THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE AMENDMENT (MISCELLANEOUS MEASURES) BILL 2014

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Industry, the Honourable Ian Macfarlane, MP)
OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE AMENDMENT (MISCELLANEOUS MEASURES) BILL 2014

OUTLINE

The purpose of this Bill is to amend the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPGGS Act) to:

- Expand the definition of ‘designated coastal waters’ to include all waters of the sea landward of the Commonwealth offshore area; and

- Provide an alternative mechanism for titleholders to take eligible voluntary actions, where there is more than one holder of a single title.

**Designated coastal waters**

On 28 February 2014, the Commonwealth Government announced a new streamlined approach for environmental approvals for offshore petroleum activities, which makes the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) the sole environmental regulator for offshore petroleum activities in Commonwealth waters. The streamlined arrangements have significantly increased regulatory efficiency in respect of petroleum activities in Commonwealth waters, and delivered clarity and certainty for industry participants.

Recognising the significant increases in efficiency associated with regulatory streamlining, the Commonwealth is seeking to streamline regulatory arrangements in respect of all offshore petroleum activities. As part of this process, the Commonwealth is encouraging the States and the Northern Territory (NT) to confer occupational health and safety (OHS), structural integrity and environmental management functions and powers upon NOPSEMA in respect of the waters of the sea within their respective jurisdictions. This would increase the efficiency of the administrative process, by minimising the number of regulatory agencies with which industry participants must deal, and enable the States and the NT to benefit from the expertise and experience of an established national regulator.

However, the OPGGS Act in its present iteration presents a number of impediments to the conferral of functions and powers upon NOPSEMA in State and NT waters. The States and the NT may confer functions and powers under State and NT legislation in respect of their designated coastal waters. As presently defined, these waters consist of the area seaward of the territorial sea baseline to the line three nautical miles from this baseline, which divides State and NT waters from waters within the jurisdiction of the Commonwealth.

Conferral is also currently permitted under State and NT legislation in respect of eligible coastal waters, consisting of any waters that are landward of the territorial sea baseline, and not within the limits of the States or the Northern Territory. However, conferral in respect of this area is subject to certain conditions, including the requirement to conclude an intergovernmental agreement. Conferral is not currently permitted at all in respect of the internal waters of the States and the NT; that is, those waters within the limits of the States or the NT.
The proposed amendments to the OPGGS Act will expand the definition of ‘designated coastal waters’ to include all three of these areas, such that the States and the NT will be permitted to confer functions and powers on NOPSEMA under State/NT legislation in respect of all sea waters landward of the Commonwealth offshore area. This will enable the States and the NT to confer functions and powers over the widest possible geographic area within their respective jurisdictions.

**Multiple titleholders**

This Bill will also amend existing administrative arrangements for multiple holders of a single title to take certain actions permitted, but not required, to be taken under the OPGGS Act or regulations.

Due to the high cost of offshore petroleum operations, petroleum titles are often held by a consortium of companies, typically operating under a joint venture agreement. In response to legal advice obtained on issues of legal obligations and multiple titleholders, in November 2010 the OPGGS Act was amended to insert a new Part 9.6A to clarify how provisions permitting, but not requiring, titleholders to make applications and requests and give nominations and notices (defined as **eligible voluntary actions**) apply when there are two or more registered holders of a single title.

Under Part 9.6A, the registered holders of the title are not entitled to take an eligible voluntary action unless they have nominated one of them to take eligible voluntary actions on behalf of all of them. If a nomination is in place and the nominated titleholder takes an eligible voluntary action that is expressed to be made on behalf of all of the registered holders, the OPGGS Act has effect as if the eligible voluntary action were taken by the registered holders jointly.

However, application of the process in practice has created some confusion among titleholders, particularly in relation to the mandatory nature of the process, and also identified several unintended consequences.

For example, titleholders have expressed concern that there is scope under the current scheme for a nominated titleholder to take an eligible voluntary action without the knowledge of the other registered holders of the title, and thereby bind them to any outcome of the action. In order to prevent this, joint titleholders have in a number of instances made a nomination for the purpose of a particular action and then immediately revoked the nomination once the action has been taken. This pattern is then repeated for subsequent actions, creating an ongoing cycle of administrative burden both for the titleholders and for NOPTA.

Further, concerns exist in relation to the validity of an eligible voluntary action taken by a nominated titleholder in circumstances where the nomination is revoked after the relevant action is taken, but before a decision is made in relation to the action by the applicable regulator.

Finally, because any of the registered titleholders may revoke a nomination made under the OPGGS Act without notifying the other registered holders of the title, the situation may arise where a nominee, unaware of the revocation, purports to take an eligible voluntary action that they are not permitted to take. This creates a number of administrative difficulties for NOPTA – including the potential need to refund application fees – as well as additional burdens on the titleholders.

This Bill would therefore amend Part 9.6A to provide an alternative mechanism for multiple holders of a single title to take eligible voluntary actions and to provide clarity in relation to the relevant
provisions. The amendments will expressly permit multiple titleholders to choose between (a) using the existing nominations process for the taking of eligible voluntary actions, and (b) taking these actions jointly by way of affixing the signatures of all titleholders.

The amendments will also expressly clarify that any eligible voluntary actions taken by a nominee before the nomination is revoked will remain valid. Finally, the amendments will impose a requirement on a titleholder who revokes a nomination to notify the other holders of the title in writing as soon as reasonably practicable after the revocation being made.

FINANCIAL IMPACT STATEMENT

This Bill has no financial impact.
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS


Offshore Petroleum and Greenhouse Gas Storage Amendment (Miscellaneous Measures) Bill 2014

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Bill

The purpose of this Bill is to amend the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPGGS Act) to:

- Expand the definition of ‘designated coastal waters’ to include all waters of the sea landward of the Commonwealth offshore area, so that States and the Northern Territory can confer functions and powers on the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) in respect of the broadest possible geographical area; and

- Provide an alternative mechanism for offshore petroleum and greenhouse gas titleholders to take actions that are permitted, but not required, to be taken under the OPGGS Act and regulations (‘eligible voluntary actions’), such as submission of applications and nominations, where there is more than one holder of a single title.

The Bill also implements the following features to give effect to these primary amendments.

- Permitting regulations to prescribe future State and Northern Territory legislation for the purposes of the definitions of ‘State PSLA’ and ‘Territory PSLA’ respectively in section 643 of the OPGGS Act. This will allow the Commonwealth to readily ensure that States and the Northern Territory can continue to confer functions and powers on NOPSEMA under a State PSLA or Territory PSLA, even if the name and scope of the relevant State or Territory legislation is subsequently amended.

- Clarifying that an eligible voluntary action taken by a nominated titleholder remains valid where the nomination is revoked before a decision is made by the regulator in relation to the action. This feature delivers clarity to titleholders about the effect of a revocation of a nomination on eligible voluntary actions already taken by the nominated titleholder.

- Requiring a registered holder of a title who revokes a nomination of a titleholder to take eligible voluntary actions to notify the other holders of the title as soon as reasonably practicable. This will minimise administrative burden associated with titleholders taking eligible voluntary actions unaware that their nomination has been revoked.

Human rights Implications

This Bill does not engage any of the applicable rights or freedoms.
Conclusion

This Bill is compatible with human rights as it does not raise any human rights issues.
OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE AMENDMENT (MISCELLANEOUS MEASURES) BILL 2014

NOTES ON CLAUSES

Clause 1: Short title

This is a formal provision specifying the short title of the Act.

Clause 2: Commencement

This Act will commence on the day after this Act receives the Royal Assent.

Clause 3: Schedules

This clause gives effect to the provisions in the Schedule to this Act.
Schedule 1 – Designated coastal waters etc.


Item 1: Subsection 572F(4) (paragraph (b) of the definition of land or waters)

Section 572F provides for recovery by a State or Territory from a Commonwealth titleholder of costs or expenses arising out of an escape of petroleum from the titleholder’s operations.

This item removes the reference to eligible coastal waters from the definition of land or waters, of the relevant jurisdiction, within subsection 572F(4) of the OPGGS Act.

Under the amendments made by this Act, those areas forming the eligible coastal waters of the States and the Northern Territory (NT) will be included in the expanded definition of designated coastal waters, which is referred to in paragraph (c) of the definition of land or waters, of the relevant jurisdiction. As a consequence, references to eligible coastal waters are redundant, and can be repealed.

However, the policy intent is that the States and the NT should be able to recover reasonable costs or expenses incurred as a result of an escape of petroleum under the ‘polluter pays’ provisions both in respect of areas covered by the expanded definition of designated coastal waters, and in respect of land and waters (e.g. lakes, rivers, etc.) not captured by this definition. (The expanded definition of designated coastal waters only refers to waters of the sea within the limits of the State or Territory.)

Consequently, it is appropriate that the definition of land or waters, of the relevant jurisdiction, under subsection 572F(4) continue to include references to ‘land or waters within the limits of the jurisdiction’ (see paragraph (a) of that definition).

Item 2: Subsection 641(1)

This item, with items 3 and 4, amends section 641 of the OPGGS Act, which disapplies certain Commonwealth maritime legislation, so that it applies to any part of the designated coastal waters of a State or the NT in respect of which State or Territory legislation substantially corresponding to the listed OHS laws (as defined in section 638 of the OPGGS Act) applies.

Amendment is necessary because a State or the NT may now apply legislation that substantially corresponds to the listed OHS laws only in relation to a part of the designated coastal waters as newly defined. For example, the relevant State or Territory may apply legislation that substantially corresponds to the listed OHS laws to the 3 nautical mile territorial sea covered by the existing definition of designated coastal waters but not, for example, to their internal sea waters, or to parts only of their internal waters.

Item 3: Subsection 641(1)

This item further amends subsection 641(1) consistently with the amendment made by item 2.
Item 4: Subsection 641(2)

This item amends subsection 641(2), which is the actual disapplication provision, so that it carries out the intent that Commonwealth maritime legislation is disapplied in relation to any part of the designated coastal waters of a State or the NT in respect of which State or Territory legislation substantially corresponding to the listed OHS laws applies, to the same extent as Commonwealth maritime legislation is disapplied in the offshore area. See discussion under item 2.

Item 5: Section 643 (paragraph (a) of the definition of State PSLA)

In 2010, Victoria enacted the Offshore Petroleum and Greenhouse Gas Storage Act 2010 (Vic), which replaced the previous Petroleum (Submerged Lands) Act 1982 for that State. The Commonwealth understands that some other jurisdictions are also considering changes to their offshore resources legislation that may place that legislation outside the definition of State PSLA in section 643.

This item takes account of this eventuality. It provides that the definition of State PSLA, in relation to New South Wales, includes the Petroleum (Submerged Lands) Act 1982 of that State, or any other such law of NSW as is prescribed by the regulations. This will ensure that, by modification to regulations rather than an amendment to the OPGGS Act, New South Wales may continue to confer powers upon the National Offshore Petroleum Safety and Environment Management Authority (NOPSEMA) in the event that it enacts legislation not presently captured by the definition of State PSLA.

It is acknowledged that section 10A of the Acts Interpretation Act 1901 (AIA) provides for a reference to a short title provided by a law of a State or Territory for the citation of a law of that State or Territory as originally enacted to be construed as a reference to that law as originally enacted or as amended from time to time. However, a State may decide, for example, to amend its offshore petroleum legislation so that it covers both offshore and onshore operations, or so that it covers both petroleum and other operations, such as mining or geothermal. There is a risk that the change in scope of the new legislation would take it outside of the operation of section 10A of the AIA, and therefore this item will ensure that the new legislation can instead be prescribed by regulation.

The amended definition technically constitutes a Henry VIII clause (i.e. a provision that enables primary legislation to be modified by delegated legislation). However, the scope of this clause is very narrow, and will only be used in the event of a State or NT legislative change to ensure that powers and functions can continue to be conferred on NOPSEMA by that State or the NT. It would, in effect, preserve the continuing effective operation of that part of the OPGGS Act. The State will still have the ability to decide whether to confer functions on NOPSEMA. In addition, the type of functions that can be conferred on NOPSEMA is limited in scope by section 646 of the OPGGS Act. The regulations will not be able to expand the type of functions that can be conferred on NOPSEMA, or expand the geographical coverage of the conferral beyond the area envisaged by the OPGGS Act, but merely ensure that functions that are appropriately conferred by or under a State or NT Act in accordance with section 646 are conferred effectively. Given the benefits associated with regulatory streamlining, it is preferable to ensure that the names of relevant State or NT legislation, or parts of legislation, can be prescribed quickly if necessary to ensure conferrals of functions on NOPSEMA can be given rapid effect.
Item 6: Section 643 (paragraph (b) of the definition of State PSLA)


This item also provides that the definition of State PSLA, in relation to Victoria, also includes any other such law of Victoria as is prescribed by the regulations. See discussion under item 5.

Item 7: Section 643 (paragraphs (c), (d), (e) and (f) of the definition of State PSLA)

This item expands the current definition of State PSLA, in relation to Queensland, Western Australia, South Australia and Tasmania, to include any other such law of the relevant jurisdiction as is prescribed by the regulations. See discussion under item 5.

Item 8: Section 643 (definition of Territory PSLA)

This item provides that the definition of Territory PSLA includes the Petroleum (Submerged Lands) Act of the NT, or any other such law of the NT as is prescribed by the regulations. See discussion under item 5.

Item 9: Section 643 (note at the end of the definition of Territory PSLA)

This item removes the note at the end of the definition of Territory PSLA. The amendments to the OPGGS Act made by items 5 to 8 will provide for laws of a State or the NT to be prescribed by regulation for the purposes of the definition of State PSLA or Territory PSLA. It will therefore not be necessary to apply section 10A of the AIA – see discussion under item 5.

Item 10: Section 644

This item makes the primary amendment to the OPGGS Act under Schedule 1 to this Act.

The item removes the existing definition of designated coastal waters from the OPGGS Act, and substitutes a new, expanded definition. The new definition, in relation to a State or the NT, covers

‘so much of the scheduled area for the State or Territory as consists of any waters of the sea that are on the landward side of the offshore area of the State or Territory.’

The scheduled area is the area defined by the geographic coordinates for the relevant State or Territory provided in Schedule 1 to the OPGGS Act.

The expanded definition will merge those areas of the sea previously comprehended by the definitions of:

- **eligible coastal waters**, which presently includes so much of the scheduled area for the State or Territory as consists of any waters that are on the landward side of the territorial sea baseline that are not within the limits of the State or Territory.
• **designated coastal waters**, which presently includes so much of the scheduled area for the relevant State or Territory as consists of the waters that lie between the territorial sea baseline and a line 3 nautical miles seaward of that baseline, as well as any area on the landward side of the territorial sea baseline in respect of which certain titles were granted under the previous *Petroleum (Submerged Lands) Act 1967*; and

• **internal waters**, which presently include waters of the sea within the territorial limits of the relevant State or Territory.

The merging of these three areas represents the simplest and most efficient mechanism by which existing impediments to the conferral of occupational health and safety (OHS), structural integrity and environmental management functions and powers on NOPSEMA under State or NT legislation may be removed. The expanded definition will permit conferral across the largest possible geographical area, in order to achieve the greatest streamlining benefit.

It will still be a decision for the individual States and the NT as to whether they will confer functions and powers on NOPSEMA in respect of their designated coastal waters. The States and the NT may also elect to confer functions and powers in respect of part, but not all, of the area constituted by the new definition of designated coastal waters.

The continuing effect of section 646A of the OPGGS Act should also be noted. Section 646A does not permit NOPSEMA to perform any petroleum functions conferred under State or NT legislation, unless that State or NT has conferred both OHS and structural integrity functions on NOPSEMA, and there are provisions of the State or Territory PSLA that substantially correspond to Schedule 3 to the OPGGS Act (which relates to OHS), and regulations under the State or Territory PSLA that substantially correspond to the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* and Part 5 of the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* (to the extent to which the provisions of those regulations relate to petroleum). The reason for this restriction is that, in Commonwealth waters, NOPSEMA’s regulatory oversight of OHS risks and well integrity risks contributes substantially to the reduction of risks to the environment. Without effective management by a titleholder of OHS and well integrity risks, environmental risks are more likely to eventuate. In addition, if functions relating to environmental management are conferred on NOPSEMA under a State or Territory PSLA, there must be regulations under the State or Territory PSLA that substantially correspond to the provisions of the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009*.

**Item 11: Subparagraph 646(e)(i)**

This item restricts the area over which the OPGGS Act directly confers investigatory functions in respect of occupational health and safety upon NOPSEMA.

The policy intention has always been that the functions and powers of NOPSEMA that are directly conferred by the OPGGS Act should apply only in Commonwealth waters, and the operation of the current provision is likely to have been a drafting oversight.

This item corrects that drafting error, providing that the investigatory function conferred on NOPSEMA by subparagraph 646(e)(i) only applies in relation to operations undertaken in
Commonwealth waters. This will not affect the ability of the States and the NT to confer such functions upon NOPSEMA in respect of their designated coastal waters under subparagraph 646(b).

**Item 12: At the end of section 646**

In order to ensure the validity of conferrals of functions and powers upon NOPSEMA by the States and the NT following the expansion of the definition of ‘designated coastal waters’, limitations are placed upon conferral in respect of areas that are within the limits of a State or the NT (see discussion in item 13 below).

For clarity, this item inserts two notes, indicating the provisions under which conferral is limited.

**Item 13: Before subsection 646A(1)**

The amendments made under this item confine any conferral of power on NOPSEMA under State or NT laws to matters over which the Commonwealth has the power to legislate.

Following the decision in *R v Hughes*, where a Commonwealth law purports to impose a duty on a Commonwealth body or officer to perform a function under a State law, it is necessary to identify a Commonwealth head of power which supports the imposition of that duty.

At present, the imposition of duties upon NOPSEMA to perform State functions is supported by the external affairs power under section 51(xxxix) of the Constitution. This is because, at present, functions and powers are only conferred upon NOPSEMA in respect of waters consisting of the area seaward of the territorial sea baseline to the line three nautical miles from this baseline (currently ‘designated coastal waters’) and in respect of waters landward of the baseline but external to the State (currently ‘eligible coastal waters’). This area is beyond the territorial limits of Australia.

However, as a result of this Act, the definition of ‘designated coastal waters’ will be expanded. The expanded definition will include waters of the sea within the limits of the States and the NT. As a consequence, the conferral of powers and functions upon NOPSEMA will no longer be completely supported by the external affairs power. Another head of Commonwealth power must be relied upon where functions and powers are conferred in respect of the internal waters of the States and the NT.

The entities regulated by NOPSEMA either are foreign corporations or trading corporations formed within the limits of the Commonwealth, or are engaged in activities relating to vessels and structures owned or operated by such corporations. These entities are within the corporations power in section 51(xx) of the Constitution. Consequently, it is proposed that the corporations power be relied upon to support conferrals of state or territory powers and functions upon NOPSEMA in respect of activities conducted within the limits of the States and the NT.

In order to ensure that the relevant head of power supports conferral, the provisions inserted by this item makes express reference to the subject matter of the power – constitutional corporations or vessels, structures, facilities, wells or equipment owned or controlled by constitutional corporations.
Item 14: Subsection 649(1)

This item omits ‘(1)’ from the beginning of the subsection. This is to take account of the proposed repeal of subsection 649(2).

Item 15: Subsection 649(1)

This item removes the reference to section 650 from subsection 649(1). Subsection 650(2) is the only part of section 650 that refers to the functions or powers of NOPSEMA. That subsection is removed by the operation of these amendments – see item 20. As a consequence, there will no longer be a reference to the functions or powers of NOPSEMA in section 650, so the reference to that section in subsection 649(1) is redundant.

Item 16: Subsection 649(2)

This item removes subsection 649(2), which refers to powers conferred on NOPSEMA by or under a law of a State or the NT as permitted by section 650. Subsection 650(2) is the only part of section 650 that contemplates the conferral of powers on NOPSEMA. That subsection is removed by the operation of these amendments – see item 20. As a consequence, subsection 649(2) is redundant, and may be repealed.

Item 17: Subparagraphs 650(1)(c)(iii) and (iv)

This item removes references to eligible coastal waters and ‘land or waters within the limits of the State or Territory’ from paragraph 650(1)(c). It replaces these references with a new subparagraph 650(1)(c)(iii), which refers to ‘land or waters (not being designated coastal waters) within the limits of the State or Territory’.

References to eligible coastal waters will be redundant following implementation of this Act, as that term is removed from the OPGGS Act – see item 23. The waters that currently constitute eligible coastal waters will come within the expanded definition of designated coastal waters – see item 10. The reference to the designated coastal waters of the relevant State or Territory in subparagraph 650(1)(c)(v) will therefore incorporate those waters. The reference to designated coastal waters will also capture waters of the sea within the limits of the State or NT.

However, it is the policy intent that NOPSEMA should be able to continue to provide services under contract on land, or in lakes, rivers and other waters within the limits of the State or the NT that are not captured by the expanded definition of designated coastal waters. New subparagraph 650(1)(c)(iii) takes account of this. It refers explicitly to those waters that have been excluded from the new definition of designated coastal waters.

Item 18: Paragraph 650(1)(d)

This item removes references to subparagraph 650(1)(c)(iii) from paragraph 650(1)(d) of the OPGGS Act, and replaces it with the phrase ‘if the services as are to be provided on land that is, or waters that are, within the limits of the State or Territory.’

Subparagraph 650(1)(c)(iii) as amended refers only to land or waters within the limits of the relevant State or Territory that are not captured by the new definition of designated coastal waters – see
items 10 and 17. This effectively restricts the scope of the subparagraph to lakes, rivers and other waters within the limits of the State or Territory that are not waters of the sea.

However, to ensure compliance with the Constitution, services provided by NOPSEMA under contract on land that is, or in any waters that are, within the limits of the State or Territory should be restricted to the regulation of activities carried out by constitutional corporations, and those things in which they have a proprietary or controlling interest. To ensure this is the case, this item amends paragraph 650(1)(d) to give explicit reference to all land and waters within the limits of the relevant State or Territory.

Item 19: Subsection 650(1)(note)

This item removes the note to subsection 650(1), which makes reference to eligible coastal waters. As the term eligible coastal waters is removed from the OPGGS Act by this Act (see item 23), the note is redundant and may be repealed.

Item 20: Subsection 650(2)

This item removes subsection 650(2) of the OPGGS Act. The subsection enables the conferral of powers and functions on NOPSEMA by a State or the NT in respect of petroleum exploration, recovery and development in eligible coastal waters. The definition of eligible coastal waters is repealed by the operation of this Act – see item 23.

As a consequence, subsection 650(2) of the OPGGS Act is redundant and may be repealed. As the waters that previously constituted eligible coastal waters are incorporated within the expanded definition of designated coastal waters (see item 10), States and the NT will be able to confer functions and powers on NOPSEMA in respect of those waters under the relevant paragraphs of section 646 of the OPGGS Act.

Item 21: Subsection 650(6)

This item removes the reference to functions and powers conferred on NOPSEMA in relation to eligible coastal waters under subsection 650(2) in subsection 650(6) of the OPGGS Act. Subsection 650(2) of the OPGGS Act is repealed by this Act – see item 18.

Item 22: Subsection 650(6A)

This item removes the reference to functions and powers conferred on NOPSEMA in relation to eligible coastal waters under subsection 650(2) in subsection 650(6A) of the OPGGS Act. Subsection 650(2) of the OPGGS Act is repealed by this Act – see item 20.

Item 23: Subsection 650(7) (definition of eligible coastal waters)

This item removes the definition of eligible coastal waters from the OPGGS Act.

Those waters constituting eligible coastal waters prior to these amendments are to be absorbed into the expanded definition of designated coastal waters, which will include the current definition of designated coastal waters as well as the eligible coastal waters and the internal waters of the States and the Northern Territory – see item 10.
As a consequence, the definition of **eligible coastal waters** in subsection 650(7) is redundant and may be repealed.

**Item 24: After subsection 678(1)**

This item inserts a new subsection 678(1A) into section 678. The new subsection clarifies that the Corporate Plan prepared by the CEO of NOPSEMA need only provide details of an analysis of risk factors in respect of matters in relation to which NOPSEMA has functions.

Pursuant to paragraphs 678(1)(a), (b) and (c) of the OPGGS Act, the Corporate Plan prepared by the CEO of NOPSEMA under section 35 of the Public Governance, Performance and Accountability Act 2013 must include an analysis of risk factors likely to affect the safety of offshore petroleum operations and offshore greenhouse gas storage operations, and to affect offshore petroleum environmental management and offshore greenhouse gas storage environmental management. The plan must also include an analysis of risk factors likely to affect the structural integrity of facilities, wells and well-related equipment located in NOPSEMA waters.

Relevantly, ‘offshore petroleum operations’ and ‘offshore greenhouse gas storage operations’ are defined under section 643 of the OPGGS Act as operations that take place in NOPSEMA waters, which are in turn defined under the same section as Commonwealth waters and the designated coastal waters of the States and the Northern Territory. ‘Offshore petroleum environmental management’ and ‘offshore greenhouse gas storage environmental management’ are defined under section 643 in relation to ‘regulated operations’, which are defined as including operations to which a State or Territory PSLA apply.

However, NOPSEMA does not have any functions or powers exercisable in relation to designated coastal waters unless a State or the NT confers them. It is not appropriate to expect NOPSEMA to conduct risk analysis in respect of matters beyond the purview of its regulatory functions. This is particularly so given the expansion of the definition of ‘designated coastal waters’, as this would oblige NOPSEMA to conduct risk analysis in its corporate plan in respect of an even greater area.

The new subsection inserted by this item corrects this error, and ensures that NOPSEMA’s Corporate Plan will be required to include risk analysis in relation to safety, structural integrity and environmental management only to the extent that NOPSEMA has functions in relation to those matters.
Schedule 2 – Multiple titleholders

Part 1 - Amendments

*Offshore Petroleum and Greenhouse Gas Storage Act 2006*

**Items 1 and 2: Subsection 775A(1)**

These items restructure the existing definition of eligible voluntary action so that the types of actions that are eligible voluntary actions need only be listed once in Division 1 of Part 9.6A. See also items 3, 4, 8 and 9.

**Item 3: Paragraph 775B(4)(d)**

This item simplifies paragraph 775B(4)(d) by replacing references to an application, nomination, request or notice with a reference to an eligible voluntary action. This is enabled by the restructure of the definition of eligible voluntary action – see items 1 and 2.

**Item 4: Subsection 775B(4)**

This item simplifies subsection 775B(4) by replacing references to an application, nomination, request or notice with a reference to an eligible voluntary action. This is enabled by the restructure of the definition of eligible voluntary action – see items 1 and 2.

**Item 5: Subsection 775B(5)**

Subsection 775B(2) of the OPGGS Act provides that the registered holders of a single petroleum title may nominate one of them to take eligible voluntary actions on behalf of all of them. However, the effect of current subsection 775B(5) is that this nomination is mandatory if the titleholders wish to take such an action. Nomination may not be the preferred option for certain petroleum titleholders, who would prefer full involvement in actions in relation to the title, rather than leaving certain actions to representatives.

Further, concerns have been expressed about a nominee potentially being able to take an eligible voluntary action without the knowledge of the other holders of the title. To prevent this, titleholders have in a number of instances made a nomination for the purposes of taking a particular action, then immediately revoked the nomination following the action being taken. This pattern is then repeated for subsequent eligible voluntary actions. This creates an ongoing cycle of nomination and revocation, which places a considerable administrative burden both on the titleholders and on NOPTA, who is responsible for the administration of the nominations process.

This item amends subsection 775B(5) to also allow the registered holders of a petroleum title to take an eligible voluntary action jointly. It is anticipated that joint action will involve each of the titleholders affixing signatures to the relevant document contemplated by the action, e.g application form, nomination, etc. Acknowledging that there may in some cases be titleholders that may prefer to have a nomination in place so that they do not have to be involved in the day to day running of the title, amended subsection 775B(5) provides a choice between taking eligible voluntary actions jointly and taking such actions by the existing nominations process. The effect of the amendment is also that titleholders may elect to take certain actions jointly, even if a nomination is in place.
For an eligible voluntary action to be valid, it must be undertaken using one of the methods contemplated in subsection 775B(5).

Item 6: After subsection 775B(6)

This item inserts a new subsection (6A) into section 775B. The new subsection requires the registered holder of a petroleum title who revoke a nomination under subsection 775B(6) to notify each of the other registered holders of the title of the revocation as soon as reasonably practicable after the revocation has been made.

Under the existing framework, there is no legislated requirement that all registered holders of a petroleum title be informed of a revocation being made. As a result, the situation may arise where the previously nominated registered holder of the title purports to take an eligible voluntary action – for example, the submission of an application – unaware that they are not entitled to take the action in question as the nomination has been revoked. In these circumstances, a number of administrative difficulties may be created, potentially including the need to refund any application fees, as well as additional burdens on the titleholders.

This item addresses these unintended consequences by requiring a titleholder who revokes a nomination to notify, in writing, all other holders of the title of the revocation as soon as practicable after the revocation being made.

Item 7: After subsection 775B(7)

This item inserts a new subsection (7A) into section 775B. The subsection provides that where a nomination ceases to be in force – either by reason of that nomination being revoked, or where the nominee ceases to be a registered holder of the petroleum title – any eligible voluntary action undertaken before the cessation in force of the nomination remains valid.

This amendment is in response to questions over whether an eligible voluntary action undertaken prior to the cessation in force of a nomination remains valid, where the nomination ceases to be in force before a decision has been made by the regulator in relation to the action; such as, for example, where a nominee submits an Environment Plan to NOPSEMA, and the nomination ceases to be in force before NOPSEMA has made a decision whether to accept or reject the plan.

This item clarifies that eligible voluntary actions taken prior to the cessation in force of a nomination remain valid. In the example of the Environment Plan submission above, the submission will remain valid, and NOPSEMA will continue to assess and make a decision in relation to the plan.

Item 8: Paragraph 775C(4)(d)

This item replicates the amendment made by item 3 for the equivalent provision in the OPGGS Act relating to greenhouse gas titleholders. See discussion in relation to that item.

Item 9: Subsection 775C(4)

This item replicates the amendment made by item 4 for the equivalent provision in the OPGGS Act relating to greenhouse gas titleholders. See discussion in relation to that item.
Item 10: Subsection 775C(5)

This item replicates the amendment made by item 5 for the equivalent provision in the OPGGS Act relating to greenhouse gas titleholders. See discussion in relation to that item.

Item 11: After subsection 775C(6)

This item replicates the amendment made by item 6 for the equivalent provision in the OPGGS Act relating to greenhouse gas titleholders. See discussion in relation to that item.

Item 12: After subsection 775C(7)

This item replicates the amendment made by item 7 for the equivalent provision in the OPGGS Act relating to greenhouse gas titleholders. See discussion in relation to that item.

Part 2 – Application of amendments

Item 13: Definition

This item defines Offshore Act for the purposes of Part 2 of Schedule 2 to this Act to mean the Offshore Petroleum and Greenhouse Gas Storage Act 2006.

Item 14: Application – multiple titleholder amendments

This item provides application provisions for the purposes of the amendments made to the OPGGS Act by Part 1 of Schedule 2 to this Act.

The application provision ensures that the amendments to clarify the validity of an eligible voluntary action taken before revocation of a nomination will apply when a nomination is revoked on or after the commencement of the amendments. However, the provision also ensures the continuing validity of such eligible voluntary actions, whether the action was taken before, on or after the commencement of the amendments.