits to the Account

The amounts that must be credited to the Special Account are:

(g) any amounts appropriated by the Parliament for the purposes of the Account;
(h) fees for services provided by the Safety Authority levied under section 150YQ;
(i) amounts of safety inspection levy (and late payment penalty);
(j) amounts of safety case levy (and late payment penalty);
(k) amounts of pipeline safety management plan levy (and late payment penalty);
(l) amounts paid by a State or the Northern Territory in respect of the exercise of powers by the Safety Authority under State/Territory ‘onshore’ legislation;
(m) any other amounts paid to the Authority on behalf of the Commonwealth by a State, Territory or other person.

Section 150YP Purposes of the Account

Section 150YP sets out the purposes of the Special Account. These are, in effect, the carrying out by the Safety Authority of its functions and the exercise of its powers under the Commonwealth, State and Northern Territory PSLAs and the exercise of any powers conferred on it by State/Northern Territory ‘onshore’ legislation. Subsection 21(1) of the FMA Act appropriates money standing to the credit of the Account for expenditure for those purposes, up to the balance of the account for the time being.

DIVISION 8—OTHER FINANCIAL MATTERS

Section 150YQ Fees for services provided by the Safety Authority

This section provides for the imposition of fees for services, in relation to regulatory services provided by the Safety Authority. The fees must be set on a cost-recovery basis.

The fees for services imposed under this section relate to regulatory services provided by the Authority in relation to all Safety Authority waters, i.e. Commonwealth waters and State/Northern Territory designated coastal waters. The services referred to are
services under the Commonwealth PSLA, State and Northern Territory PSLAs, and occupational health and safety regulations under those Acts. While the Safety Authority will be acting under State and Northern Territory PSLAs when performing regulatory services in respect of activities in designated coastal waters, the Commonwealth PSLA provides for the conferral of functions and powers on the Authority by the States and Northern Territory in relation to those waters, and paragraph 150XE(b) expressly confers on the Authority the functions conferred on it by the State and Territory PSLAs.

Section 150YR Safety Investigation Levy

This section provides for the collection of the safety investigation levy imposed by the Offshore Petroleum (Safety Levies) Bill 2003.

The amount of levy payable by an operator will be set in the regulations at a level that recovers the cost to the Safety Authority of conducting the investigation.

The investigation levy will only become payable once a threshold level of investigatory cost is exceeded. That threshold will be high. This reflects the purpose of imposing the investigation levy separately from the annual safety case levy or the annual pipeline safety management plan levy. This is to avoid an unacceptable level of cross-subsidisation between those operators whose activities require a high level of investigatory activity by the Safety Authority and those whose activities do not.

Section 150YS Safety case levy

This section provides for the collection of the safety case levy imposed by the Offshore Petroleum (Safety Levies) Bill 2003. The annual safety case levy will recover the regulatory costs of maintaining the safety case system.

Subsection 150YS(1) provides that the regulations may make provision for the remittal of part of an amount of safety case levy if the facility is of a kind declared by the regulations to be a facility that operates on an intermittent basis and the facility in fact operates for only part of the year. This is intended to deal with the problem that some mobile facilities, such as drilling rigs, are commonly only in operation for periods of the year, and may spend a substantial part of the year out of work. Under clause 2A of Schedule 7, such a vessel will only be a ‘facility’ for those parts of the year when it is in operation, and during the down time will not be regulated by the Safety Authority. This section therefore provides for the remittal of part of the annual fee in these circumstances.

Section 150YT Pipeline safety management plan levy

This section provides for the collection of the pipeline safety management plan levy imposed by the Offshore Petroleum (Safety Levies) Bill 2003. The annual pipeline safety management plan levy will recover the regulatory costs of maintaining the safety management plan system.
Section 150YU Liability to taxation

Section 150YU exempts the Safety Authority from Commonwealth, State and Territory taxes. This exemption does not extend to Commonwealth taxes, such as GST or FBT, for which an express exemption is necessary.

DIVISION 9 - MISCELLANEOUS

Section 150YV Annual Reports

Section 150YV sets out requirements in relation to annual reports as they apply to the Authority and the Board.

Subsection 150YV(1) requires that as soon as practicable after 30 June each year, the CEO must prepare a report in relation to the operations of the Safety Authority during the previous financial year. The CEO must provide the report to the Commonwealth Minister and a copy of the report to each responsible State and Northern Territory Minister and the MCMPR.

Subsection 150YV(3) provides that as soon as practicable after 30 June of each year, the Chair of the Board must prepare a report in relation to the operations of the Board during the previous financial year. The Chair is required, as soon as is practicable, to provide the report to the Commonwealth Minister and a copy of the report to each responsible State and Northern Territory Minister and the MCMPR. Section 34C of the Acts Interpretation Act 1901 sets out requirements in respect of furnishing Parliament with certain annual reports.

Subsection 150YV(4) requires the Commonwealth Minister to cause a copy of each report to be tabled in each House of Parliament within 15 sitting days of receiving the report.

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

This section provides that the Commonwealth Minister or responsible State and Territory Minister may require the Safety Authority, by written notice, to prepare a report or a document setting out information in relation to one or more specified matters arising from the performance of its functions or the exercise of its powers. Copies of any such report or document are to be provided to the Commonwealth Minister, the responsible State and Northern Territory Ministers and the MCMPR. Any such report or document is to be prepared in the time specified in the notice requesting it.

Section 150YX Commonwealth Minister may give directions to the Safety Authority

This section sets out the powers of the Commonwealth Minister to give directions to the Safety Authority and the role of State and Northern Territory Ministers in the giving of such directions. This is another of the key provisions that establishes the accountability of the Safety Authority to Commonwealth, State and Northern Territory Ministers.
Subsection 150YX(1) enables the Commonwealth Minister to give directions in writing to the Safety Authority in respect of the performance of its functions and the exercise of its powers.

Subsection 150YX(11) provides that, before giving a direction of general application, the Commonwealth Minister must give State and Northern Territory Ministers the opportunity to consult with him or her about the direction.

Subsection 150YX(2) prevents the Commonwealth Minister from giving directions in respect of a particular facility. However, subsection 150YX(3) provides that nothing in subsection 150YX(2) prevents the Commonwealth Minister from directing the Authority to investigate a particular accident or dangerous occurrence at a facility.

Subsection 150YX(4) gives responsible State and Northern Territory Ministers the ability to request that the Commonwealth Minister give a direction that relates wholly or principally to the Safety Authority’s operations in the coastal waters of the State or Territory concerned. Subsection 150YX(5) provides that the Commonwealth Minister must use his or her best endeavours to make a decision in relation to a request within 30 days. Subsection 150YX(6) provides that, if the Commonwealth Minister refuses to give the direction, he or she must give written reasons for the refusal.

Subsection 150YX(7) provides that, before giving 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 or the Northern Territory, the Commonwealth Minister must obtain the agreement of each responsible State or Northern Territory Minister concerned.

Subsections 150YX(8) to (10) set out the means by, and circumstances of urgency in which, the Commonwealth Minister may give a direction which relates wholly or principally to the Authority’s operations in the designated coastal waters of one or more States or the Northern Territory without the prior approval of each relevant, responsible State and or Northern Territory Minister. A direction given in these circumstances expires after 30 days unless, in the meantime, the agreement of affected State or Territory Ministers has been obtained. A direction that expires may be re-issued in the same or similar terms.

Subsection 150YX(12) provides that the Authority must comply with a direction given under this section.

Subsection 150YX(13) provides that the scope of the directions that may be given under this section is not limited by the terms of sections 150XE (the power to give policy principles) or 150YW (the power to require reports and information).

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

Section 150YY gives the consent of the Commonwealth Parliament for the States and Northern Territory to confer prosecutorial functions and powers on the DPP in relation to offences under State or Northern Territory ‘mirror’ occupational health and
safety laws that substantially correspond to ‘section 140H OHS laws’. The DPP will only have those functions and powers if the State or Northern Territory PSLA confers them in relation to the designated coastal waters of that State or Territory.

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

Section 150YZ gives the consent of the Commonwealth Parliament for the States and Northern Territory to confer functions on the Australian Industrial Relations Commission in their ‘mirror’ occupational health and safety laws that substantially correspond to ‘section 140H OHS laws’. The functions that may be conferred on the AIRC are functions that ‘mirror’ its functions under:

– clause 37 of Schedule 7, which enables a person to appeal against a decision of an inspector; and

– clause 12 of Schedule 7, which provides for the AIRC to resolve disagreements in relation to designated work groups.

Section 150Z Reviews of operations of Safety Authority

This section provides for the Commonwealth Minister to conduct 3-yearly reviews of the operations of the Safety Authority in Commonwealth waters and State/Territory coastal waters. There is capacity under this section for the Commonwealth Minister’s review to be carried out in conjunction with reviews by State or Northern Territory Ministers. It is expected that each of the State and Northern Territory Acts will include a similar requirement for review by the responsible State or Territory Minister of the operations of the Authority in the designated coastal waters of the relevant State or Territory.

Subsections 150Z(1) to (5) provide that the Commonwealth Minister is to cause to be conducted reviews of the operations of the Safety Authority relating to each 3-year period after the commencement of operations of the Authority on 1 January 2005. The Commonwealth Minister’s review is to relate to operations in Safety Authority waters — i.e. both Commonwealth waters and State/Territory designated coastal waters.

Subsection 150Z (6) provides that a responsible State or Northern Territory Minister may request that a review under this section be conducted in conjunction with a review of the operations of the Authority in the designated coastal waters of that State or Territory that is being conducted at the same time.

Subsection 150Z (7) provides that, without limiting the matters to be covered by a review, the review must include an assessment of the effectiveness of the Authority in improving the occupational health and safety of persons engaged in offshore petroleum operations.

Subsection 150Z (8) requires the tabling of any report of a review in each House of Parliament within 15 sitting days of the report being 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

Items 5 to 8

The purpose of items 5, 6, 7 and 8 is to disapply State and Northern Territory occupational health and safety laws that would otherwise apply to facilities in Commonwealth waters. (The kinds of vessel or structure that are ‘facilities’ are set out in clause 2A of Schedule 7.)

The reason for disapplying State and Northern Territory occupational health and safety laws in relation to facilities in Commonwealth waters is that this Bill will apply, instead, the occupational health and safety regime in Schedule 7 of the PSLA (as amended by this Bill). At present, Schedule 7 applies in Commonwealth waters subject to a ‘roll-back’ provision in section 140H. Prior to its amendment by this Bill, subsection 140H(2) provides that Schedule 7 does not apply in the adjacent area of a State or the Northern Territory if the law of that State or Territory provides, to any extent, for matters relating to the occupational health and safety of persons employed in the area. Most States and the Northern Territory have occupational health and safety laws that apply in their (3 nautical mile) coastal waters. Those laws are at present applied, as Commonwealth law, in the adjacent area by operation of section 9 of the PSLA (in the case of States) or section 11 (in the case of Territories).

This Bill will remove the ‘roll-back’ in subsection 140(2) and apply Schedule 7 in all adjacent areas (i.e. in Commonwealth waters).

Schedule 7, as amended by this Bill, applies only in relation to a ‘facility’. The State and Northern Territory laws are therefore disapplied by items 5 to 8 only in relation to facilities, and persons and activities at facilities. State and Northern Territory occupational health and safety laws will continue to apply in Commonwealth waters, by operation of sections 9 and 11 of the PSLA, in relation to any other vessels, structures and persons who are in Commonwealth waters for a purpose related to activities to which Part III of the PSLA applies.

The new subsections which the Bill adds to sections 9 and 11 deal expressly with the different means by which State and Northern Territory occupational health and safety laws might otherwise apply, or be applied, in the adjacent area of a State or Territory.

Subsections 9(2A) and 11(2A) provide, in relation to a State or the Northern Territory, respectively, that the laws or parts of laws that are prescribed in the regulations in relation to the State or Territory are not applied, by operation of subsection 9(1) or subsection 11(1), as the case may be, in relation to a facility located in the adjacent area of that State or Territory.

Subsections 9(2C) and 11(2C) provide that the laws or parts of laws prescribed under subsection (2A) of each section in relation to a State or the Northern Territory do not
apply by force of the law of that State or Territory in relation to a facility located in the adjacent area of that State or Territory. This provision is necessary because State or Northern Territory laws may apply extra-territorially in Commonwealth waters, if subsection 9(1) or 11(1) is disapplied in relation to them. The purpose of this provision is to ensure that no prescribed provision of a State or Northern Territory occupational health and safety law applies in Commonwealth waters in relation to a facility, even if there is no direct inconsistency with Schedule 7 or the regulations referred to in subsection 140H(2). These Commonwealth laws are intended to be all-encompassing, for OHS at a facility.

Subsections 9(2D) and 11(2D) are concerned with State or Northern Territory occupational health and safety laws that are ‘substantive criminal laws’ to which Schedule 1 to the Commonwealth Crimes at Sea Act 2000 and the corresponding State and Northern Territory Crimes at Sea Acts apply. For present purposes, this refers to provisions of State and Northern Territory laws that create offences. Many provisions of State and Northern Territory occupational health and safety laws create offences, and would therefore be applied offshore by the Crimes at Sea legislation rather than by subsections 9(1) and 11(1) of the PSLA.

Subsections 9(2D) and 11(2D) provide that the laws prescribed in the regulations under subsections 9(2D) and 11(2D) in relation to a State or the Northern Territory do not apply in relation to a facility located in the adjacent area of that State or Territory:

(a) by force of the law of the State. (The cooperative scheme set out in Schedule 1 to the Crimes at Sea Act 2000 provides that the ‘substantive criminal law’ of a State (which includes the Northern Territory) applies, ‘by force of the law of the State’, throughout the inner adjacent area for the State. The ‘inner adjacent area’ covers Commonwealth waters between 3 and 12 nautical miles from the territorial sea baseline.)
(b) by force of subclause 2(2) of that Schedule. (Subclause 2(2) of Schedule 1 to the Crimes at Sea Act 2000 applies the ‘substantive criminal law’ of a State in the ‘outer adjacent area’. The ‘outer adjacent area’ covers the remainder of Commonwealth waters.)

Subsections 9(2H) and 11(2H) provide that, despite subclauses 2(1) and (2) of Schedule 1 to the Crimes at Sea Act 2000, the State or Northern Territory ‘mirror’ occupational health and safety provisions that correspond to the laws referred to in subsection 140H(2) do not apply in relation to a facility located in the adjacent area of the relevant State or Territory:

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

Subsection 9(2H) and 11(2H) are intended to ensure that the offence provisions of the State and Northern Territory ‘mirror’ occupational health and safety laws that are enacted in relation to State and Territory designated coastal waters as part of the legislative scheme of which this Bill is a part are not ‘picked up’ and applied in Commonwealth waters by the Crimes at Sea legislation.
Subsections 9(2B) and 11(2B) require that the State or Northern Territory laws prescribed for the purposes of subsections 9(2A) and (2C) and 11(2A) and (2C) must be laws with respect to occupational health and safety. Subsections 9(2E) and 11(2E) require the same in relation to laws prescribed for the purposes of subsections 9(2D) and 11(2D). It is proposed that the laws to be prescribed in relation to each State and the Northern Territory will be agreed with the State or Territory concerned.

Subsections 9(2F) and 11(2F) enable laws to be prescribed notwithstanding that they relate to occupational health and safety and to one or more other matters. This is intended to deal with the possibility that a law or part of a law may have a number of different purposes – for example, a provision or set of provisions in a law may be directed at securing not only occupational health and safety but also protection of the environment.

Subsections 9(2G) and 11(2G) enable an instrument or part of an instrument to be prescribed, whether or not the law under which the instrument was made is itself prescribed.

Subsections 9(11) and 11(10) provide that, where a law is disapplied ‘in relation to a facility’, this means that the law is disapplied in relation to:

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

Subsections 11(2J), (2K) and (2L) provide for the disapplication of Northern Territory occupational health and safety laws in relation to a facility located in the adjacent area of the Territory of Ashmore and Cartier Islands. The laws in force in the Northern Territory (except Commonwealth Acts) are applied in the Territory of Ashmore and Cartier Islands by the *Territory of Ashmore and Cartier Islands Acceptance Act 1933*.

Subsection 11(2J) provides that the prescribed Northern Territory occupational health and safety laws (i.e. the non-offence provisions of those laws) do not apply in relation to a facility in the adjacent area of the Territory of Ashmore and Cartier Islands either by force of the *Territory of Ashmore and Cartier Islands Acceptance Act 1933*; or by force of subsection 11(1).

Subsection 11(2K) provides that the Northern Territory occupational health and safety laws that are ‘substantive criminal laws’ within the meaning of the *Crimes at Sea Act 2000* are not applied in the Territory of Ashmore and Cartier Islands either by force of the *Territory of Ashmore and Cartier Islands Acceptance Act 1933*; or by force of subclause 2(2) of Schedule 1 to the *Crimes at Sea Act 2000*.

Subsection 11(2L) ensures that the Northern Territory ‘mirror’ occupational health and safety laws which the Northern Territory applies in its designated coastal waters are not applied in the adjacent area of the Territory of Ashmore and Cartier Islands by the *Territory of Ashmore and Cartier Islands Acceptance Act 1933* or subclause 2(2) of Schedule 1 to the *Crimes at Sea Act 2000*. 
Item 9

Item 9 inserts new sections 11A and 11B into the PSLA.

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

Section 11A provides that the ‘Maritime legislation’ does not apply in relation to a facility in the adjacent area of a State or Territory, while it is a facility (subsection 11A(1)). In the section, ‘Maritime legislation’ means the Navigation Act 1912, the Occupational Health and Safety (Maritime Industry) Act 1993 (the OHS(MI) Act), and subordinate legislation under those Acts (subsection 11A(3)).

In general terms, the Navigation Act regulates ships. For instance, Part II of the Navigation Act relates to masters and seamen, while Part IV is about ships and shipping. The Navigation Act includes some special provisions relating to vessels and other things involved in petroleum exploration and exploitation (see, for example, sections 8, 8A and Part VB). Subordinate legislation under the Navigation Act includes regulations, and Marine Orders made by the Australian Maritime Safety Authority (see subsection 425(1AA)). Presently, some Marine Orders also deal with vessels involved in petroleum exploration and exploitation (see, for example, Marine Orders Part 47, Mobile Offshore Drilling Units, and Marine Orders Part 60, Floating Offshore Facilities).

The OHS(MI) Act establishes an occupational health and safety regime for the maritime industry which applies in addition to the Navigation Act (OHS(MI) Act, section 7). Broadly, the application of Part II of the Navigation Act to ships is the starting point for the application of the OHS(MI) Act (see the OHS(MI) Act, definition of ‘prescribed ship’ in section 4, and section 6). There are also special provisions in the OHS(MI) Act applying to certain off-shore industry mobile units (see the definition of ‘prescribed unit’ in section 4, and section 6).

For the purposes of Schedule 7 of the PSLA, a ‘facility’, includes some vessels which would ordinarily be covered by the Maritime legislation. For instance, a vessel used for processing, storage and offloading of petroleum, a drill ship, and a pipe lay barge, will all generally be a ‘facility’ covered by the occupational health and safety regime established by Schedule 7 (see the definitions of ‘facility’ in proposed clauses 2 and 2A of Schedule 7).

New section 11A will make it clear that despite the terms of the Maritime legislation, generally, the Maritime legislation will not apply in relation to a facility in an adjacent area. Instead, Schedule 7 will regulate those facilities. Because new subsection 11A(1) provides that the Maritime legislation does not apply ‘in relation to’ a facility in the adjacent area, the Maritime legislation will not apply to, for example a vessel, or people on that vessel, while the vessel is a facility in an adjacent area. However, when a vessel ceases to be a facility, section 11A will no longer apply, and the Maritime legislation will immediately apply to the vessel, according to its terms. This may occur, for instance, if a vessel being used for processing, storage and
offloading of petroleum ceases those operations, and is returned to navigable form (see new subclause 2A(5)(b) of Schedule 7, which deals with when a facility ceases to be a facility).

Subsection 11A(2) will provide an exception to the general disapplication of the Maritime legislation. That provision will ensure that the Maritime legislation is not disapplied by subsection 11A(1) to the extent that it relates to the transfer of persons or goods between a ship and a facility. In general, in such a situation, there will be an overlap of applicable laws. That is, provisions of both Schedule 7 of the PSLA and the Maritime legislation may apply to the transfer of persons or goods between a ship and a facility. In any particular case, all of the relevant provisions of the PSLA and the Maritime legislation will have to be considered. The transfer of persons or goods involves the potentially hazardous interaction of a facility and a ship. It is important that in such a situation, both the facility and the ship be subject to appropriate safety regulation.

Section 11B - Disapplication of the Navigation Act 1912 and the Occupational Health and Safety (Maritime Industry) Act 1993 in designated coastal waters in certain circumstances

New section 11B essentially provides for the disapplication of the Maritime legislation in certain designated coastal waters in the same way as it is disapplied in an adjacent area.

The provision applies to designated coastal waters of a State or the Northern Territory if the State or Territory PSLA and regulations substantially correspond to the section 140 OH&S laws in their application to the designated coastal waters (subsection 11B(1)). In such a situation, subsection 11B(2) disapplies the Maritime legislation in the designated coastal waters to the same extent as section 11A disapplies the Maritime legislation in the adjacent area. That is, generally, the Maritime legislation will not apply in relation to a facility in the designated coastal waters, while it is a facility, but it will apply in relation to the transfer of persons or goods between a ship and a facility.

Section 11B will operate when the State or Territory PSLA and regulations applying in the designated coastal waters substantially correspond to the section 140 OH&S laws. This is because in those circumstances, disapplication of the Maritime legislation is appropriate so that the interaction of occupational health and safety laws and the Maritime legislation in the designated coastal waters, is similar to that in the adjacent area.

For the purposes of section 11B, the terms ‘designated coastal waters’, ‘State PSLA’ and ‘Territory PSLA’ have the meanings they have for the purposes of Part IIIC of the PSLA (see new sections 150XB and 150XC) (subsection 11B(3)). The term ‘Maritime legislation’ has the meaning it has in new section 11A (subsection 11B(3)). The term ‘section 140H OH&S laws’ is defined in new subsection 140H(2).

Item 10 Section 140H
Item 10 repeals section 140H which applies Schedule 7 in adjacent areas subject to a ‘roll-back’ in favour of State or Northern Territory occupational health and safety laws, where those laws apply in the State’s or Territory’s 3 nautical mile coastal sea and so are applied in the relevant adjacent areas by section 9 (in the case of States) and section 11 (in the case of the Northern Territory).

Item 10 inserts a new section 140H. This applies Schedule 7, as amended by this Bill, in each adjacent area (i.e. in all Commonwealth waters). The section also lists the ‘section 140H OHS laws’.

Section 140H Application of occupational health and safety laws

Subsection 140H(1) gives effect to Schedule 7, as amended by this Bill. Because Schedule 7 applies in relation to ‘facilities’ and a ‘facility’ as defined in Schedule 7 is located in Commonwealth waters, the effect of subsection 140H(1) is to apply Schedule 7 only in Commonwealth waters.

Subsection 140H(2) lists the ‘section 140H OHS laws’. This subsection does not operate to apply these laws. It merely provides a convenient means by which to refer to this group of laws in other provisions of the Bill. The ‘section 140H OHS laws’ are the substantive occupational health and safety laws that it is intended the States and Northern Territory will ‘mirror’ in their PSLAs or in regulations under those PSLAs.

It is proposed that the regulations included in the ‘section 140H OHS laws’ will be amended to confer functions on the Safety Authority with effect from 1 January 2005. It is these regulations as in force on or after 1 January 2005 to which subsection 140H(2) refers.

Item 11 - Objects

This item repeals the existing clause 1 that sets out the objects of Schedule 7 and replaces it with a new clause 1 that broadens the focus of Schedule 7 in the following two respects.

Firstly, Schedule 7 is no longer concerned almost exclusively with the employer-employee relationship. It is now directed at securing the health and safety of all members of the workforce at a facility, whether they work at the facility under a contract of employment with any person or under some other contractual arrangement and regardless of whether they have any contract at all with a person who owes a duty of care. (As is usual with occupational health and safety regimes, Schedule 7 also protects persons at or near the facility who are not members of the workforce.)

Secondly, the new clause 1 makes clearer that the provisions of Schedule 7 are not confined to members of the workforce while they are working but are also intended to protect the workforce during mealtimes, recreation and periods of rest offshore.

Items 12 to 36 - Definitions
These items repeal or amend a number of the existing definitions, provide definitions for some new terms that are introduced in the Schedule, and provide definitions that differentiate between Schedule 7 and the remainder of the PSLA.

Item 12 inserts a definition of “associated offshore place”. An “associated offshore place” is included in a “facility” as defined (see item 17). An “associated offshore place” in relation to a facility is defined to include other places near the facility where activities (including diving) take place that are related to the construction, operation, maintenance or decommissioning of the facility. “Associated offshore places” specifically do not include any other facility, or any supply vessel, off-take tanker, anchor handling vessel or tugboat, or any vessel or structure declared by regulations not to be an associated offshore place.

Items 13 and 14 refer to definitions of “Commonwealth waters” and “contractor” located elsewhere in the Bill. The existing definition of “contractor” is repealed, because it depends on the person who engages the contractor being an ‘employer’, which may not be the case. New clause 2D provides a similar definition of “contractor” that does not rely on the existence of an “employer”.

Item 15 repeals the definition of “designated work group” and substitutes a new definition. Currently, the provisions relating to designated workgroups are drafted on the assumption that each workgroup comprises a set of persons all having the same employer. This new definition takes account of the changed terminology used in Schedule 7 which recognises that the workforce at a facility may include employees of a number of different employers and others who are not in an employment relationship with any person at the facility. It is now the operator of the facility who is responsible for establishing designated work groups.

Item 16 substitutes a new definition of “employer”. The change is consequential on the fact that Schedule 7 now applies in relation to facilities, rather than to all activities carried on under Part III of the Act.

Item 17 inserts a partial definition of “facility”. A “facility” includes a facility that is being constructed or installed. This will enable the safety case arrangements and Schedule 7 to apply during the construction and installation of a facility. “Facility” also includes an “associated offshore place” in relation to a facility. “Facility” is further defined in clause 2A of Schedule 7.

Item 18 inserts a definition of “group member”. This item is consequential on the changed membership of a ‘designated work group’, which no longer consists only of employees of the same employer.

Items 19, 20 and 21 reflect the changed terminology in Schedule 7 from “investigation” to “inspection”. The new term accords better with the mainly monitoring nature of visits by Safety Authority inspectors to a facility under Part 4 of Schedule 7. “Inspection” may however include an investigation or inquiry.

Item 22 repeals the definition of “involved union”.

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Item 23 introduces a definition of “member of the workforce”, being any person who performs work at a facility. Other items insert the term “member of the workforce” in place of the term “employee” in the relevant definitions.

Item 24 adopts the definition of “offshore petroleum operations” in Part IIIC.

Item 25 defines “OHS inspector” in Schedule 7 to mean a Safety Authority inspector, as opposed to an inspector of the Designated Authority of a State or Northern Territory.

Item 26 inserts a definition of “operator”. Operator means the person who is identified under the regulations as the operator of the facility or proposed facility. The term “operator” is used in Schedule 7 to establish duties of care and to impose various other requirements on the persons who are in management and control of facilities. Prior to the amendment of Schedule 7 by this Bill, duties of care addressed employers, manufacturers, suppliers and employees, but not “operators” or other persons in a supervisory role who are not employers of the relevant workforce.

Items 27, 28 and 33 introduce definitions of “operator’s representative at a facility”, “premises” and “regulated business premises”. These terms are used in Schedule 7 to better enable the Safety Authority and its inspectors to take necessary and appropriate compliance and enforcement action in the event of an accident, dangerous occurrence or apparent breach of legislation. The function of the “operator’s representative” is to be the point of contact between the operator and OHS inspectors who visit the facility. “Premises” and “regulated business premises” are places, either offshore facilities or relevant onshore places, at which OHS inspectors will have certain specified powers of entry and search.

Item 29 introduces a definition of “proposed facility”, which is a facility in planning, design, or fabrication at a place other than Safety Authority waters (for example at an Australian shipyard or overseas). Schedule 7 has no direct application to a “proposed facility”, but the term is used in the Offshore Petroleum (Safety Levies) Bill 2003. Subsections 7(8) and 8(8) of that Bill provide that “facility” includes a proposed facility and that “proposed facility” has the same meaning as in Schedule 7 and in the ‘mirror’ State and Northern Territory legislation, respectively. The inclusion of a proposed facility in the definition of “facility” in those sections is necessary to enable the Safety Authority to have influence over the facility’s design and future OHS management, prior to its actual construction or installation in Australian waters, and to recover its costs of so doing. This will only occur, however, if the owners or operator of the proposed facility wish to have a safety case in force in respect of the proposed facility, prior to its construction or installation in Safety Authority waters, or to utilise services of the Safety Authority under the regulations in relation to a proposed facility.

Item 30 inserts a definition of “recovery”. It includes all processes directly or indirectly associated with recovery of petroleum. It is a broad-ranging term that would include, for example, activities to enhance the productive capacity of a petroleum deposit. It does not limit the meaning of the word when used elsewhere in the Act.
Item 31 introduces a definition of “registered organisation”, to mean an organisation within the meaning of the Workplace Relations Act 1996.

Item 32 repeals the definition of “registered union”.

Item 34 defines “work” as work offshore that is directly or indirectly related to the construction, operation, maintenance or decommissioning of a facility. The change to the definition is necessary because Schedule 7 no longer applies in relation to all persons who do work in relation to activities to which Part III of the Act applies.

Item 35 introduces a definition of “workforce representative”. In relation to a person who is a member of the workforce at a facility “workforce representative” means a registered organisation of which that person is a member, when that person is qualified to be a member because of the work performed at the facility. In relation to a designated work group or a proposed designated work group, “workforce representative” means a registered organisation of which a person is a member who is (or is likely to be) in the work group, when that person is a member because of the work performed or likely to be performed at the facility.

Item 36 introduces a definition of “work group employer” in relation to designated work groups. Currently, the arrangements for designated workgroups are drafted on the assumption that each workgroup comprises a set of persons all having the same employer. The amended workgroup arrangements assign responsibility for organising workgroups to the operator, and use the term “workgroup employer” to allow for the fact that members of the workgroup may be employed by a number of different employers.

Item 37 substitutes a new definition of “workplace”. It means either the whole facility or any part of the facility. This item makes clear that, for the purpose of Schedule 7, the whole of the facility is treated as a workplace, including meals, accommodation and recreation areas.


Through these items, the Bill ensures that the primary consultation on occupational health and safety issues will be between the operator and the workforce, but it allows the workforce to request the involvement and assistance of workforce representatives. Areas where the workforce may request that workforce representatives become involved are:

- development of an occupational health and safety policy under clause 3;
- establishment and variation of designated work groups under clause 12;
- election, resignation or disqualification of health and safety representatives under clauses 13, 20 or 21;
- establishment and operation of health and safety committees under clause 23;
- requests, under clause 30, for the Safety Authority to carry out an inspection
– appeals, under clause 37, against notices issued or varied by a Safety Authority inspector
– requests, under clause 49, for the Safety Authority to institute a prosecution against a person for an apparent offence against the Schedule or regulations
**Item 38 - Definitions and other provisions relating to facilities**

This item repeals clause 3 and inserts new clauses 2A, 2B, 2C, 2D and 3.

Clause 2A further defines the vessels and structures located in Commonwealth waters that are considered to be “facilities” for the purpose of Schedule 7.

Subclause 2A(1) provides that (subject to subclauses (4) and (5)), vessels or structures are taken to be facilities whether floating or fixed, whether or not they are capable of independent navigation, not only whilst being used for the defined petroleum activities, but also when being prepared for such use at the operations site.

The categories of activities that cause relevant vessels and structures to be defined as facilities are:

(i) recovery, processing, storage and offloading of petroleum, or any combination of these activities
(ii) provision of accommodation for persons at another facility, whether or not connected by walkway
(iii) drilling or servicing a petroleum well, or doing any work associated with drilling or servicing
(iv) laying of pipes for petroleum, including any manufacturing of such pipes, or doing work on existing pipes
(v) erection, dismantling or decommissioning of a vessel or structure of any of the above types
(vi) any other activity related to offshore petroleum that is prescribed

If diving work is facility-related, it will be included in the occupational health and safety regime applied in relation to the facility, because the place where the diving takes place will be an ‘associated offshore place’. (The relevant diving safety requirements in the Petroleum (Submerged Lands) (Diving Safety Regulations) 2002 will also apply.)

Subclause 2A(2) clarifies that a vessel or structure is taken to be “located” offshore for the purpose of laying pipes despite the fact that it moves as the pipe is laid.

Subclause 2A(3) clarifies that a facility includes any wells and associated plant and equipment by which petroleum is recovered, any pipe or system of pipes through which petroleum is conveyed from a well to the facility, and any secondary line associated with the facility.

Subclause 2A(4) clarifies that the following are not facilities:

(a) off-take tankers
(b) tugs or anchor handling vessels
(c) vessels used for supplying facilities or for travelling to or from a facility
(d) any vessel or structure declared by regulations not to be a facility

Subclause 2A(5) further clarifies that a vessel or structure is considered to be a facility for these purposes not only when it is being used for petroleum activities, but
from the time it arrives at the site where it is to be so used, until it has ceased its operations and is in a navigable or other state that enables it to relocate from the site.

Subclauses 2A(6) and (7) provide that pipelines licensed under Division 4 of Part III are ‘facilities’. Where a licensed pipeline conveys petroleum from a well without the petroleum having passed through another facility, the pipeline “facility” includes that well and associated plant, equipment and gathering lines.

Clause 2B establishes a duty on the operator to ensure that, whenever a facility is attended, there is a person present who is in management or control, and who provides a point of contact between the operator and any Safety Authority inspector who may visit that facility. The clause also ensures that the name of that person is prominently displayed at the facility. This person is referred to as the “operator’s representative at a facility”.

Clause 2C makes clear that the provisions of Schedule 7 apply to persons who are at a facility solely for purposes of accommodation, even though all their work activities may be at another facility. It is common practice during periods of construction and major maintenance works to accommodate persons at a different facility to the one at which they work.

Clause 2D defines “contractor”. The effect of the new definition, together with subclause 5(3), is that a person will owe the ‘contractor’ duty of care in subclause 5(3) to another person whom he or she engages under a contract for services to do work at a facility, and to employees of that other person.

Item 38 (continued) – Duties of Operator

The new clause 3 establishes the duties of care that are owed by the operator of a facility.

The primary duty of the operator is to take all reasonably practicable steps to ensure that the facility and all work and other activities at the facility are safe and without risk to health.

It should be noted that this duty does not require the operator to eliminate all risk, as this is not possible. The same applies to the duties of care that are imposed on other persons by clauses 4 to 9. Rather, the duties are conditioned by the phrase “take all reasonable practicable steps”. This is a concept that is common to all modern OHS regulatory regimes; it is discussed in more detail later.

It should also be noted that the duties refer to “risk to health”, as well as to “safe”. This is to clarify that the duties encompass hazards to long-term health (for example, exposure to carcinogens) as well as hazards that can cause immediate harm (such as fires or explosions).

The PSLA does not, prior to its amendment by this Bill, establish any duties of care for operators, but only for employers, manufacturers, suppliers, etc. Also, where the employer does not employ members of the offshore workforce, either directly as employees or through a contract to supply a ‘contractor workforce’, but enters into
arrangements whereby there are a number of intermediate contractors, this gives rise to a gap – the employer owes no duties to those intermediate persons.

Placing duties on the operator, who is the person most able to control the risk at the facility, generally strengthens the regulatory regime. In addition, the operator duties, being more general than employer duties, rectify the above-mentioned gap.

The duties on operators established by this item are consistent with those imposed, through Commonwealth, State and Territory legislation, on those persons who are occupy, manage and control facilities on land that are used for the manufacture or storage of explosives and other dangerous goods.

Without limiting the generality of the primary duty, the clause also establishes more specific duties on the operator, namely to take all reasonably practicable steps to:

- provide and maintain a safe and healthy physical environment at the facility
- provide adequate welfare facilities
- ensure that plant, equipment, substances etc at the facility are safe and without risk to health
- implement and maintain systems of work at the facility that are safe and without risk to health
- implement and maintain emergency systems and procedures for the facility
- provide appropriate information, instruction and training
- monitor health and safety at the facility
- provide medical and first aid facilities
- develop a suitable health and safety policy.

“Reasonably Practicable Steps”

The general duties of care are all qualified so that the person owing the duty of care has to take “all reasonably practicable steps.” This is an important concept, is widely used in OHS law both in Australia and internationally, and recognises that it is not possible to entirely remove all risk.

In the OHS legislation of the States and Northern Territory the duties are conditioned by the phrase “reduce so far as is practicable” or “reduce so far as is reasonably practicable”. The offshore petroleum industry commonly uses the term “reduce to as low as reasonably practicable”, based on the wording of the legal duty in the United Kingdom. In practice, all these phrases have the same meaning.

What the phrases mean is that the duty holder must weigh up the level of risk, the state of knowledge about the risk and about the ways in which it may be controlled, and the costs of providing the control. On the basis of these considerations the duty holder must then decide what measures will be adopted to control the risk. Where the risk is high, or where knowledge is uncertain, more measures would be adopted, and less weight would be given to the cost.

The duties apply only so far as the duty-holders can exercise control or mitigate the consequences through the conduct of their undertaking. Some risks arise from external events or circumstances over which the duty-holder has no control, but even
in these cases the duty-holders are able to take action to mitigate the consequences that may result. Such risks should therefore be included in the assessment.

This process can involve varying degrees of rigour. The more systematic and rigorous the approach, the more transparent it will be to the regulator and to other interested parties. However, duty-holders should not be overburdened by being required to apply high rigour in all cases. Generally, the greater the initial level of the risk under consideration, the greater the degree of rigour that will be required of the arguments (within the Safety Case) that show that the duties have been met.

**Item 39 – Duties of Care of Supervisors and Employers**

This item repeals clauses 4 and 5, and substitutes new clauses.

The new clause 4 establishes duties of persons who may be in management or control of a part of a facility, or of certain activities at a facility. Examples of such persons may be those supervising a drilling crew, maintenance crew, or dive team.

The duties established for these persons are similar to those established for the operator, but are limited to the areas or activities under the control of the person. The duties require the person to take all reasonably practicable steps to ensure the places or activities under their control are safe and without risk to health, including all reasonable practicable steps to:

- provide and maintain a safe and healthy physical environment at the relevant places
- ensure that all plant, equipment, substances etc used in the work is safe and without risk to health
- implement and maintain systems of work that are safe and without risk to health
- provide a means of access to and escape from the relevant places that is safe and without risk to health
- provide appropriate information, instruction and training

The duties on these persons do not include requirements to provide medical and first aid facilities, or develop a health and safety policy, as these are matters best addressed for the facility as a whole, by the operator. The duties on these persons also do not require monitoring of occupational health and safety, as this is best addressed by the operator (for the facility as a whole) and by employers (for each individual person).

The new clause 5, like the clause 4 it replaces, establishes duties of employers to employees and to contractors. The clause has been redrafted so as to be consistent with other duties of care.

The amended employer duties are similar to those of supervisors, specifically to take all reasonable practicable steps to protect the health and safety of employees, including all reasonable practicable steps to:

- provide and maintain a safe and healthy working environment
– ensure that all plant, equipment, substances etc used by the employees is safe and without risk to health:
– implement and maintain systems of work that are safe and without risk to health
– provide a means of access to and escape from the employees work locations that is safe and without risk to health
– provide appropriate information, instruction and training

There is overlap in the duties of care imposed on operators, on persons in control of parts of the facility or particular work, and on employers. There is further overlap with the duties of care imposed on manufacturers, suppliers, etc, which are defined by later clauses. This overlap is intentional. It ensures that there are no gaps in the coverage of the duties of care, so that, when enforcement action is required, it can be taken against the most appropriate person in the circumstances. Such action might be directed at one or more of the relevant persons, but would focus on those persons best positioned to control the risk in the relevant circumstances.

The repealed clause 5, which imposed duties of employers in relation to third parties, has been replaced by the operator and supervisor duties of care and by the broadened scope of clause 9.

**Items 40 to 49 – Duties of Care of Manufacturers**

These items make minor amendments to the existing duties of care of manufacturers of plant and substances, as set out in clause 6 of Schedule 7.

The amendments ensure that the duties are not restricted to protection of “employees” whilst performing “work”, but provide protection to all persons at all times they are at petroleum facilities.

**Item 50 – Duties of Care of Suppliers**

This item amends the existing duties of care of suppliers of plant and substances, as set out in clause 7 of Schedule 7.

Minor amendments are made throughout clause 7, equivalent to those made to clause 6 by items 40 to 49, to ensure that the duties are not restricted to protection of “employees” whilst performing “work”, but provide protection to all persons at all times they are at petroleum facilities.

The duties of care of suppliers are also extended to those persons who may supply an entire facility, rather than just items of plant for a facility. This ensures that appropriate duties are established for the situation where an entire facility is manufactured (for example in a shipyard) and then transported complete to the site at which it is to be used.

**Item 51 – Duties of Care of Persons Erecting or Installing Plant**

This item extends the existing duties of care of persons erecting or installing plant, as set out in clause 8 of Schedule 7, so as to include those who erect or install entire
facilities. The item also removes unnecessarily restrictive references to “employer”, or “work” etc.

**Items 52 to 56 – Duties of Care of Persons at Facilities**

These items extend the duties of care for employees, as set out in clause 9 of Schedule 7, so as to become duties of care of any person at a petroleum facility. In doing so, the item removes unnecessarily restrictive references to “employer” or “work” etc.

There are also changes to the arrangements whereby there may be agreements on choice and/or means of use of equipment. Such agreements would not involve any union, or any workforce representative, but may involve a health and safety representative.

**Item 57 to 60 – Reliance on Information**

This item amends clause 10 of Schedule 7, so as to clarify the extent to which, in complying with their duties, persons may rely on information provided by others, or on the results of testing and research conducted by others. The item also removes unnecessarily restrictive references to “employer”, “work” etc.

**Items 61 to 70 – Regulations Relating to OHS**

These items clarify that Regulations made under clause 11 of Schedule 7 may apply not only to employers, employers etc, but may apply to any class of person involved with offshore petroleum activities. The item also clarifies that any such Regulations may make different provisions for different types or classes of facility.

**Items 71 to 79 – Designated Work Groups**

The purpose of designated work groups is to provide a formal and structured organisation for consultation, between management and the workforce, on occupational health and safety issues. Management may decide to organise designated work groups, and must do so if requested by any of the persons or bodies set out in the legislation.

These items amend the current provisions for the establishment and variation of designated work groups that are set out in clause 12 of Schedule 7. The fundamental purpose of the provisions is unchanged, but certain responsibilities are transferred, and the consultative requirements are amended accordingly.

Currently, the responsibility to organise work groups, in the event that a request is made, lies with the employer. This is changed to be a responsibility of the operator, although in discharging this responsibility the operator has to consult with the employers of all persons who would be members of the proposed work groups. The resultant consultative arrangements are more complex than at present, but better reflect the manner in which offshore activities are organised and managed.

These items also include a number of minor amendments to clause 12 that delete unnecessarily restrictive references to “employee”, “work”, etc.
Items 80 to 84 – Health and Safety Representatives

These items amend the provisions that relate to the selection of Health and Safety Representatives (HSRs) and the keeping of a list of HSRs. HSRs are the persons selected to represent the members of each designated work group during consultations with management on OHS issues. HSRs also have certain powers to inspect workplaces, and issue provisional improvement notices, as described later.

Items 80 and 81 make minor amendments to subclauses 13(2) and (3), which state that HSRs may be selected for each designated workgroup, that such HSRs must be a member of the workforce within that work group, and that such selection may be either by unanimous agreement by all persons in the work group or by election.

Item 83 repeals subclauses 13(4) to (10). Item 84 introduces a new clause 13A that replaces the provisions of the repealed subclauses 13(4) to (9), a new clause 13B that replaces the provisions of the repealed subclause 13(10), and a new clause 13C.

Clause 13A relates to the election of HSRs and includes provisions as follows.

If there is a vacancy for an HSR, and no person has within a reasonable time been unanimously selected by the group, the operator is required to invite nominations from all group members. If the operator fails to invite such nominations in a reasonable time, the Safety Authority may direct the operator to do so. No person can be nominated if disqualified under clause 21.

If there is only one candidate, that person is taken to be elected. If more than one candidate is nominated, the operator must conduct or arrange for the conduct of an election. If requested by the lesser of (a) 100 members of the workforce who are in the relevant designated work group and (b) a majority of the members of the workforce who are in the relevant designated work group, then that election must be in accordance with the regulations. All members of the workforce in the designated work group are entitled to vote. The operator must comply with any Directions of the Safety Authority when conducting the election.

Clause 13B requires the operator to prepare and keep up to date a list of all HSRs, and to make that list available to the members of the workforce and to Safety Authority inspectors.

Clause 13C requires the operator to notify members of the workforce of a vacancy for an HSR within a reasonable time of that vacancy arising, and to notify those members of the name of the person selected within a reasonable time of the selection being made.

Items 85 and 86 – Training of HSRs

OHS law provides that HSR be trained in their role, functions and powers, and that they must be allowed time off work duties to attend suitable and accredited training.
This item transfers the responsibility, under clause 15 of Schedule 7, for accreditation of HSR training courses, from State and Northern Territory Designated Authorities, to the Safety Authority. It also amends the clause so as to require the operator, as well as the employer, to grant the HSR leave to attend an accredited course.

Item 87 – Powers of HSRs

This item makes a number of detailed changes to clause 16 of Schedule 7, which defines the powers of HSRs (that is, the actions HSRs may take) in the event that there is an apparent contravention of Schedule 7 or of the regulations.

These amendments improve the readability of the clause, delete or change terms (such as “employee” or “designated authority”) where these are no longer relevant, and ensure that the operator and all affected employers are involved or consulted, as appropriate.

As a result of the amendment, the arrangements for consultation and involvement are more complex than at present. However, the amended provisions better reflect the manner in which offshore activities are organised and managed.

There is no substantive change to the powers that HSRs are granted under the PSLA. These powers are, briefly: to inspect the workplace, to request an inspection by a Safety Authority inspector, to accompany that inspector during such an inspection, to represent the group members in consultations with management, to investigate complaints by group members about OHS, to be present at any interview of a group member by an inspector or management about OHS issues, to obtain access to relevant information, and to issue provisional improvement notices under clause 17. In exercising these powers, HSRs may be assisted by consultants, if agreed by either the Safety Authority or management.

Items 88 to 91 – Provisional Improvement Notices

HSRs have powers to issue provisional improvement notices (PINs), which are a mechanism to inform persons responsible for relevant work activities that the HSR believes that there is a contravention of the Schedule or regulations. The PIN may also indicate an action that the HSR believes the responsible person must take to rectify the apparent contravention. HSRs may only issue PINs after having consulted with the responsible person about the apparent contravention, and if there is a failure to reach agreement within a reasonable time.

These items make detailed changes to clause 17 of Schedule 7, to reflect the change in terminology from ‘employer’ and ‘employees’ to ‘responsible person’ and ‘work group member’ and to accommodate the fact that there may be a number of persons who are ‘responsible persons’ and that members of a work group may be employed by a number of different employers.

Items 92 to 97 – Effect of PINs
These items make detailed changes to clause 18 of Schedule 7, primarily to replace the terms “investigator”, “investigation” and “Designated Authority” with “inspector”, “inspection” and “Safety Authority, respectively.

The provisions of this clause are briefly as follows. If an HSR issues a PIN to any person, that person may request an inspection by a Safety Authority inspector. Upon that request being made the PIN is suspended, but the Safety Authority inspector may subsequently confirm, vary or cancel the PIN, and make any other decision or exercise any other powers considered necessary. The responsible person is required to ensure that the notice (as confirmed or varied by the inspector) is complied with, to the extent that the responsible person has control.

**Items 98 to 100 – Duties of Operators and Other Employers in Relation to HSRs**

These items make detailed changes to clause 19 of Schedule 7, equivalent to those made to clause 18, and also to assign duties on operators as well as employers.

The provisions of this clause are as follows. They require the operator to consult with an HSR (if requested) about any workplace changes that may affect the health and safety of the workforce, and (if there is no health and safety committee) about the implementation and review of measures to control health and safety. They also require the operator to allow the HSR to make inspections under clause 16.

**Items 101 to 103 – Resignation of HSRs**

These items relate to clause 20. As the title of the clause implies, this clause establishes the processes to be followed for the formal resignation of HSRs. It also sets out the requirements for notifying relevant persons of such resignations.

These items make changes to the clause, for example to change references to “employee” to be references to “group member”, and to ensure that the operator and all relevant employers are involved or informed as appropriate. The fundamental intent of the clause is unchanged.

**Items 104 to 106 – Disqualification of HSRs**

As noted earlier, HSR powers are rarely misused. However, it is necessary to make provisions for disqualification of HSRs, and these provisions are contained in clause 21 of Schedule 7.

These items make changes to that clause, to ensure that the operator and the relevant employer are involved or informed as appropriate. The fundamental intent of the clause is unchanged.

**Items 107 to 111 – Health and Safety Committees**

Health and Safety Committees are formed as a further means of consultation between management and the workforce regarding occupational health and safety.
Management may form such committees of their own volition, but are required to do so under clause 23 of Schedule 7 if the workforce exceeds 50 in total, there are designated work groups, and a request is made. The clause also states that the composition and procedures of the committee are to be agreed by appropriate consultation, that the committee must meet at least every 3 months, and that minutes of meetings must be retained for 3 years.

These items make changes to clause 23, to clarify that health and safety committees should be established for each facility rather than each workplace, that the operator is responsible for organising the committee, and that the operator should consult with workforce employees in this respect. These changes are made to better reflect the organisation and management of offshore petroleum activities. The fundamental intent of the clause is unchanged.

**Item 112 – Functions of Health and Safety Committees**

Clause 24 of Schedule 7 defines the functions of health and safety committees.

This item makes changes to clause 24, equivalent to those made to clause 23. The changes are intended to ensure that the committee facilitates cooperation between all relevant persons – the operator, other employers and member of the workforce. The fundamental intent of the clause is unchanged.

**Items 113 to 115 – Duties of the Operator and Other Employers regarding Health and Safety Committees**

Clause 25 of Schedule 7 makes provisions to ensure that the health and safety committee functions effectively, for example by requiring that relevant information be provided to the committee, and by requiring that persons are given time off work activities to attend committee meetings.

These items make changes to clause 25, equivalent to those made to clauses 23 and 24. For example, the operator is given duties, as well as other relevant employers. The fundamental intent of the clause is unchanged.

**Item 116 – Action by HSRs and Direction to perform other work**

This item substitutes a substantially revised clause 26. Clause 26 deals with the emergency powers of an HSR. The clause has been revised so that it accords better with Article 19(f) of the ILO Occupational Safety and Health Convention, 1981.

Subclause 26(1) provides that if an HSR 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 ceases to perform particular work, the HSR must either inform a supervisor or, if no supervisor can be contacted immediately, must direct that the work cease and inform a supervisor as soon as practicable.

Subclause 26(2) provides that the supervisor must then take such action as he or she thinks appropriate to remove the danger.
Subclause 26(3) provides that, if the HSR has reasonable cause to believe that there continues to be an imminent and serious danger to health or safety unless the work ceases, despite any action taken by the supervisor, the HSR must direct that the work cease and, as soon as practicable, inform the supervisor that the direction has been given.

If an HSR gives a direction under subclause (1) and there is disagreement between the HSR and the supervisor as to the need for the direction, or the HSR gives a direction under subclause (3), then the HSR or the supervisor may make a request to the Authority or to an OHS inspector that an inspection be conducted of the work.

Clause 26 obviously builds on the previous terms in which the clause was drafted. However, there is a major difference in the power that the HSR has in the event of a disagreement between the HSR and the supervisor as to the adequacy of the measures that the supervisor has taken having been notified under subclause 26(1). Under the repealed clause, the HSR was merely able to request that an investigation be conducted. Under the new clause the HSR can, in an appropriate case, give a direction to cease the work.

This item also repeals and re-enacts clause 27 of Schedule 7. Clause 27 enables persons to be deployed to other work in the event of a cessation of work under clause 26.

Other changes made by this item are consequential upon the changes in terminology in Schedule 7. For example, reference to “investigator” is changed to “inspector”.

**Item 117 - Division 4 - Exemptions**

This item inserts a new clause 27A, which confers on the Safety Authority the power, in accordance with the regulations, to make a written order exempting a specified person from any or all of the provisions of Part 3 of Schedule 7 (the workplace arrangements). The Safety Authority must not make an exemption order unless it is satisfied on reasonable grounds that it is impracticable for the person to comply with the provision or provisions. By operation of subsection 46(2) of the Acts Interpretation Act 1901, the power to exempt a specified person enables the Safety Authority to exempt a class of persons.

This power of exemption is necessary because of the varied nature of the facilities to which Schedule 7 applies. For example, in the case of facilities that are not normally staffed the workplace arrangements in Part 3 may be impracticable. There are also likely to be particular circumstances arising on individual facilities that make an exemption necessary.

**Item 118 – Part 4 of Schedule 7 (heading)**

This item gives a new heading to Part 4 of Schedule 7. The heading is now ‘inspections’, to reflect the fact that clause 28, which dealt with the advisory function of the Designated Authority, has been repealed.

**Item 119 – Safety Authority may refer persons seeking advice to experts**
This item repeals clause 28 of Schedule, as equivalent provisions will now exist elsewhere in the PSLA. This clause was the whole of Division 1 of Part 4.

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

This item inserts a new heading for Division 1 or Part 4 of Schedule 7. The new heading is:

Division 1—Inspections

Items 121 to 129 make significant amendments to the powers of OHS inspectors in relation to entry and search of offshore facilities and onshore premises, and in relation to requiring the giving of reasonable assistance, including answers to questions and the production of documents or articles.

The scope of these powers varies, according to whether they are exercised in relation to an offshore facility, onshore “regulated business premises” or other onshore premises. The varying scope of these powers reflects the nature of the safety case system which is established under the Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996 and also the unique characteristics of the offshore petroleum industry and the particular hazards that it presents for the health and safety of the personnel involved.

Regulatory staff must be able to visit the offshore facilities and meet the staff responsible for managing the facility on a regular basis. Access to the facility is needed to examine the extent to which the policies, procedures and systems of work, described by the operator in the safety case, are implemented offshore. This is done by a combination of activities usually described as “inspection,” “audit” and “investigation”. In addition, on rare occasions urgent access to a facility will be required, usually following incidents.

Safety case processes require a higher level of engagement by the regulator with an operator’s staff, compared with some other regulatory approaches. This occurs at all stages in the facility’s lifecycle, before the case is submitted, especially during the assessment phase and post acceptance. These activities inevitably involve regular meetings with an operator’s staff onshore.

Such meetings are essential, because it is from the operator’s onshore offices that the facilities are managed. Any regulatory approach that did not involve examining the workings of safety related management processes and only visited the facility would be seriously flawed. Furthermore, even to carry out the offshore element of the regulatory oversight, such as audits and investigations, visits to the operator’s offices where the senior management team and technical support functions are located, are still needed.

This work is generally done in a highly professional and cooperative manner with little or no need for an inspector to use coercive powers. However, the knowledge by all parties that the powers exist sets the regulatory framework so that there is no
barrier to the free and open communications that are needed to make a safety case system work. The system cannot operate unless regulators:-

1. Have the right of access to facilities at reasonable times. Without this the regulators cannot judge if the safety case is being adhered to;
2. Can require co-operation and assistance. Unless this power exists, duty holders would not have to explain how their particular equipment and managerial systems work, and hence judgments about the safety case cannot be made;

Item 121 – Inspectors, Inspections and Powers of Entry and Search

This item repeals the existing clauses 29 “Investigators”, 30 “Investigations” and 31 “Powers of entry” and replaces them with new clauses 29 “Inspections”, 30 “Inspections”, 31 “Powers of entry and search - facilities”, 31A “Powers of entry and search – regulated business premises (other than facilities)”, 31B “Powers of entry and search – premises (other than regulated business premises)” and 31C “Warrants to enter premises (other than regulated business premises)”.

The new clause 29 gives those persons who are appointed as Safety Authority inspectors under section 150YL the powers, functions and duties of an inspector that are established in Schedule 7 and in the Regulations listed in subsection 140H(2). This replaces the current provisions of clause 29, whereby State and Northern Territory inspectors who are appointed under section 125 are made investigators for the purposes of the Schedule.

The new clause 30 largely mirrors the repealed clause 30, although the provisions of the new clause relate to inspections for the purpose of Schedule 7 and the Regulations listed in subsection 140H(2), whereas the existing clause relates only to investigations for the purpose of Schedule 7 or regulations under the Schedule.

In addition a number of detailed changes are made in line with changes to the rest of Schedule 7. Specifically, references to “investigator” are changed to “inspector”, references to “Designated Authority” are changed to “Safety Authority”, references to “in the performing of work” and “at a workplace” are changed to “at a facility”, and references to “employee” are changed to “member of the workforce”.

New clauses 31, 31A and 32B provide for powers of entry and search at facilities, onshore ‘regulated business premises’ and premises other than ‘regulated business premises’, respectively. An important distinction exists in relation to powers of entry and search at these three categories of place, in relation to the need for an OHS inspector to obtain a warrant. No warrant is required for entry and search at a facility or at onshore ‘regulated business premises’, but a warrant is required for entry and search at other onshore premises.

This distinction is made on the basis that a facility, and operations at a facility, and facility management activities at onshore ‘regulated business premises’ are all the subject of the safety case in relation to a facility.
The offshore facilities to which Schedule 7 applies cannot be constructed, operated or decommissioned without there being a safety case in force for the facility under the Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996. A safety case comes into force when it is accepted by the Safety Authority and an operator is subject to an annual safety case fee which will recover the costs of the Safety Authority in monitoring compliance with the requirements of the safety case and the legislation. The safety case, which is prepared by the operator of the facility, demonstrates the manner in which the operator will comply with its obligations under Schedule 7 and the safety-related regulations. The safety case covers the structure of the facility and all activities that take place there.

An accepted safety case is a form of safety licence, and it will be the principle functions of the Safety Authority to assess the safety case to determine whether to accept it, and subsequently to monitor and ensure compliance with the terms of the safety case. Visits by inspectors to carry out such monitoring will be a frequent and entirely routine aspect of this safety regulatory system.

In relation to onshore ‘regulated business premises’, it is common for production/processing facilities to be remotely operated from onshore, and in the case of all facilities, most of the information and persons carrying out operational management activities are located at onshore premises. The Bill therefore treats such premises on the same basis as the facility itself.

The new subclauses 31(1) and 31(2) largely repeat the repealed clause 31, with necessary changes from “investigator” to “inspector”, from “workplace” to “facility”, from “investigators certificate under section 125” to “inspectors identity card” etc. However, the following additional provisions are made:

- The inspector is given power to inspect, take extracts from, or make copies from, any documents at the facility that he or she reasonable grounds to believe are related to the subject of the inspection. This power is needed in order to conduct effective inspections at the facility, and may also be needed in response to incidents that have occurred.
- The inspector is given power to inspect the seabed and subsoil in the vicinity of the facility. This power may be needed for accident investigation.

The new subclause 31(3) requires the inspector to afford relevant elected HSRs a reasonable opportunity to consult about the subject of the inspection. This extends the existing provisions in subclause 31(2), which are limited to a requirement to notify HSRs. This change is consistent with current OHS legislation in the States and Northern Territory.

The new subclause 31(4) makes it an offence for a person to obstruct or hinder an OHS inspector in the exercise of his or her powers under the clause. This change is also consistent with current OHS legislation in the States and Northern Territory.

New subclause 31(5) disapplies subclause 31(4) where the person has a reasonable excuse. This subclause places on the defendant the evidential burden of establishing that he or she had a reasonable excuse. The reason for this shift in the evidential
burden from the prosecution to the defendant is the facts or circumstances relating to the defendant’s conduct will be principally within the knowledge of the defendant.

Clause 31A provides inspectors with powers of entry and search at “regulated business premises” that are not facilities. The search powers under this clause relate only to documents that relate to a facility or facility operations that are the subject of an “inspection”. The powers therefore relate only to the responsibilities of the Safety Authority in relation to health and safety of the workforce at a facility. “Regulated business premises” is defined to mean “premises that are occupied by a person who is the operator of a facility and that are used or proposed to be used, wholly or principally in connection with offshore petroleum operations”. The intent is to enable inspectors to enter and search operators’ premises used in relation to offshore operations. These may be, for example, premises used for remote operation of facilities, or offices used for management of operations, supply bases, heliports, etc, where there are documents related to an investigation. Currently, such powers do not exist under the PSLA.

In relation to subclause 31A(3) which makes it an offence to obstruct or hinder an OHS inspector in the exercise of powers under this clause and subclause 31A(4) which disapplies subclause (3) if the person has a reasonable excuse, see the clause note to clause 31 above.

Clause 31B(1) provides inspectors with powers of entry and search at premises that are not “regulated business premises”. “Premises” are defined as including “a structure or building, a place (whether or not enclosed or built upon)” or a part thereof. The intent is to enable inspectors to enter and search other relevant premises, such as the offices or workshops of a company who designs modifications to a facility, or who manufactures or maintains equipment used on a facility, where there are relevant documents.

Subclause 31B(2) provides that the powers under clause 31B may only be exercised with the consent of the occupier of the premises to be entered and searched, or in accordance with a warrant.

Subclause 31B(3) requires the inspector to take reasonable steps to inform the person in charge of the premises of the purpose of the entry, and to produce for inspection his or her identity card, a copy of any relevant written direction, and a copy of any restrictions on the his or her powers under subclause 29(3).

However, subclauses 31B(4) and 31B(5) impose further requirements on entry to premises that are not “regulated business premises”. These are:

- if there is a warrant, and the occupier is present, the inspector must provide the occupier with a copy of the warrant
- if there is no warrant, the inspector must inform the occupier of the premises that he or she may refuse consent for entry, or may withdraw a consent that has been given.

Subclause 31B(6) clarifies that consent must be voluntary. Subclauses 31B(7) and (8) mirror 31(4) and (5) and 31A(3) and (4). In relation to subclause 31B(7) which
makes it an offence to obstruct or hinder an OHS inspector in the exercise of powers under this clause and subclause 31B(8) which disapplies subclause 31B(7) if the person has a reasonable excuse, see the clause note to clause 31 above

Clause 31C establishes how warrants to enter premises may be obtained.

Subclause 31C(1) provides that an inspector may apply to a Magistrate for a warrant that would authorise the inspector, with such assistance as the inspector thinks necessary, to exercise the powers under subclause 31B(1) at particular premises.

Subclause 31C(2) states that the application must be supported by information, on oath or affirmation, that sets out the grounds for applying for the warrant. Subclause 31C(3) provides that, if the Magistrate is satisfied that there are reasonable grounds, a warrant may be issued.

Subclause 31C(4) establishes that such a warrant must specify the name of the inspector, whether the inspection can be made at any time or at specified times, the day on which the warrant ceases to have effect and the purpose for which the warrant is issued. Subclause 31C(5) establishes that a warrant must have a date of expiry no later than 7 days from the date of issue. Subclause 31C(6) establishes that the warrant must identify the premises to which the warrant applies.

**Items 122 to 129 – Power to require Assistance and Information**

Item 122 repeals the existing subclause 32(1) and replaces it with provisions that are broadly equivalent to the repealed subclauses, but with some important differences.

The more significant changes made by the new provisions are as follows.

Firstly, new subclause 32(1) draws a distinction between the categories of location at which a requirement to answer questions or to produce documents or articles is imposed. If a requirement to answer a question under subclause 32(1B) is made to a person who is physically present at a facility or at onshore “regulated business premises”, there are no formal requirements as to the manner in which the question may be asked or an answer may be required. If the requirement is made to a person who is at other onshore premises, however, subclause 32B(1C) imposes a number of formal requirements. The person is not required to answer the question unless the requirement:

- is in writing;
- specifies a day not less than 14 days later on or before which the question is to be answered; and
- is accompanied by a statement to the effect that a failure to comply is an offence.

A similar distinction is made in subclauses 32(1D) and (1E) in relation to a requirement to produce a document or article, and similar formal restrictions are imposed in the case of a requirement made of a person not physically present at “regulated business premises”.
The rationale for the lack of formal restrictions on the requirement to answer questions or produce documents or articles at facilities and other “regulated business premises” is that the safety case system can only operate effectively if there is constant engagement and cooperation between regulators and industry from the time before construction of a facility commences through to all stages of its productive life and decommissioning. It is essential that there should be a constant flow of information from operators and unhindered consultation with regulators in order to ensure that all reasonably practicable steps are taken to eliminate or reduce risk. In an industry environment where risks can arise and escalate rapidly, it is essential that an OHS inspector have the ability to assess a situation rapidly and have immediate access to all the necessary information in order to determine whether action is necessary to avoid an accident. Situations of immediate danger are not, however, the only circumstances where free access to information is necessary for an OHS inspector. The very nature of a routine monitoring visit makes formal restrictions on the asking of questions inappropriate.

The other significant change is that an OHS inspector can require an operator of a facility to provide appropriate transport to and from the facility (for the inspector, and for any equipment required by the inspector and any samples the inspector may take at the facility) and to provide reasonable accommodation and subsistence at the facility for the purposes of an inspection by the OHS inspector.

It is normal practice around the world in offshore petroleum regulatory regimes for the operators of offshore petroleum facilities to provide transport for regulators. These facilities are remote and there are no publicly available transport facilities that regulators can use. Equally, once on a facility, a regulator is entirely dependant on the operator for their other normal subsistence needs, including food and bedding. Again there is no other practical alternative and it is the generally accepted position elsewhere in the world.

The list of persons from whom assistance and information is modified as follows:

- currently assistance and information can be requested from any employer, any persons representing an employer, any owner or occupier of a workplace at which an investigation is being conducted, and any employee or contractor
- consistent with the changes in the persons who owe duties of care under Schedule 7, subclauses 32(1), (1B) and (1D) now allow assistance and information to be requested from the operator of a facility, the persons in charge of operations at a workplace in relation to a facility, any person representing the first two persons, and a member of the workforce at a facility.

Items 123 to 129 make a number of minor or consequential amendments to clause 32.

**Items 130 to 135 – Power to take Possession**

Clause 33(1) of Schedule 7 gives inspectors the power to take possession of plant, to take samples of substances etc, for example as part of an investigation into an accident. Clauses 33(2) to (5) impose requirements to notify affected persons when powers under 33(1) are exercised.
Items 130 to 132 change “investigation” to “inspection”, “investigator” to “inspector” and “workplace” to “facility” throughout subclause 33(1).

Item 133 replaces subclause 33(2), making equivalent changes to those made to subclause 33(1), and also clarify to whom notice must be given that the inspector has taken possession of plant or samples of substances etc. These persons are the operator of the facility, the employer of any member of the workforce who uses the plant or substance, the owner of the plant or substance (if not otherwise notified as the operator or as an employer) and the HSR for the designated workgroup of the relevant members of the workforce.

Item 134 replaces subclauses 33(3), making further equivalent changes. The effect is that, rather than an “employer” displaying the notice at the “workplace”, the operator’s representative at the facility must display the notice.

Item 135 replaces “investigator” by “inspector” throughout subclauses 33(4) and 33(5).

Items 136 to 138 – Power to Direct Workplaces are not Disturbed

Item 136 repeals the existing subclause 34(1) and replaces it with a new subclause regarding the power of inspectors to issue notices that direct that workplaces not be disturbed, in order to remove immediate threats to health and safety, or to allow inspections or other examinations to take place.

Although the provisions are equivalent to those that currently exist, a number of detailed changes are made, in line with other amendments made throughout Schedule 7. For example, “investigation” is replaced by “inspection”, “investigator” is replaced by “inspector” and “workplace” is replaced by “facility”. There is also some rephrasing of the provisions, for clarification.

The amendment requires any notice to be given to the operator’s representative at the facility, whereas the current requirement is to give the notice to “the persons who is for the time being in charge of operations at the workplace”.

Item 137 repeals the existing subclauses 34(3) and (4) and replaces them with new but equivalent subclauses. The amended subclause 34(3) requires the operator’s representative at the facility to ensure that the notice is displayed prominently at the workplace. The amended subclause 34(4) requires the inspector to notify the owner of any plant, substances etc that is the subject of direction, and to notify the HSR of any affected designated workgroup.

Item 138 repeals the existing subclause 34(5) and replaces it with an equivalent subclause. The amended subclause requires the operator of the facility to ensure that the direction is complied with.

Items 139 to 146 – Power to Issue Prohibition Notices
Item 139 repeals the existing subclauses 35(1) and 35(2) and replaces them with new but equivalent subclauses regarding the power of inspectors to issue notices that prohibit specified activities.

Although the provisions are equivalent to those that currently exist, a number of detailed changes are made, in line with other amendments made throughout Schedule 7. For example, in subclause 35(1), “investigation” is replaced by “inspection”, “investigator” is replaced by “inspector” and “employer” is replaced by “operator of a facility”. There is also some rephrasing of the provisions, for clarification.

Subclause 35(2) as amended requires the prohibition notice to be issued to the operator by giving it to the operator’s representative at the facility.

Item 140 replaces “investigator’s” by “inspector’s” in subclause 35(3)(a), and item 141 replaces “employer” by “operator” in subclause 35(3)(b). This is consistent with changes made throughout Schedule 7.

Item 142 repeals the existing subclauses 35(4), (5) and (6) and replaces them with new but equivalent subclauses that make essentially the same provisions. The amended subclause 35(4) requires the operator to ensure that the notice is complied with. The amended subclause 35(5) requires the inspector to inform the operator if the action taken by the operator to remove the threat to health and safety is not adequate. The amended subclause 35(6) provides that the notice ceases to have effect once the inspector has informed the operator that the inspector is satisfied with the action taken to remove the threat.

Items 143 and 144 replace “investigator” by “inspector” and replace “investigation” by “inspection” throughout subclauses 35(7) and (8).

Item 145 repeals the existing subclause 35(9) and replaces it with a new but equivalent subclause. The amended subclause 35(9) requires the operator’s representative at the facility to give a copy of the notice to the HSR of each designated workgroup that is affected by the notice, and to display a copy of the notice in a prominent place.

Item 146 makes a minor amendment to subclause 35(10). Under the amended subclause the inspector is required to give a copy of the notice to any person (who is not the operator) who owns plant, substances etc affected by the notice.

Items 147 to 154 – Power to Issue Improvement Notices

These items relate to clause 36 of Schedule 7, which establishes the powers of inspectors to issue notices that require improvements to be made so as to correct an apparent contravention of Schedule 7 or of the regulations, or to prevent a repeat of an earlier contravention.

Items 147 and 148 replace “investigator” by “OHS inspector”, replace “investigation” by “inspection” and replace “forms the opinion” by “believes on reasonable grounds” in subclause 36(1).
Item 149 repeals the existing subclause 36(2) and replaces it with new but equivalent subclauses (2) and (2A). New subclause 36(2) allows the inspector to give the improvement notice to the operator’s representative at the facility if the operator is the person responsible for the contravention or likely further contravention. New subclause 36(2A) also allows the inspector to give the improvement notice to the operator’s representative at the facility when the responsible person is an employer but it is not possible to give the notice to that employer. In this second case the operator’s representative must in turn ensure that the employer is given a copy of the notice.

Items 150 to 153 make changes to subclauses 36(3) and 36(5) equivalent to those made to subclause 36(1) by items 147 and 148.

Item 154 repeals the existing subclause 36(7) and (8) and replaces them with new but equivalent subclauses:

- The amended subclause 36(7) requires any employer who is given an improvement notice to in turn give a copy of that notice to the operator’s representative at the facility.
- The new subclause 36(7A) requires the operator’s representative at the facility, if a notice is given to the representative by an inspector or if a copy of a notice is given to the representative by an employer under 36(7), to give a copy of the notice to the HSR of each designated workgroup that is affected by the notice, and to display a copy of the notice in a prominent place.
- The new subclause 36(8) requires the inspector to give copies of notices to: if the inspector gives a notice to an employee, the employer of that employee; if the notice relates to a workplace, plant or substances etc, the owner of that workplace, plant, substance etc; if the inspector gives the notice to an owner of a workplace, the operator and any affected employers.

These provisions appear complex, but ensure that all persons affected by a notice are given copies of the notice via appropriate and practical means.

*Items 155 to 167 – Appeals*

These items make numerous minor changes to clause 37, consistent with changes made throughout Schedule 7. For example, “investigator” is changed to “inspector”, “investigation” is changed to “inspection”, “an employer” is changed to “the operator of a facility”, and “employee” is changed to “a member of the workforce”. The provisions of the clause are not substantively altered.

*Item 168 – Liability*

This item repeals clause 38, which currently protects investigators against civil liability in connection with the conduct of an investigation or the exercise of powers in relation to an investigation. This Bill includes OHS inspectors in the list of persons and bodies who are protected by the immunity from suit in section 140AA of the Act.

*Items 169 to 172 – Notices not to be Tampered With*
Item 169 changes a reference to 36(7) to be a reference to 36(7A).

Item 170 alters the penalty for tampering with any notice under clauses 33, 34, 35 or 36, from 6 months imprisonment, to 50 penalty units.

Items 171 and 172 add a note in relation to the Criminal Code.

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

This item renames Division 3 of Part 4 of Schedule 7, to refer to “inspections” as opposed to “investigations”.

**Items 174 to 178 – Reports on Inspections**

Item 174 repeals subclauses 40(1), (2) and (3), and replaces them with new but equivalent subclauses regarding reports of inspections. A number of detailed changes are made, consistent with changes made throughout Schedule 7. For example, “investigator” is changed to “inspector”, “investigation” is changed to “inspection”, “Designated Authority” is changed to “Safety Authority”. In addition, the amended subclause 40(3) requires the Safety Authority to give a copy of the report to the operator of the facility, to employees who carry out activities to which the report relates, and to the owners of plant etc to which the report relates.

Items 175 to 177 amend subclauses 40(4), substituting “Safety Authority” for “Designated Authority”, and enabling the Safety Authority to request, from the operator and any other person to whom the report is given, particulars of actions taken or to be taken in relation to the report or any associated notice under clauses 35 or 36.

Item 178 repeals subclause 40(5) and replaces it with a new but equivalent subclause. The amended subclause requires the operator of the facility, on receiving a report from the Safety Authority, to give a copy of that report and any related Safety Authority comments, to each health and safety committee and (where there is no committee) to the HSR of each designated workgroup.

**Item 179 – Notifying and Reporting Accidents and Dangerous Occurrences**

This item repeals subclause 41(1) and replaces it with an equivalent new subclause. The new subclause requires notification and reporting of accidents and dangerous occurrence in relation to a facility as opposed to a workplace, and requires the notification and report to be sent to the Safety Authority as opposed to the Designated Authority. Some other minor changes are made, for example changing “employee” to “member of the workforce”.

**Item 180 – Records of Accidents and Dangerous Occurrences to be Kept**

This item repeals subclause 42(1) and replaces it with an equivalent new subclause. The new subclause requires records of the accidents and dangerous occurrences notified under subclause 41(1) to be kept by the operator of the facility, as opposed to by the employer.
**Item 181 – Codes of Practice**

This item amends subclause 43(1) to allow prescribed codes of practice to have the purpose of providing guidance to operators and employers of members of the workforce. The current subclause refers only to employers.

**Items 182 to 184 – Interference with Equipment etc**

Item 182 amends subclause to replace “employers or contractors at work” by “members of the workforce at a facility”, to make clear that the offence of interfering with equipment applies at all times when offshore.

Items 183 and 184 add a note to provide a cross-reference to the Criminal Code.

**Item 185 – Members of Workforce not to be Levied**

This item extends the provisions of clause 46 to make it an offence for either the operator or an employer to levy a member of the workforce in relation to health and safety matters. The existing clause only makes this an offence for employers.

This item also repeals clause 47. This deletes the requirement for the Designated Authority to prepare an annual occupational health and safety report. Reporting by the Safety Authority is provided for by new section 150YV of the PSLA.

**Items 186 to 190 – Employer not to Dismiss Employee**

These items relate to clause 48, which relates to unfair dismissal or other prejudicial acts against an employee as a result of (for example) a health and safety complaint.

The changes are minor and consequential on other amendments. Item 186 amends subclause 48(1) to make it clear that “employer” includes an operator or any other employer of a member of the workforce of a facility, item 187 changes “investigation” to “inspection”, item 188 adds a cross-reference to paragraph 26(3)(c), item 189 changes “investigator” to “OHS inspector”, and item 190 changes a cross-reference to subclause 26(4) to be a cross-reference to subclause 26(5).

**Items 191 to 193 – Institution of Prosecutions**

Item 191 repeals subclauses 49(1) and (2) and replaces them with new subclauses. Subclause 49(1) now provides that proceedings for an offence against Schedule 7 or the regulations set out in or prescribed under subsection 140H(2) may be instituted by the Safety Authority or by an OHS inspector. Subclause 49(2) now provides that an HSR may request the Safety Authority to institute proceedings for an offence against Schedule 7 or against the regulations if a period of 6 months has elapsed since the relevant act or omission occurred and the Safety Authority has not yet instituted proceedings. Subclause 49(2A) provides that a workplace representative may also make such requests.

Items 192 and 193 make minor consequential changes to subclause 49(3).
Item 194 and 195

These items change references to “the regulations” in subclause 50(7) and in clauses 51 and 52 (which meant only regulations made for the purposes of Schedule 7), to references to the regulations set out in or prescribed for the purposes of subsection 140H(2). These are the occupational health and safety regulations, such as the Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996.

Items 196 and 197 – Regulations (General)

These items change a reference to clause 13 to be a reference to clause 13A, and change an occurrence of the word to “employees” to the phrase “members of the workforce at a facility”.

Item 198 – Transitional provisions for inspections

This item introduces a new Division 2 that provides transitional arrangements. It also sets out the following transitional arrangements in relation to clause 30 of Schedule 7.

Subclause (1) in item 199 extends the provisions for inspections by the Safety Authority, to allow these inspections to ascertain whether persons were complying with the Schedule and regulations as they existed prior to 1 January 2005, to allow inspections in relations to contraventions prior to 1 January 2005 against the Schedule and regulations as they then existed, and to allow inspections in relation to accidents or dangerous occurrences that occurred prior to 1 January 2005.

Subclause (2) provides that a Safety Authority inspector, if carrying out an inspection that had already been the subject of an investigation by a Designated Authority investigator, can have regard to anything that happened in the course of that investigation. It also requires the Designated Authority and the investigator to take all reasonably steps to provide the Safety Authority and the inspector with information, documents etc obtained during the course of the investigation.

Item 199 – Transitional provisions for prosecutions

This item sets out the following transitional arrangements in relation to clause 49 of Schedule 7.

Subclause (1) of this item allows the Safety Authority or an inspector to institute proceedings against a person for an offence against Schedule 7 or the regulations that were in force prior to 1 January 2005.

Subclause (2) of this item enables to Safety Authority or an inspector to continue with any prosecution that was instituted by the Designated Authority or an investigator prior to 1 January 2005.

Item 200 – Transitional provisions - cessation of application of State and Northern Territory OHS laws
The effect of this item is to apply the provisions of section 8 of the Acts Interpretation Act 1901 to all the State and Northern Territory OHS laws or parts of laws that cease to apply as a result of this Bill. It should be noted that the provisions of this item apply to all laws or parts of laws that cease, including regulations and instruments.

**Item 201 – Transitional regulations**

This item provides that regulations may be made in relation to any transitional matters arising out of the amendments to the PSLA contained within this Bill.
SCHEDULE 2 – AMENDMENTS RELATING TO GST COMPONENT OF CERTAIN FEES

Item 1 – Paragraph 129(1)(a)

This item amends paragraph 129(1)(a) so that the Commonwealth is not required to remit to the States or Northern Territory the goods and service tax (GST) component of certain amounts collected by the Designated Authorities, i.e. by the State or Northern Territory Minister responsible for petroleum resources. The paragraph provides that, not later than the last day of each month of the year, the Commonwealth shall pay to the States and the Northern Territory “an amount equal to each amount payable under this Act”, other than exploration permit cash bid payments, and under the Petroleum (Submerged Lands) Fees Act 1994 and the Petroleum (Submerged Lands) (Registration Fees) Act 1967 “in connection with a document that relates to a block or pipeline in the adjacent area and received by the Commonwealth during the preceding month.” Certain fees paid by petroleum operators are GST inclusive. These fees are initially collected by the Designated Authorities who then pay them into the Commonwealth Consolidated Revenue Fund. The amendment proposed in this item would make the provision specify that the Commonwealth would remit to the State or the Northern Territory an amount equal to the non-GST component of each amount payable under the Act as per this paragraph. This would ensure that the portion that is meant to be paid to GST collections would be debited from the remitted fees, if GST applies to the fee in question. The non-GST component would be remitted directly to the State or Northern Territory and the GST component would be remitted to GST collections and ultimately become available to the States or Northern Territory under the established revenue sharing arrangements.

Item 2 – Subsection 129(1A)

Subsection 129(1A) provides that the Commonwealth shall, in accordance with arrangements approved by the Minister, pay to each State and the Northern Territory, “amounts equal to all moneys, other than royalties, payable to the Designated Authority, on behalf of the Commonwealth, under Part III in relation to the adjacent area in respect of the State.” This refers to other types of payments than those mentioned under item 1. The amendment proposed in this item would make a provision similar to the one made by item 1. To the extent, if any, to which subsection 129(1A) deals with GST inclusive amounts, the amendment proposed by this item corresponds to the amendment proposed by item 1.

Item 3 – At the end of section 129

This item adds a new subsection which defines “the non-GST component” that figures in the two preceding items. Under the current terms of the GST legislation and determinations, a number of amounts payable under the Act are in fact not subject to GST. The definition of “the non-GST component” effectively takes account of this as, for those cases, it is defined as the whole amount. If an amount does not include GST, the whole of the amount will be the “non-GST component”, and the whole amount will be remitted back to the State or Northern Territory.
**Item 4 – Application of amendments**

This item sets out the transitional arrangement for commencement of the debiting of the GST component from payments to the States or the Northern Territory and should be read in conjunction with item 4 of the table in clause 2, which provides that the commencement date is the first day of the month following the month in which this Bill receives Royal Assent. The arrangement is prospective. For example, if a fee of the type mentioned in paragraph 129(1)(a) were payable by an operator on or after the first day of the month following the month in which this Bill received Royal Assent, the new arrangements would apply to that fee, i.e. the non-GST component would be remitted to the State or Northern Territory. The existing arrangements would apply to fees that became payable before the commencement date.
SCHEDULE 3 – AMENDMENTS RELATING TO DATA MANAGEMENT

Item 1 - After section 122

This item inserts a new section allowing regulations to be made for data submission, including a requirement that a titleholder submit a data management plan. This item does not repeal section 122 of the Act which reads in part as follows:

“The Designated Authority may, by instrument in writing served on a person carrying on operations in an adjacent area under a permit, lease, licence, infrastructure licence, pipeline licence, special prospecting authority, access authority or instrument of consent under section 123, direct that person to do any one or more of the following things:

(a) to keep such accounts, records and other documents in connexion with those operations as are specified in the instrument;
(b) to collect and retain such cores, cuttings and samples in connexion with those operations as are so specified; and
(c) to furnish to the Designated Authority, or to such person as is so specified, in the manner so specified, such reports, returns, other documents, cores, cuttings and samples in connexion with those operations as are so specified.”

Currently, the system of data collection is established by directions under this section. The retention under sub-item (5) of this section will enable an orderly transition to use of data management plans. When the proposed data management regulations are fully operational, this section will still enable ad hoc directions to be given to particular operators in cases where special requirements are in order.

Item 2 – Subsection 150(1) (at the end of paragraph (c) of the definition of applicable document)

This item refers to the definition of “applicable document”, which currently reads as follows:

“applicable document means:
(a) an application made after the commencement of this Part to the Designated Authority under this Act; or
(b) a document accompanying such an application; or
(c) a report, return or other document relating to a block that has been given after the commencement of this Part to the Designated Authority under this Act.”

This item amends the above definition so that a document submitted under the proposed regulations will also be an applicable document.

Item 3 – Subsection 150(1) (definition of confidential information)

This item repeals the definition of “confidential information” because it is to be included in the proposed data management regulations.
**Item 4 - Subsection 150(1) (definition of contested information)**
This item repeals the definition of “contested information” because it is to be included in the proposed data management regulations.

**Item 5 - Subsection 150(1) (definition of derivative information)**
This item repeals the definition of “derivative information” because it is to be included in the proposed data management regulations.

**Item 6 - Subsection 150(1) (definition of excluded information)**
This item repeals the definition of “excluded information” because it is to be included in the proposed data management regulations.

**Item 7 - Subsection 150(1) (definition of notice inviting objections to the disclosure)**
This item repeals the definition of “notice inviting objections to the disclosure of information” because it is to be included in the proposed data management regulations.

**Item 8 - Subsection 150(1) (definition of petroleum mining instrument)**
This item repeals the definition of “petroleum mining instrument” because it is to be included in the proposed data management regulations.

**Item 9 - Subsection 150(1) (definition of seismic data grid scaled in time)**
This item repeals the definition of “seismic data grid scaled in time” because it is to be included in the proposed data management regulations.

**Item 10 - Subsections 150(2) to (5)**
These subsections contain additional details that are needed to understand the definitions of “derivative information”, “confidential information”, “contested information” and “notice inviting objections to the disclosure of information” referred to above. All these details are likewise to be included in the proposed data management regulations. They are accordingly repealed by this item.

**Item 11 – Subsection 150(6)**
This item renumbers existing section 150(6) as 150(2) since the existing subsection numbers 150(2) to 150(5) have been deleted.

**Item 12 – At the end of Section 150**
Subsection 150(6) currently reads as follows:

“For the purposes of this Part:
(a) cores and cuttings, well data, logs, sample descriptions and other documents, relating to the drilling of a well, are taken to have been given to the Designated Authority not later than one month after the drilling of the well was, in the Designated Authority’s opinion, substantially completed; and
(b) geophysical or geochemical data relating to geophysical or geochemical surveys are taken to have been given to the Designated Authority not later than one year after the geophysical or geochemical field work was, in the Designated Authority’s opinion, substantially completed.”

Under the proposed data management regulations, it is not proposed that this deeming would continue to apply prospectively. However, it is proposed that this provision continue to apply to wells and surveys substantially completed before the commencement of this amendment. This is the purpose of the new subsections (3) and (4) added by this item.

Item 13 – Divisions 2 and 3 of Part IIIA

This item repeals existing sections 150B to 150J inclusive which deal with the disclosure of information and procedures to be followed in respect of contested information. The item substitutes new sections 150B to 150H, which constitute a subset of the provisions in the existing sections. Under the proposed new subsections, provisions relating to Commonwealth, State and Northern Territory Ministers making information and samples available to each other and the use of information and samples in administering the Act or regulations are retained in the Act. Apart from this availability, proposed paragraphs 150B(2)(c), 150C(2)(c), 150E(2)(c) and 150F(2)(c) provide that any other release (i.e. public release) is allowed only if it is provided for in the regulations. The proposed new section 150G maintains the provisions currently in the Act for regulations to prescribe fees for access to data and samples. The proposed new section 150H provides for the regulations to prescribe review procedures in respect of decisions about access and release. This replaces the detailed provisions currently in section 150J. A new section 150J provides that this Part does not override any requirements of the Privacy Act 1988.

Aside from the linkages to the regulations and added mention of Northern Territory Ministers (correcting a past oversight), the provisions to be left in the Act after the repeal proposed by this item deviate only in formatting from provisions currently in the Act.

Item 14 – Subsection 152(1) (subparagraph (b)(ii) of the definition of reviewable decision)

Under section 152 of the Act, a reviewable decision is a decision of the Commonwealth Minister in relation to certain specified areas of responsibility. These include decisions of the Commonwealth Minister under existing subsections 150D(1), (2), (3) or (4), 150F(2) or (3) or 150J(4). These are decisions on whether to release information or grant access to a petroleum mining sample under various scenarios, decisions on whether to impose a fee for this access and decisions reviewing a Designated Authority (i.e. State or Northern Territory Minister’s) decision on an objection to disclosure. Following the repeal and substitution made by item 11, the relevant new section references are the ones proposed in this item.

Item 15

This item inserts a standard power to make transitional regulations.