THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE AMENDMENT (MISCELLANEOUS AMENDMENTS) BILL 2019

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Resources and Northern Australia, Senator the Honourable Matthew Canavan)
OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE AMENDMENT (MISCELLANEOUS AMENDMENTS) BILL 2019

OUTLINE

The purpose of the Offshore Petroleum and Greenhouse Gas Storage Amendment (Miscellaneous Amendments) Bill 2019 (the Bill) is to amend the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (the OPGGS Act) to:

- transfer regulatory responsibility for offshore greenhouse gas wells and environmental management from the responsible Commonwealth Minister (the Minister) to the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA);
- strengthen and clarify the powers of NOPSEMA inspectors to monitor and enforce compliance by regulated entities with their obligations under the OPGGS Act and associated regulations;
- ensure valid designation of certain areas as ‘frontier areas’ for the purposes of the Designated Frontier Area tax incentive;
- future-proof references to regulations made under the OPGGS Act in provisions of that Act; and
- make minor policy and technical amendments to improve the operation of the OPGGS Act.

Overall, the amendments reflect the Australian Government’s commitment to the maintenance and continuous improvement of a strong and effective regulatory regime and keeping up-to-date with leading practice.

Transfer of regulatory functions and powers in relation to greenhouse gas storage operations

The amendments in the Bill, together with amendments to the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (the Environment Regulations) and the Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011 (the Wells Regulations), make NOPSEMA the regulator for offshore greenhouse gas well operations and environmental management of greenhouse gas storage activities, in addition to its existing functions as regulator of offshore petroleum well operations and environmental management of offshore petroleum activities. Prior to the amendments, the Minister was the regulator for offshore greenhouse gas wells and environmental management.

The reason for the division of petroleum and greenhouse gas responsibilities is largely historical. However, with a relative increase in greenhouse gas storage activities, the Government has renewed its focus on the adequacy of greenhouse gas storage regulatory arrangements. NOPSEMA has also developed substantial expertise in the regulation of offshore environmental management and well operations through its responsibility for the regulation of offshore petroleum activities.

To ensure an experienced and independent regulator has oversight of offshore greenhouse gas storage activities, it is appropriate to transfer regulatory oversight for offshore greenhouse gas wells and environmental management from the Minister to NOPSEMA.
The Minister will retain responsibility for major resources related decisions concerning: the granting of greenhouse titles; the imposition of title conditions; the cancellation of titles; and core decisions about resource management and resource security.

**Strengthen and clarify powers of NOPSEMA inspectors**
The Bill strengthens and clarifies the powers of NOPSEMA inspectors to monitor and enforce compliance by regulated entities with their obligations under the OPGGS Act and associated regulations. This change is in response to issues that NOPSEMA has identified in undertaking its vital compliance monitoring functions. It is important that NOPSEMA has adequate and appropriate powers to undertake this function, given the potential risks associated with non-compliance in a high-hazard industry.

**Valid designation of certain areas as 'frontier areas’**
The Bill amends the OPGGS Act to retrospectively designate four areas, released as part of the 2005 Offshore Petroleum Exploration Acreage Release (acreage release), as ‘frontier areas’ for the purposes of the Designated Frontier Area tax incentive (DFA). The DFA was in place between 2004 and 2009 and was designed to encourage petroleum exploration in Australia’s remote offshore areas. As part of the scheme the Resources Minister was able, under the Petroleum Resource Rent Tax Assessment Act 1987 (the PRRTA Act), to allocate up to 20 per cent of each year’s acreage release areas as frontier areas. Where an exploration permit was granted over a ‘frontier area’, the permit holder could claim up to 150 per cent of expenditure on particular exploration activities conducted in the permit area as a deduction for the purposes of the Petroleum Resource Rent Tax (PRRT).

Under the PRRTA Act, the Resources Minister was required to designate areas in writing to include them within the DFA. However, an administrative oversight was recently discovered that shows this requirement was not met for the 2005 acreage release. As a result, four exploration permits that were granted, after being promoted as frontier areas in 2005, were not validly designated as ‘frontier areas’. To avoid potential for doubt regarding validity of claims under the tax incentive scheme, the amendments in the Bill will retrospectively designate the areas as Designated Frontier Areas. This will remove any doubt about the entitlement of the relevant titleholders to the uplifted PRRT deductions.

**Future-proof references to regulations**
The Bill amends the OPGGS Act to future-proof references to regulations made under the OPGGS Act in provisions of that Act. The amendments avoid the need to amend the OPGGS Act any time regulations under the OPGGS Act sunset and are remade.

The OPGGS Act currently contains specific references to the titles of sets of regulations under the OPGGS Act. However, when those regulations sunset and are remade with a new title, there is a risk that the references will become ineffective. Also, provisions in the regulations that are integral to the meaning and application of defined terms and requirements in the OPGGS Act will potentially be renumbered in remade regulations, even if their content remains comparable.

Effective references to regulations are critical to the operation of a number of provisions of the OPGGS Act, including provisions which set out parts of the OPGGS Act and regulations
that are subject to monitoring and investigation under the *Regulatory Powers (Standard Provisions) Act 2014*, and polluter pays and financial assurance obligations.

The Bill will amend the OPGGS Act to remove the references to specific titles of regulations, and instead enable references to the titles of regulations, or reference to provisions of regulations, to be prescribed by regulations under the OPGGS Act.

**FINANCIAL IMPACT STATEMENT**

The Bill is expected to have nil financial impact. Amendments to the Regulatory Levies Act and the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004* will ensure NOPSEMA is fully cost-recovered for its new regulatory functions in relation to greenhouse gas wells and environmental management.

The amendments to retrospectively designate certain areas as ‘frontier areas’ for the purposes of the DFA tax incentive are not expected to have any financial impacts.
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Offshore Petroleum and Greenhouse Gas Storage Amendment (Miscellaneous Amendments) Bill 2019 (the Bill)

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

- transfer regulatory responsibility for offshore greenhouse gas wells and environmental management from the responsible Commonwealth Minister (the Minister) to the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA);
- strengthen and clarify the powers of NOPSEMA inspectors to monitor and enforce compliance by regulated entities with their obligations under the OPGGS Act and associated regulations;
- ensure valid designation of certain areas as ‘frontier areas’ for the purposes of the Designated Frontier Area tax incentive;
- future-proof references to regulations made under the OPGGS Act in provisions of that Act; and
- make minor policy and technical amendments to improve the operation of the OPGGS Act.

Human Rights implications

Schedules 1, 4, 12, 15 and 16 to the Bill engage with rights protected under the International Convention on Civil and Political Rights (ICCPR). These include the protection against arbitrary interference with privacy and reputation, the presumption of innocence, the right to a fair and public hearing, and the right to minimum guarantees in criminal proceedings.

Further detail on the engagement between the relevant Schedules and the relevant rights protected under the ICCPR is provided below. The provisions contained in those Schedules are compatible with human rights as, to the extent that they limit human rights or freedoms, those limitations are reasonable, necessary and proportionate to the legitimate objectives that the relevant provisions aim to achieve.

The remainder of the amendments made by the Bill are mechanical or technical in nature and do not abridge or otherwise engage with applicable human rights or freedoms.

Right to privacy and reputation

Article 17 of the ICCPR prohibits arbitrary or unlawful interference with an individual’s privacy, family, home or correspondence, and protects a person’s honour and reputation from
unlawful attacks. This right may be subject to permissible limitations where those limitations are provided by law and are non-arbitrary. In order for limitations not to be arbitrary, they must be aimed at a legitimate objective and be reasonable, necessary and proportionate to that objective.

**Schedule 1**

**Transfer of greenhouse gas storage regulatory functions and powers**

**Monitoring and investigations**

Schedule 1 to the Bill contains key amendments to the OPGGS Act necessary to support and effect the transfer of regulatory functions and powers for offshore greenhouse gas storage environmental management and wells to NOPSEMA.

The amendments extend all of the existing inspectorate functions and powers of NOPSEMA inspectors under Parts 2 and 3 of the *Regulatory Powers (Standard Provisions) Act 2014* (the Regulatory Powers Act) and in Schedule 2A to the OPGGS Act (warrant-free environmental management inspections) to offshore greenhouse gas storage operations. This will enable NOPSEMA inspectors to monitor and investigate compliance by greenhouse gas titleholders with their obligations under the OPGGS Act and regulations. These amendments represent an extension of existing inspectorate functions and powers relating to offshore petroleum operations.

In all cases, inspection powers are and will continue to be limited by purpose; namely the purpose of determining whether titleholders are complying with their obligations under the OPGGS Act and associated regulations. The powers are necessary to enable NOPSEMA, as the national regulator of offshore petroleum and greenhouse gas storage operations, to monitor and investigate compliance by persons with their obligations. In the context of a high-hazard industry, it is particularly important to ensure the regulator has sufficient powers to ensure regulatory obligations are being complied with. Non-compliance by a person may, for example, increase the risks to the environment from petroleum or greenhouse gas storage operations, which may potentially have serious consequences.

NOPSEMA’s existing inspection powers and functions for petroleum activities were designed to ensure these powers are available only to the extent that those matters relate to compliance or non-compliance of a person with their obligations under the OPGGS Act and associated regulations. For example, a NOPSEMA inspector would only be able to inquire into personal matters relating to an individual, if at all, in the exercise of a specific power in Part 2 or 3 of the Regulatory Powers Act (with a warrant), or in Schedule 2A to the OPGGS Act (environmental compliance monitoring without a warrant), and only to the extent that the inquiry related to compliance with regulated obligations. Any limitation of the right to privacy in extending the existing powers and functions to inspections relating to greenhouse gas storage obligations is to meet a legitimate objective, and is reasonable, necessary and proportionate to meeting that objective.

Further, when an inspection is undertaken using the monitoring or investigation powers in the Regulatory Powers Act, the provisions in that Act will protect against arbitrary abuses of power and safeguard against arbitrary limitations on the right to privacy. For example, a NOPSEMA inspector cannot enter premises under the Regulatory Powers Act unless they
have a warrant or consent from the occupier of the premises, and their identity card or a copy of the warrant under which they are entering must be shown to the occupier of the premises. This provides for the transparent use of the powers in the Regulatory Powers Act and mitigates against arbitrariness and risk of abuse. In addition, the OPGGS Act provides that a magistrate (including a Judge of the Federal Circuit Court) is an issuing officer for the purposes of issuing a warrant to enter premises to conduct monitoring or investigation under the Regulatory Powers Act.

Similarly, protections for the right to privacy are in place for the powers in Schedule 2A to the OPGGS Act for warrant-free environmental management compliance monitoring by NOPSEMA. Immediately on entering premises for the purposes of an inspection without a warrant, a NOPSEMA inspector must take reasonable steps to notify the occupier of the premises of the purpose of entry. A NOPSEMA inspector will also be required to produce the inspector’s identity card when requested to do so by the occupier. Notably, at least for the purpose of inspecting premises offshore, an inspector would also need to arrange with a greenhouse gas titleholder to obtain transport to, and accommodation at, the premises. A titleholder would therefore be given advance notice of a forthcoming inspection. To interpose a further requirement that a NOPSEMA inspector obtain an external consent prior to carrying out each inspection would therefore provide little by means of an additional safeguard. The powers under which NOPSEMA inspectors may enter premises without warrant also specifically exclude residential premises, including in the expanded categories of regulated business premises in Schedule 2A to the OPGGS Act. Therefore, the risk that such entry would infringe a person’s right to protection against arbitrary or unlawful interference with their privacy, family, home or correspondence is extremely low.

In addition to these safeguards, the use or disclosure of any personal information is subject to the Privacy Act 1988 (the Privacy Act). For example, clause 12A of Schedule 2A to the OPGGS Act includes a provision requiring that, if an environmental prohibition notice or environmental improvement notice to be published does contain personal information (within the meaning of the Privacy Act), NOPSEMA must take such steps as are necessary in the circumstances to ensure the information is de-identified before the notice is published.

In conclusion, any limitation of the right to privacy through the extension of existing functions and powers to greenhouse gas storage operations is limited similarly to those relating to offshore petroleum activities, which are considered reasonable, necessary and proportionate.

**Information sharing**

Schedule 1 to the Bill also includes amendments to Part 6.11 of the OPGGS Act that will ensure parties responsible for the administration of that Act and associated regulations have the ability to share information relating to offshore greenhouse gas storage operations with each other, and with other relevant Commonwealth, State and Northern Territory government agencies in circumstances where it is appropriate in order to enable those bodies to adequately discharge their legislative functions and powers. For example, the information sharing provisions enable information to be shared during a joint investigation. This is an extension of existing powers in relation to offshore petroleum operations.
The ability to share information is discretionary and not obligatory. The person in possession of the information will be able to specifically consider the type of information to be shared and the rationale for sharing that information in each particular case before making a decision to share the information. The Chief Executive Officer (CEO) of NOPSEMA will also have the ability to place conditions on the sharing of information with other Commonwealth, State or Northern Territory government agencies, such as conditions restricting further disclosure. A provision has been included to require parties to de-identify personal information wherever possible (where the sharing of specific personal information is not necessary). While the amendments could have allowed the use or disclosure of personal information obtained prior to the commencement of Schedule 1 to the Bill (as such uses or disclosures would be permitted under the Privacy Act as uses or disclosures required or authorised by or under law) it was considered that, as a matter of privacy policy, the ‘required or authorised by law’ exceptions to the general prohibitions against the use or disclosure of personal information should apply only in relation to the law as it applied at the time when the personal information was collected. In other words, the sharing of information provision, as it relates to personal information, is not to be applied retrospectively.

The amendments in Schedule 1 to the Bill provide that information which can be shared may include personal information. While this power constitutes an interference with privacy, the use or disclosure of any personal information is also subject to the Privacy Act, as well as the limitations described above. The interference with privacy is therefore lawful. The information sharing provisions are not arbitrary and are considered reasonable, necessary and proportionate in the circumstances.

**Expanded definition of regulated business premises**

The Schedule also contains amendments to strengthen and clarify the powers of NOPSEMA inspectors to determine whether regulated entities are compliant with their obligations under the OPGGS Act and associated regulations, in response to issues that NOPSEMA has identified through conducting its compliance and monitoring functions. This includes expanding the categories of places that NOPSEMA inspectors may enter, without a warrant, for the purposes of conducting a monitoring inspection under Schedule 2A (environmental inspections) or Schedule 3 to the OPGGS Act (OHS inspections). Expansions to the categories of places that NOPSEMA inspectors may enter without a warrant will apply to premises used in connection with either offshore petroleum operations or greenhouse gas storage operations. The expansion of categories is occurring by way of amendment to the definition of *regulated business premises* to include those that are occupied by a related body corporate of a titleholder or operator, a contractor of a titleholder or operator, or a contractor of a related body corporate of a titleholder or operator.

Extensions to the definition of *regulated business premises* in Schedules 2A and 3 are necessary as the current scope of regulated business premises is proving to be inadequate in practice. One reason is that a company that is a titleholder may not be the entity that makes decisions about the operations being carried out under the authority of that title. For example, these decisions may be made by a parent company with a subsidiary established for the purposes of holding the title. Relevant documents or things may be held at the premises of the latter company. Another reason is that operations (for example, drilling a well or diving) may be carried out entirely by a contractor, so any documents or things relating to the operations
will be located at the premises of the contractor rather than at the premises of the titleholder or operator. Oil spill response equipment is also likely to be stored at premises of a contractor of a titleholder, and it is vital that NOPSEMA can readily ensure titleholders are compliant with oil spill preparedness obligations.

In the course of a Schedule 2A environmental inspection or a Schedule 3 OHS inspection, an inspector may observe or see things relating to persons in their capacity as private individuals. A NOPSEMA inspector would only be able to inquire into personal matters relating to an individual to the extent that those matters relate to compliance or non-compliance by a person with their obligations under the OPGGS Act and associated regulations. Any limitation of the right to privacy is to meet a legitimate objective, and is reasonable, necessary and proportionate to meeting that objective.

**Schedule 4**

Schedule 4 to the Bill includes amendments to enable a NOPSEMA inspector to take possession of a document, or a thing, produced by a person under existing subclause 8(3) of Schedule 2A (environmental inspections) or subclause 74(3) of Schedule 3 (OHS inspections) to the OPGGS Act, and retain it for as long as reasonably necessary.

The existing subclauses enable a NOPSEMA inspector to require a person to produce a document or thing if the inspector is satisfied on reasonable grounds that the person is capable of producing a document or thing that is reasonably connected with the conduct of an environmental inspection or an OHS inspection. The amendments will enable a NOPSEMA inspector to retain possession of a document or thing produced by a person under those subclauses for as long as reasonably necessary.

The owner of the thing, and the person with overall control at the relevant premises, will be notified of the taking of possession of the thing and the reasons for it. This ensures they are aware that the thing has been removed.

The power to take possession of documents, or things, is limited to the purpose of determining whether obligations of persons under the OPGGS Act and associated regulations are being complied with. NOPSEMA often faces difficulties in obtaining information about offshore petroleum activities for the purpose of monitoring compliance and investigating the causes of incidents. Offshore operations are technologically complex. They take place far from land and, in the case of well operations, far below the seabed, making physical inspection difficult, or sometimes impossible, for an inspector. In many cases, the inspector’s best recourse is to ask questions of those carrying out the operations, or to have them produce operational records detailing, for example, maintenance schedules.

However, once documents or things are produced under the relevant subclauses, NOPSEMA inspectors do not currently have the power to take possession of and retain them for review. Such powers are necessary to enable NOPSEMA to monitor and investigate compliance by persons (generally oil companies) with their obligations under the OPGGS Act and regulations. In the context of a high-hazard industry where compliance requires a major financial investment, and where non-compliance with the OPGGS Act can result in incidents that could cause major environmental damage, fatalities, and/or increased risks to health or
safety of persons (including employees), the regulator must have sufficient powers to
determine whether regulatory obligations are being complied with. Impeding NOPSEMA’s
ability to retain documents or things produced in the course of an environmental or OHS
inspection would not be in the public interest given the nature of the potential harm that could
occur as a result of non-compliance with the OPGGS Act.

The amendments in Schedule 4 to the Bill provide for the document or thing to only be held
for as long as reasonably necessary, and the person otherwise entitled to possession of the
document would be provided with a certified true copy, which has the same status as the
original in all courts and tribunals. Until that copy is provided, the person will have
reasonable access to the original document. Reasonable access to a thing will be afforded for
as long as NOPSEMA has possession of that thing.

Schedule 15

Schedule 15 to the Bill introduces new Schedule 2B to the OPGGS Act, which will enable
NOPSEMA inspectors to undertake inspections without a warrant to monitor compliance by
offshore petroleum and greenhouse gas titleholders with well integrity-related obligations
under the OPGGS Act and regulations. The new Schedule includes inspections powers that
are equivalent to those in Schedule 2A (environmental management inspections) and
Schedule 3 (OHS inspections).

Non-compliance by a person with well integrity-related obligations, such as failure to comply
with a well operations management plan in force for a well activity, may increase the risks to
health or safety of persons and the environment from offshore operations, which may have
potentially serious consequences.

Given the difficulty in accessing offshore facilities, the risks associated with offshore
activities and the frequent changes to operational decisions by titleholders about the timing of
well activities, the requirement to obtain a warrant may impede NOPSEMA’s ability to
conduct monitoring inspections of well activities at the time they are being undertaken. The
delay involved in obtaining a warrant, where the well activity has been brought forward for
operational reasons, could mean the well activity is completed and the rig has departed before
the NOPSEMA inspector has authority to conduct the inspection. Further, a requirement to
obtain a warrant before conducting a monitoring inspection would impede NOPSEMA’s
ability to respond quickly in an emergency.

Given that new Schedule 2B is equivalent to the inspection powers in Schedules 2A and 3,
the human rights considerations are equivalent to those discussed above in relation to
Schedules 1 (monitoring and investigation and the expansion of regulated business premises)
and 4. As for Schedules 2A and 3, NOPSEMA inspectors will in all cases be required to
obtain a warrant or consent before exercising powers to search for and gather evidential
material.

Schedule 16

Schedule 16 to the Bill amends the OPGGS Act to enable the Minister, the National Offshore
Petroleum Titles Administrator (the Titles Administrator) and the CEO of NOPSEMA to
accept and enforce undertakings in relation to compliance with provisions of the OPGGS Act and regulations.

If the Minister, the Titles Administrator or the CEO of NOPSEMA accept an undertaking, they will be required to publish the undertaking. This requirement is considered important in the context of ongoing work across government to increase transparency.

To ensure the right to privacy is safeguarded, if an undertaking contains personal information within the meaning of the Privacy Act, the Minister, the Titles Administrator or the CEO of NOPSEMA (as applicable) is required to take reasonable steps to ensure the information is de-identified before the undertaking is published.

**Right to be presumed innocent until proven guilty**

Article 14(2) of the ICCPR provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. The protections in Article 14(2) of the ICCPR only apply in criminal proceedings. Generally, consistency with the presumption of innocence requires the prosecution to prove each element of a criminal offence beyond reasonable doubt. Offence provisions which place an evidential or legal burden on the defendant and no-fault offences, such as strict and absolute liability offences which allow for the imposition of criminal liability without the need to prove fault, will engage the presumption of innocence. This is because a defendant’s failure to discharge the burden or the lack of a burden altogether may permit their conviction despite reasonable doubt as to their guilt.

**Schedule 1**

**Strict liability offences**

A failure to comply with new sections 452A, 579A, 591B and 594A and new subsections 581(1A), (1B) and (1C), which are inserted by Schedule 1 to the Bill, will be offences of strict liability. Further, the amendments in Schedule 1 will ensure the existing strict liability offence in clause 12 of Schedule 2A will apply with respect to a notice given during an inspection in relation to greenhouse gas environmental management obligations, as well as in relation to petroleum environmental management (as it currently applies).

The OPGGS Act contains a range of strict liability offences to deal with circumstances where fault may be difficult to prove due to the remote and complex nature of offshore operations and the prevalence of multiple titleholder arrangements. In terms of the right to presumption of innocence as afforded to individuals the reality is that, in the offshore regulatory regime, investigations and prosecutions are conducted largely, if not solely, in relation to companies and not individuals. Prosecutions to date have only been in relation to companies, and it is not anticipated that this regulatory approach would change in the future given the nature of the industry and the requirements imposed.

A penalty of 100 penalty units is considered appropriate for a failure to comply with a direction (general or remedial) given to a current or former titleholder by NOPSEMA (new sections 579A, 591B and 594A). This is higher than the preference stated in *A Guide To Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*. 
September 2011 (the Guide) for a maximum 60 penalty units for offences of strict liability. However, offshore resources activities, as a matter of course, require a very high level of expenditure and by comparison a smaller penalty would be an ineffective deterrent. Also, the parties in question are expected to be well aware of their duties and obligations due to the overall ‘licencing’ arrangements in place for activities.

Penalties for other new or extended offences of strict liability are less than 60 penalty units, consistent with the preference in the Guide.

Evidential and legal burden on a defendant

A failure to comply with a direction given under new section 579A, which is inserted by Schedule 1 to the Bill, will be an offence of strict liability. If the direction applies to a titleholder and another person, and the other person is prosecuted for an offence in relation to a breach of the direction, it is a defence if the other person adduces evidence that they did not know of, and could not reasonably be expected to have known of, the existence of the direction.

Further, the amendments in Schedule 1 to the Bill will provide for the existing offences in subclauses 6(1), 7(3), 8(5) and 12(4) of Schedule 2A to the OPGGS Act to apply with respect to an inspection in relation to greenhouse gas environmental management obligations, as well as in relation to petroleum environmental management (as they currently apply). It is a defence to an offence against each of those provisions if the person has a reasonable excuse. Without limitation, a reasonable excuse may include circumstances that were unforeseeable, or outside the person’s control. A reasonable excuse could also, for example, include an issue relating to safety, e.g. as a defence to a prosecution for obstructing or hindering a NOPSEMA inspector in the exercise of the inspector’s powers under subclause 6(1) of Schedule 2A.

Finally, the existing offences in clause 8(5) of Schedule 2A and clause 74(5) of Schedule 3 of the OPGGS Act, which have a reasonable excuse defence, will apply in relation to inspections at the expanded categories of regulated business premises as a result of the amendments in Schedule 1 to the Bill.

In each case, in accordance with subsection 13.3(3) of the Criminal Code Act 1995 (the Criminal Code), a defendant who wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating an offence bears an evidential burden in relation to that matter. The defendant will therefore bear an evidential burden in relation to the question of whether the defendant had a reasonable excuse, or whether the defendant did not know and could not reasonably be expected to have known about the existence of a direction. The burden of proof is reversed because the matter is likely to be exclusively within the knowledge of the defendant. This is particularly the case given the remote nature of offshore operations. It is therefore reasonable to require the defendant to adduce evidence in relation to this defence.

This is consistent with the Guide which states that where the facts of a defence are peculiarly within the defendant’s knowledge, it may be appropriate for the burden of proof to be placed on the defendant.
It will also be a defence for an offence in relation to a breach of a direction given by NOPSEMA under new section 579A, 591B or 594A if the defendant proves that they took all reasonable steps to comply with the direction. A defendant bears a legal burden in relation to this matter. The burden is reversed because the matter is likely to be exclusively within the knowledge of the defendant, particularly given the remote nature of offshore operations. The proof must be discharged on the balance of probabilities (see section 13.5 of the Criminal Code). Again, this is consistent with the Guide, which states that where the facts of a defence are peculiarly within the defendant’s knowledge, it may be appropriate for the burden of proof to be placed on the defendant.

The task of regulators of the offshore resources industry is difficult given the remote location and high hazard nature of the industry’s key operations. For this reason, providing effective and comprehensive compliance and enforcement tools to the regulator is vital in order to deliver human health and safety and environmental protection outcomes. Furthermore and of relevance in consideration of a human rights protection context, it is regulation pertaining, by and large, to large multinational companies as opposed to individuals. The companies who participate in this industry are well resourced, sophisticated and voluntarily engaging in activities for profit.

The OPGGS Act, in part, establishes a regulatory framework for the management of remote and high hazard industry activities associated with offshore resources exploration and production. These activities, if not conducted properly, have the potential to result in serious injury or death and/or extraordinary environmental harm. The robustness of the regulatory regime, including an effective compliance and enforcement framework, is critical to achieving this objective. The objective of the breach of directions defence is to assist in achieving the objective of ensuring the safety of persons in the industry as well as the protection of the environment. As such, the regulatory regime positively engages with the right to life, and helps to protect other human rights which would be negatively affected by significant environmental damage.

A direction issued by NOPSEMA is an enforcement tool designed to achieve a very particular outcome, to direct the industry participant to either do or refrain from doing something in order to deliver OHS, environmental management or well integrity outcomes. Directions are not used frequently; they are used in extraordinary circumstances, usually to deal with a specific emergent risk that the regulations do not adequately cover. The application and use of directions is taken seriously. The defence in connection with the offence of non-compliance with a direction allows an optional exception; it is an opportunity for the defendant to prove that they took all reasonable steps to comply with the direction. As a result, the measure is effective in achieving the objectives of the OPGGS Act.

The defence is not related to issues of culpability, but instead provides exceptions or an excuse for conduct. In addition, the defence relates to the serious potential consequences of non-compliance. Conduct resulting in the offence would, in most circumstances, take place at a remote location and without the ability for the regulator to immediately or even quickly gain access to premises at that location in order to ascertain the facts directly relating to the defence. As a result, the facts and information directly relevant to the defence is entirely within the defendant’s knowledge.
The defence is likely to be used by companies with significant resources, who are more than capable of shouldering the legal burden if they wish to claim a defence. The industry is highly regulated and companies involved have chosen to voluntarily participate in this regulated environment on a for profit basis.

As a result, the measure contains a limitation that is both reasonable and proportionate to the achievement of the relevant objective.

Allowing for a reversal of the evidential burden of proof only would create internal inconsistencies in the OPGGS Act and its established treatment of offences and defences. It is essential to avoid any perception by the offshore petroleum and greenhouse gas storage industries that the Commonwealth is ‘soft’ on compliance. Defences should be available only to those who have genuinely done everything in their power to avert the occurrence of an adverse event and can demonstrate that they have done so.

To provide the ability of a defendant to simply point to evidence that suggests a reasonable possibility that reasonable steps were taken to comply with a direction would result in the regulator being unable to successfully and meaningfully take enforcement action in the case of an offence being committed. This would undermine the legitimate objective in question.

In the aftermath of an event where one or more workers may have suffered serious injury or may have died, or where significant environmental damage may have occurred, it is appropriate that a titleholder should have to demonstrate, on the balance of probabilities, it took all available action to prevent the occurrence, rather than merely to meet the evidential burden relating to the possibility of having done so.

Due to the remote occurrence of the regulated activities, the regulator is not able to, at the relevant time, independently assess and verify what is reasonable or practicable in the event of non-compliance. Accordingly, the defence would almost always succeed without the real ability of the prosecution to contest its veracity. The relevant facts are entirely within the defendant’s knowledge and not at all within the regulator’s knowledge. This puts the regulator at a significant disadvantage when attempting to establish the chain of causation of an adverse event and to meet a legal burden of proof that a defence cannot be relied upon. This would ultimately lead to suboptimal outcomes for OHS of offshore workers and protection of the marine environment.

**Schedule 4**

Amendments to subclauses 12(1) and (2) of Schedule 2A and 79(1) and (2) of Schedule 3 to the OPGGS Act make it an offence of strict liability for a person to:
- tamper with a notice that has been displayed under new subclause 8(16) or 74(17); or
- remove the notice before the thing to which the notice relates is returned to the premises from which it was taken.

In terms of the right to presumption of innocence it is appropriate to apply a no-fault offence to ensure these offences may be effectively enforced. This is necessary due to the difficulty in proving intent given the remote and complex nature of offshore operations. The intention of applying strict liability is to improve compliance in the regime. This is consistent with the principles outlined in the Guide, which include that the punishment of offences not involving
fault may be appropriate where it is likely to significantly enhance the effectiveness of the enforcement regime in deterring certain conduct. This is particularly important given that the purpose of displaying the notice is to ensure the safety of persons at the premises by ensuring that they are aware that the thing has been removed. Consistent with preferences in the Guide, the fine is 50 penalty units.

The amendments provide a ‘reasonable excuse’ defence to the new offences of strict liability. The defendant will bear an evidential burden in relation to the question of whether they had a reasonable excuse. However, consistent with the Guide, it is reasonable to require the defendant to adduce evidence in relation to this defence. The burden of proof is reversed because the matter is likely to be exclusively within the knowledge of the defendant. This is particularly the case given the remote nature of offshore petroleum operations.

**Schedule 15**

**Strict liability offence**

Schedule 15 to the Bill inserts new Schedule 2B to the OPGGS Act, which provides for inspections in relation to well integrity-related obligations under the OPGGS Act and regulations. Clause 16 of Schedule 2B makes it an offence of strict liability for a person to tamper with or remove a notice that has been displayed under:

- subclause 9(3) or (4) – notice of taking possession of plant, a substance or a thing, or a sample of a substance or thing;
- subclause 11(2) – well integrity do not disturb notices;
- subclause 13(3) – well integrity prohibition notices; and
- subclause 15(6) – well integrity improvement notices.

Given that new Schedule 2B is equivalent to the inspection powers in Schedule 2A to the OPGGS Act, the human rights considerations are equivalent to those discussed above in relation to Schedule 1 (particularly in relation to the extension of the application of clause 12 of Schedule 2A to inspections in relation to greenhouse gas environmental management obligations). Further, the penalty for the new offence of strict liability in Schedule 2B is less than 60 penalty units, consistent with the preference in the Guide.

**Evidential and legal burden on a defendant**

New Schedule 2B creates offences for which it is a defence if the person has a reasonable excuse:

- clause 6 – obstructing or hindering a NOPSEMA inspector;
- clause 7 – failure to provide reasonable assistance and facilities to a NOPSEMA inspector if required to do so by the inspector;
- clause 8 – failure to answer a question, or produce a document, if requested to do so by a NOPSEMA inspector; and
- clause 16 – tampering with or removing a notice.

The defendant bears an *evidential* burden in relation to the question of whether the defendant had a reasonable excuse. The provisions in new Schedule 2B are equivalent to provisions in Schedule 2A to the OPGGS Act which are discussed above, in relation to extension of the
application of those provisions to inspections with respect to greenhouse gas environmental management obligations. The same human rights considerations discussed above also apply in relation to the provisions in new Schedule 2B.

Clause 23 of new Schedule 2B makes it a defence to a prosecution for refusing or failing to do anything required by a well integrity law if the defendant proves that it was not practicable to do that thing because of an emergency prevailing at the relevant time. A defendant bears a legal burden in relation to this matter. The burden is reversed because the matter is likely to be exclusively within the knowledge of the defendant, particularly given the remote nature of offshore operations. The proof must be discharged on the balance of probabilities (see section 13.5 of the Criminal Code). Again, this is consistent with the Guide, which states that where the facts of a defence are peculiarly within the defendant’s knowledge it may be appropriate for the burden of proof to be placed on the defendant.

The task of regulators of the offshore resources industry is difficult given the remote location and high hazard nature of the industry’s key operations. For this reason, providing effective and comprehensive compliance and enforcement tools to the regulator is vital in order to deliver human health and safety and environmental protection outcomes. Furthermore and of relevance in consideration of a human rights protection context, it is regulation pertaining, by and large, to large multinational companies as opposed to individuals. The companies who participate in this industry are well resourced, sophisticated and voluntarily engaging in activities for profit.

The OPGGS Act, in part, establishes a regulatory framework for the management of remote and high hazard industry activities associated with offshore resources exploration and production. These activities, if not conducted properly, have the potential to result in serious injury or death and/or extraordinary environmental harm. The robustness of the regulatory framework, including an effective compliance and enforcement framework, is critical to achieving this objective. The objective of the well integrity defence is to assist in achieving the objective of ensuring the safety of persons in the industry as well as the protection of the environment. As such, the regulatory regime positively engages with the right to life, and helps to protect other human rights which would be negatively affected by significant environmental damage.

Well integrity laws relate specifically to the regulatory oversight of the structural integrity of wells, the management of which is seen as posing the greatest risk to both OHS and the environment. A failure in well integrity can result in the death of workers and widespread damage to the environment, such as that recently seen in the Gulf of Mexico with the explosion of the Macondo rig. Strict compliance with these laws is deemed critical and a central tenet of the offshore regime. However, this defence acknowledges and provides for an exception to strict compliance in emergency circumstances. As a result, the measure is effective in achieving the objectives of the OPGGS Act.

The defence is not related to issues of culpability, but instead provides exceptions or an excuse for conduct. In addition, the defence relates to the serious potential consequences of non-compliance. Conduct resulting in the offence would, in most circumstances, take place at a remote location and without the ability for the regulator to immediately or even quickly gain access in order to ascertain the facts directly relating to the defence. As a result, the facts and information directly relevant to the defence is entirely within the defendant’s knowledge.
The defence is likely to be used by companies with significant resources, who are more than capable of shouldering the legal burden if they wish to claim a defence. The industry is highly regulated and companies involved have chosen to voluntarily participate in this regulated environment on a for profit basis.

As a result, the measure contains a limitation that is both reasonable and proportionate to the achievement of the relevant objective.

Allowing for a reversal of the evidential burden of proof only would create internal inconsistencies in the OPGGS Act and its established treatment of offences and defences. It is essential to avoid any perception by the offshore petroleum and greenhouse gas storage industries that the Commonwealth is ‘soft’ on compliance. Defences should be available only to those who have genuinely done everything in their power to avert the occurrence of an adverse event and can demonstrate that they have done so.

To provide the ability of a defendant to simply point to evidence that suggests a reasonable possibility that compliance with well integrity laws was not practicable in the face of an emergency would result in the regulator being unable to successfully and meaningfully take enforcement action in the case of an offence being committed, and this would undermine the legitimate objective in question.

In the aftermath of an event where one or more workers may have suffered serious injury or may have died, or where significant environmental damage may have occurred, it is appropriate that a titleholder should have to demonstrate, on the balance of probabilities, that the titleholder took all available action to prevent the occurrence, rather than merely to meet the evidential burden relating to the possibility of having done so.

Due to the remote occurrence of the regulated activities, the regulator is not able to, at the relevant time, independently assess and verify what is reasonable or practicable in the event of non-compliance. Accordingly, the defence would almost always succeed without the real ability of the prosecution to contest its veracity. The relevant facts are entirely within the defendant’s knowledge and not at all within the regulator’s knowledge. This puts the regulator at a significant disadvantage when attempting to establish the chain of causation of an adverse event and to meet a legal burden of proof that a defence cannot be relied upon. This would ultimately lead to suboptimal outcomes for OHS of offshore workers and protection of the marine environment.

**The right to a fair and public hearing**

Article 14(1) of the ICCPR provides that all persons shall be equal before courts and tribunals, and protects the right to a fair and public hearing before a competent tribunal established by law. Laws that seek to restrict or otherwise alter access to courts and tribunals (including the manner in which appeals may be made) may engage with this right. The right may be subject to permissible limits if those limits are clearly provided by law and are non-arbitrary. For a limitation not to be arbitrary, it must be aimed at a legitimate objective, and be reasonable, necessary and proportionate to achieving that objective.
The ability to only seek criminal prosecution or application of a civil penalty creates a potential barrier to appropriate enforcement of minor breaches and less serious contraventions of the OPGGS Act and regulations. For example, the regulator or the Commonwealth Department of Public Prosecutions may determine that the cost of undertaking court proceedings is not justifiable in relation to the level and nature of the breach. In the absence of an appropriate alternative enforcement mechanism, such as the ability to issue an infringement notice, there is a high risk that no enforcement action would be taken in relation to such minor or technical breaches and contraventions.

Amendments in Schedule 1 to the Bill would make new section 452A of the OPGGS Act subject to an infringement notice. The application of an infringement notice to new section 452A will enable the regulator to respond quickly to an alleged contravention and provide an additional option for the regulator to enforce the new requirements. It will also enable the regulator to respond in a manner proportionate to the level and seriousness of the breach.

Schedule 1 to the Bill also amends section 611E of the OPGGS Act to provide for an infringement notice for a contravention of section 452A to be issued and enforced in accordance with Part 5 of the Regulatory Powers Act (as for the existing provisions of the OPGGS Act that are subject to an infringement notice).

In accordance with the principles in the Guide, new section 452A is a minor offence of strict liability. Furthermore, an enforcement officer, such as a NOPSEMA inspector, can readily make an assessment of innocence or guilt, given the clear-cut physical elements of the offence.

The right of a person to a fair and public hearing by a competent, independent and impartial tribunal is preserved by the application of the Regulatory Powers Act as the provisions of that Act allow a person to elect to have the matter heard by a court rather than pay the amount specified in the notice. Additionally, the Regulatory Powers Act provides that this right must be stated in an infringement notice issued to a person, ensuring that a person is aware of their right to have the matter heard by a court.

The provisions of the OPGGS Act also protect against arbitrariness or abuses of power through limitations as to who can issue an infringement notice in relation to new section 452A.

The nature of new section 452A of the OPGGS Act, and the safeguard described above, ensure the power to issue an infringement notice in relation to non-compliance with section 452A is reasonable, necessary and proportionate. The amendments are consistent with Australia’s human rights obligations in relation to the right to a fair and public hearing.

Schedule 12

The amendments in Schedule 12 to the Bill clarify that, in an appeal against a decision by a NOPSEMA inspector referred to in the table in subclause 80A(1) of Schedule 3 to the
OPGGS Act, the appeal is to be decided on the basis of the circumstances that prevailed at the time the relevant decision was made.

The amendments in Schedule 12 to the Bill aim to resolve certain ambiguities around whether appeals against a decision by a NOPSEMA inspector may be considered based on circumstances that exist at the time the appeal is heard, or are to be considered on the basis of circumstances that existed at the time the relevant decision was made. These ambiguities, which were highlighted by recent decisions of the Fair Work Commission (FWC) (see Sedco Forex International Inc. v National Offshore Petroleum Safety and Environmental Management Authority T/A NOPSEMA [2015] FWC 7239; Sedco Forex International Inc. v National Offshore Petroleum Safety and Environmental Management Authority T/A NOPSEMA [2016] FWCFB 2066) have potentially serious consequences for NOPSEMA’s inspectorate arrangements.

For example, a person could carry out the improvements required to be made by an improvement notice issued by a NOPSEMA inspector, and then lodge an appeal against the decision by the inspector to issue the improvement notice. If the appeal were decided solely or primarily based on circumstances that exist at the time the appeal is heard, the appeal could succeed on this basis. This risks the appeals process becoming a mechanism for expunging notices, rather than serving as a proper administrative check on NOPSEMA’s inspectorate powers. It could also frustrate the legitimate exercise of NOPSEMA’s inspectorate functions to effectively deal with compliance and risk matters identified during inspections.

The amendments contained in the Bill represent the most certain and effective manner of resolving this ambiguity. Other methods (for example, the production of guidance notes) do not deliver the necessary certainty or force of law. This position is reinforced by decisions of the High Court (see for example Shi v Migration Agents Registration Authority (2008) 235 CLR 286) which indicate that, in the absence of a clear legislative intention to the contrary, a tribunal may decide an appeal on the basis of circumstances that exist at the time the appeal is heard.

The amendments cause only minimal interference with the right to a fair and public hearing, in that they do not restrict access to the courts or otherwise alter appeals procedure. Rather, they only clarify that an appeal against the decision of a NOPSEMA inspector must be decided on the basis of circumstances existing at the time the decision was made. This is appropriate, given that decisions by NOPSEMA inspectors are made on the basis of evidence available to them at the relevant time.

The amendments in Schedule 12 therefore aim to achieve a legitimate objective: ensuring that appeals made under the OPGGS Act serve as an effective administrative check on the powers of NOPSEMA inspectors, and ensuring that inspectors can effectively address compliance and risk matters identified during inspections. Further, to the extent that the amendments place any limits on the right to a fair and public hearing, those limits represent a clear, reasonable and proportionate means of achieving that objective.
The right to minimum guarantees in criminal proceedings

Article 14(3) of the ICCPR establishes a number of guarantees that must be observed in criminal proceedings including, as set out in Article 14(3)(g), the right to be free from self-incrimination. This right may be subject to permissible limitations, where those limitations are provided by law and are non-arbitrary. In order for limitations not to be arbitrary, they must be aimed at a legitimate objective and be reasonable, necessary and proportionate to that objective.

Schedule 1

Clause 8 of Schedule 2A and clause 74 of Schedule 3 to the OPGGS Act allow a NOPSEMA inspector to require a person to answer questions or produce documents or things, if the inspector believes on reasonable grounds that the person is capable of answering the question or producing the document or thing. The question, document or thing must be reasonably connected with the conduct of an environmental or OHS inspection.

As a result of the amendments made by Schedule 1 to the Bill, clause 8 of Schedule 2A and clause 74 of Schedule 3 will apply during inspections at the expanded range of regulated business premises. Clause 8 of Schedule 2A will also be extended to apply during inspections relating to greenhouse gas environmental management, as well as relating to petroleum environmental management (clause 74 of Schedule 3 already applies in relation to both greenhouse gas and petroleum operations).

Under subclauses 8(8) and 74(8) of the OPGGS Act, a person is not excused from answering a question or producing a document or thing on the ground that the answer to the question or production of the document or thing may tend to incriminate the person or make the person liable to a penalty. However, the answer given or document produced, the fact of answering or production, or any information obtained as a direct or indirect consequence of the answering or production, is not admissible in evidence against the person in any civil or criminal proceeding (other than a proceeding relating to the provision of false or misleading information) (see subclauses 8(9) and 74(9)).

Where matters relating to compliance with environmental management laws and OHS laws are concerned, it may occasionally be more important to establish the facts rather than to be able to use the facts in a prosecution or legal action. Maintaining a privilege against self-incrimination would significantly hamper the regulator’s ability to monitor a titleholder’s or operator’s compliance with applicable environmental or OHS requirements. It could also impact on the regulator’s ability to understand the causes of incidents that have occurred that may, if they recur, cause a major accident event and/or environmental damage.

NOPSEMA faces substantial difficulties in obtaining information about offshore activities for the purpose of monitoring compliance and investigating the causes of incidents. Offshore operations are technologically complex. They take place far from land and, in the case of well operations, far below the seabed, making physical inspection difficult or impossible. In many cases, the inspector’s best recourse is to ask questions of those carrying out the operations or to have them produce operational records detailing, for example, maintenance schedules. In an industry where non-compliance can result in incidents that have the potential to cause
major damage, an inspector must be able to follow-up any leads that are obtained from the answers given to questions. To shut off any line of inquiry would not be in the public interest given the nature of the potential harm that could occur.

Subclauses 8(8) and (9) of Schedule 2A and 74(8) and (9) of Schedule 3 abrogate the privilege against self-incrimination, but also provide an immunity against use or derivative use of the information or document in civil or criminal proceedings other than for specified offences. Clauses 8 and 74 ensure NOPSEMA inspectors have sufficiently broad powers to establish facts, while protecting individuals from proceedings on the basis of providing the information. This safeguard ensures that clauses 8 and 74 are reasonable and proportionate to meeting this objective, and therefore the provisions meet Australia’s human rights obligations to afford minimum guarantees in criminal proceedings.

**Schedule 4**

As discussed above, subclauses 8(8) of Schedule 2A and 74(8) of Schedule 3 provide that a person is not excused from answering a question, or producing a document or thing, when required to do so, on the ground that the answer to the question, or production of the document or thing, may tend to incriminate the person or make them liable to a penalty. However, subclauses 8(9) and 74(9) further provide that the answer given, or document or thing produced, or any information obtained as a direct or indirect consequence of answering the question, or production of the document or thing, is not admissible in evidence against the person (a ‘use’ immunity).

Subsections 702(1) and 728(1) of the OPGGS Act similarly provide that a person is not excused from giving information or evidence, or producing a document, under section 699 or 725 respectively, on the ground that the information or evidence, or production of the document, might tend to incriminate the person or expose the person to a penalty. Subsection 761(1) provides that a person is not excused from giving information or producing a document under section 759 on the ground that the information given, or production of the document, might tend to incriminate the person, or expose the person to a penalty. A ‘use’ immunity also applies in relation to these provisions.

As discussed above, maintaining a privilege against self-incrimination would significantly hamper the regulator’s ability to monitor the titleholder’s compliance with applicable requirements, or to understand the causes of incidents that have occurred that may, if they recur, cause a major accident event leading to fatalities, serious injury and/or damage to the environment. NOPSEMA faces difficulties in obtaining information about offshore operations for the purpose of monitoring compliance and investigating the causes of incidents. For the reasons set out above, the abrogation of the privilege against self-incrimination is consistent with Australia’s human rights obligations.

The definition of a ‘person’ in the provisions that create a ‘use’ immunity is not limited to an individual and as a result the ‘use’ immunity is extended to corporations. This creates a problem where NOPSEMA obtains documents, information, evidence or a thing from a corporate entity that may be subject to prosecution. Should NOPSEMA obtain information, evidence, a document or a thing from a corporate entity (which make up the majority of
participants in the offshore petroleum sector) under one of these provisions, by nature of the definition of ‘person’ it will be inadmissible as evidence against the corporation.

Schedule 4 to the Bill amends the subsections and subclauses above so that the ‘use’ immunity is restricted only to individuals. These amendments ensure continuing protection of the human rights of the individual, and maintain consistency with other Commonwealth legislation, such as the Work Health and Safety Act 2011 and the Telecommunications Act 1997. Subsections 702(2), 728(2) and 761(2), and subclauses 8(9) of Schedule 2A and 74(9) of Schedule 3 to the OPGGS Act, ensure regulators and inspectors have a sufficiently broad power to establish facts, while protecting individuals from proceedings on the basis of information provided. This safeguard ensures that the relevant provisions are reasonable and proportionate, and therefore the provisions meet Australia’s human rights obligations to afford minimum guarantees in criminal proceedings.

Schedule 15

Schedule 15 to the Bill inserts new clause 8 of Schedule 2B to the OPGGS Act, which is equivalent to clause 8 of Schedule 2A (discussed above in relation to amendments in Schedules 1 and 4).

The human rights considerations discussed above therefore also apply in relation to new clause 8 of Schedule 2B.

Conclusion

The Bill is compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Minister for Resources and Northern Australia,
Senator the Hon Matt Canavan
NOTES ON CLAUSES

Clause 1—Short title

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

Clause 2—Commencement

2. The table in this clause sets out the commencement dates for when the provisions of the Bill will commence.

3. Sections 1 to 3 of the Bill will commence the day the Bill receives Royal Assent.

4. Division 1 of Part 1 of Schedule 1 to the Bill will commence on a day to be fixed by Proclamation. Amendments to regulations under the OPGGS Act will need to be implemented to fully effect the transfer of regulatory functions and powers for greenhouse gas storage environmental management and wells to the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA). The amendments in Schedule 1, which support the transfer of regulatory functions and powers, will commence by Proclamation so that the timing of commencement can be aligned with the commencement of the regulatory amendments.

5. If Proclamation does not occur within 6 months of Royal Assent, then Division 1 of Part 1 of Schedule 1 will automatically commence the day after the 6 month period expires.

6. Division 2 of Part 1 of Schedule 1 to the Bill will commence at the same time as Division 1 of Part 1 of Schedule 1. Like Division 1, Division 2 contains amendments to provide for the transfer of regulatory functions and powers for greenhouse gas storage environmental management and wells to NOPSEMA. However, Division 2 does not commence at all if Schedule 2 to the Timor Sea Maritime Boundaries Treaty Consequential Amendments Act 2019 (Maritime Boundaries Treaty Act) commences before the commencement of Division 1 of Part 1 of Schedule 1.

7. Division 2 of Part 1 of Schedule 1 to this Bill and Schedule 2 to the Maritime Boundaries Treaty Act both include amendments of the same provisions in Part 9.10A of the OPGGS Act. In addition, it is unknown when Schedule 2 to the Maritime Boundaries Treaty Act will commence. To accommodate this uncertainty, Division 2 of Part 1 of Schedule 1 implements interim changes to the relevant provisions, in the event that the Maritime Boundaries Treaty Act has not yet commenced, to fully implement the transfer of greenhouse gas powers. Further changes will then be made to the provisions when Schedule 2 to the Maritime Boundaries Treaty Act commences (see discussion of commencement of Division 3 of Part 1 of Schedule 1 below).
8. Division 3 of Part 1 of Schedule 1 to the Bill will commence either immediately after the commencement of the provisions covered by Division 1 of Part 1 of Schedule 1 to the Bill or immediately after the commencement of Schedule 2 to the Maritime Boundaries Treaty Act – whichever comes later. However, the provisions do not commence at all unless Schedule 2 to the Maritime Boundaries Treaty Act commences. Division 3 of Part 1 of Schedule 1 will fully implement the changes to Part 9.10A of the OPGGS Act contained in this Bill and in Schedule 2 to the Maritime Boundaries Treaty Act. Hence, Division 3 will only commence when both Division 1 of Part 1 of Schedule 1 to the Bill and Schedule 2 to the Maritime Boundaries Treaty Act have commenced.

9. If Schedule 2 to the Maritime Boundaries Treaty Act commences before Division 1 of Part 1 of Schedule 1 to the Bill, the amendments in Division 2 of Part 1 of Schedule 1 to the Bill will never commence. The amendments in Division 3 of Part 1 of Schedule 1 will commence immediately after the commencement of Division 1 of Part 1 of Schedule 1. However, if Schedule 2 to the Maritime Boundaries Treaty Act commences after Division 1 of Part 1 of Schedule 1 to the Bill, the amendments in Division 3 of Part 1 of Schedule 1 to the Bill will commence at a time after the amendments in Division 2 of Part 1 of Schedule 1 have been made.

10. Part 2 of Schedule 1 to the Bill will commence at the same time as Division 1 of Part 1 of Schedule 1. Part 2 includes transitional and application provisions in relation to the amendments made by Schedule 1.

11. Schedule 15 to the Bill, which relates to powers of NOPSEMA inspectors to inspect for compliance by petroleum and greenhouse gas titleholders with well integrity-related obligations, will commence immediately after Schedule 1 to the Bill. As for Schedule 1, regulatory amendments to fully effect the transfer of regulatory functions and powers for greenhouse gas wells to NOPSEMA are required before Schedule 15 can commence. Further, Schedule 15 includes amendments to provisions that are also amended by Schedule 1.

12. Part 2 of Schedule 16 to the Bill will commence at the same time as Schedule 1 to the Bill. The provisions to be inserted by Part 2 of Schedule 16 relate to new provisions that will be inserted by Schedule 1.

13. Part 3 of Schedule 16 to the Bill will commence at the same time as Schedule 15 to the Bill. The provisions to be inserted by Part 3 of Schedule 16 relate to new provisions that will be inserted by Schedule 15.

14. Schedule 18 to the Bill will commence immediately after Schedule 15 to the Bill. Schedule 15 is required to be in effect before Schedule 18, as items in Schedule 18 will amend provisions inserted by Schedule 15.

15. The remainder of the Bill’s provisions will commence the day after the Bill receives Royal Assent.
Clause 3—Schedules

16. This clause gives effect to the provisions in the Schedules to the Bill.

Schedule 1—Greenhouse gas storage etc.

17. The amendments in this Schedule support and effect the transfer of regulatory functions and powers for offshore greenhouse gas storage environmental management and well operations from the responsible Commonwealth Minister (the Minister) to NOPSEMA.

18. NOPSEMA has developed a high level of expertise in the regulation of offshore environmental management and well operations through its responsibility for regulation of offshore petroleum activities. NOPSEMA currently holds a delegation to undertake the Minister’s functions and powers in relation to greenhouse gas storage environmental management under the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (Environment Regulations). However, there are a number of shortcomings in the arrangements for greenhouse gas storage environmental management and well operations. Further, the delegation does not provide a viable long-term regulatory solution, and also would not under the Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011 (Wells Regulations).

19. The delegation of the Minister’s functions and powers under the Environment Regulations and Wells Regulations does not make NOPSEMA the regulator of greenhouse gas storage environmental management and well operations. NOPSEMA will accept or refuse to accept an environment plan as the ‘delegate of the Minister’. NOPSEMA may therefore be perceived to be unable to act independently of government when making its decision as delegate, since the Minister remains the responsible regulator and retains the power to give directions to the delegate. It is important in terms of integrity, reputation and best regulatory practice that NOPSEMA be seen to be independent of the government of the day when assessing environment plans and well operations management plans for greenhouse gas storage activities, as it already is for petroleum activities.

20. Further, for greenhouse gas storage operations, NOPSEMA inspectors have neither compliance monitoring and enforcement powers, nor powers to issue administrative notices such as improvement notices and prohibition notices. Compliance monitoring and enforcement powers, as well as powers to issue administrative notices, are core regulatory tools for NOPSEMA to ensure full compliance with legislative requirements and regulatory approvals by regulated entities (such as titleholders and facility operators).

21. Accordingly, regulatory oversight for offshore greenhouse gas storage environmental management and well operations is transferred from the Minister to NOPSEMA. The transfer will be effected through a suite of legislative amendments, including the amendments to be made by the Bill, and amendments to the Offshore Petroleum and
Greenhouse Gas Storage (Regulatory Levies) Act 2003 (Regulatory Levies Act), in addition to amendments to the Environment Regulations and the Wells Regulations.

22. As the entity responsible for the administration of matters relating to greenhouse gas storage resource management under the OPGGS Act, the Minister will retain responsibility for major decisions concerning the granting of greenhouse titles, the imposition of title conditions and the cancellation of titles, as well as core decisions about resource management and resource security.

Part 1—Amendments
Division 1—General amendments


Item 1: Section 7 (after paragraph (d) of the definition of approved)

23. This item ensures that the definition of approved in section 7 does not apply to the use of the term in new section 452A (inserted by item 17). A definition of approved for the specific purpose of the use of that word in new section 452A is inserted in subsection 452A(12).

Item 2: Section 7

24. This item inserts a definition of environmental management law, for the purposes of the OPGGS Act.

Item 3: Section 7 (definition of greenhouse gas project inspector)

25. This item repeals the definition of greenhouse gas project inspector. This category of inspectors is to be abolished. The amendments made by the Bill will provide for NOPSEMA inspectors to monitor and enforce compliance with obligations under greenhouse gas-related provisions in the OPGGS Act and regulations.

Item 4: Section 7 (definition of petroleum environmental law)

26. This item repeals the definition of petroleum environmental law. This term is replaced by the term environmental management law (see item 2), which applies more generally to environmental laws in relation to both petroleum and greenhouse gas storage activities.

Item 5: Section 7

27. This item inserts a definition of related body corporate, for the purposes of the OPGGS Act.
Item 6: Section 7 (after paragraph (i) of the definition of title)

28. This item amends the definition of title to include a reference to the definition used for the purpose of new section 579A (see item 27).

Items 7 and 8: Paragraph 316(2)(b); Paragraph 351(2)(b)

29. These items amend paragraphs 316(2)(b) and 351(2)(b) to ensure a direction given to a greenhouse gas assessment permittee or a greenhouse gas holding lessee, by the Minister, for the purposes of addressing potential risks to current or future petroleum operations under section 316 or 351 respectively, is subject to the requirements of the Offshore Petroleum and Greenhouse Gas Storage (Safety Regulations) 2009 (Safety Regulations), the Environment Regulations and Part 5 of the Wells Regulations. A permittee or lessee who receives a direction from the Minister should not be excused from complying with safety, well integrity and environmental management regulations, given the purpose of these regulations to ensure risks to safety, well integrity and the environment from offshore petroleum and greenhouse gas storage activities are reduced to as low as reasonably practicable.

Item 9: Subsection 360(3) (note)

30. This item amends the note to subsection 360(3) to include a reference to the new power of NOPSEMA to issue a remedial direction to a former greenhouse gas titleholder (see item 50).

Item 10: Paragraph 376(3)(b)

31. This item amends paragraph 376(3)(b) to ensure a direction given to a greenhouse gas injection licensee by the Minister under section 376, for the purposes of addressing potential risks to current or future petroleum operations, is subject to the requirements of the Safety Regulations, the Environment Regulations and the Wells Regulations.

Item 11: Paragraph 430(5)(b)

32. Paragraph 430(5)(b) refers to a direction given by the Minister under Chapter 6. As a result of the amendments to be made by Schedule 1 to the Bill, NOPSEMA will also be able to give a direction to a greenhouse gas titleholder under Chapter 6. This item therefore amends paragraph 430(5)(b) to include a reference to a direction given by NOPSEMA.

33. Paragraph 430(5)(b) also refers to a direction given to the titleholder by the Minister under Part 8.1. This is an anomaly, as the Minister does not have the ability to give a direction to a titleholder under Part 8.1; rather, it is the Titles Administrator who can give a direction under that Part. This item also amends paragraph 430(5)(b) to include a reference to a direction given by the Titles Administrator.
Items 12 and 13: Subsection 436(1) (table item 2, column headed “Event or circumstance”); Subsection 440(1) (table item 4, column headed “Event or circumstance”)

**34.** Table items 2 in subsection 436(1) and 4 in subsection 440(1) refer to a direction given to the titleholder by the Minister under Part 8.1. This is an anomaly, as the Minister does not have the ability to give a direction to a titleholder under Part 8.1; rather, it is the Titles Administrator who can give a direction under that Part. This item therefore amends these provisions to include a reference to a direction given by the Titles Administrator.

**Item 14: At the end of subsection 442(3)**

**35.** This item adds a note to subsection 442(3), to draw the reader’s attention to NOPSEMA’s function in paragraph 646(gp).

**36.** Under paragraphs 442(3)(c) to (f), the Minister is required to be satisfied of certain matters before consenting to an application by a titleholder for surrender of a title. These matters relate to removal of, or making satisfactory arrangements in relation to, property in the title area, plugging or closing off of wells, conservation and protection of the natural resources in the title area, and making good of any damage to the seabed or subsoil in the title area.

**37.** Certain information and knowledge in relation to the matters set out in paragraphs 442(3)(c) to (f) will reside with NOPSEMA, given that NOPSEMA will be the regulator of greenhouse gas wells and environmental management. It is important that the Minister is able to access this information, to determine whether he or she is satisfied with respect to the relevant matters. To this end, paragraph 646(gp) provides that one of the functions of NOPSEMA is to, when requested by the Minister, provide information, assessments, analysis, reports, advice and recommendations to the Minister in relation to the performance of the Minister’s functions, or the exercise of the Minister’s powers, in relation to offshore greenhouse gas storage operations.

**Item 15: Paragraph 446(b)**

**38.** Paragraph 446(b) refers to a direction given by the Minister under Chapter 6. As a result of the amendments to be made by this Schedule, NOPSEMA will also be able to give a direction to a greenhouse gas titleholder under Chapter 6. This item therefore amends paragraph 446(b) to include a reference to a direction given by NOPSEMA.

**39.** Paragraph 446(b) also refers to a direction given to the titleholder by the Minister under Part 8.1. This is an anomaly, as the Minister does not have the ability to give a direction to a titleholder under Part 8.1; rather, it is the Titles Administrator that can give a direction under that Part. This item also amends paragraph 446(b) to include a reference to a direction given by the Titles Administrator.
Item 16: At the end of Division 1 of Part 3.11

40. This item inserts new section 449A, requiring NOPSEMA to notify the Titles Administrator if NOPSEMA reasonably believes there is a ground for cancelling a greenhouse gas assessment permit, a greenhouse gas holding lease, or a greenhouse gas injection licence. The new section mirrors the existing, analogous petroleum-related provision in section 277A.

41. In the course of undertaking its regulatory activities, NOPSEMA may become aware of matters that could constitute a ground for cancellation of a permit, lease or licence. However, it is the Minister that has the power to cancel a greenhouse gas title, on the advice of and with regard to information provided by the Titles Administrator. Requiring NOPSEMA to provide information about these matters to the Titles Administrator will ensure such information, which the Titles Administrator or the Minister may not otherwise become aware of, will be brought to the attention of the appropriate regulatory body.

Item 17: After section 452

42. This item inserts new section 452A, which places notification obligations on registered holders of greenhouse gas titles. The new section mirrors the existing petroleum-related provision in section 286A.

43. Subsection 452A(1) makes it a requirement for any person who, at the commencement of this item, is the registered holder, or one of the registered holders, of a greenhouse title to provide the Titles Administrator and NOPSEMA with contact details, in the approved form, within 30 days of the commencement of this item.

44. At any time after this item commences, subsection 452A(2) requires a person who becomes the registered holder, or one of the registered holders, of a greenhouse title to provide the Titles Administrator and NOPSEMA with contact details, in the approved form, within 30 days of becoming a registered holder.

45. Subsections 452A(3) and (4) require written notification to the Titles Administrator and NOPSEMA when a person ceases to be a registered holder of a greenhouse gas title. This obligation is placed on the person who ceases to be the registered holder of the title, except in the case of death of a titleholder, in which case the person’s legal personal representative must notify the Titles Administrator and NOPSEMA.

46. Subsection 452A(5) requires a person to notify the Titles Administrator and NOPSEMA when their contact details change and provide the Titles Administrator and NOPSEMA with updated contact details. This requirement applies every time a registered titleholder changes their contact details.

47. All notices under subsections 452A(1), (2) and (5) are required to be made in the approved form. The Titles Administrator will make the approved form publicly available by publishing it on the Department’s website, as required by subsection 452A(6).
48. Subsection 452A(7) makes it an offence for a person who is required to notify the Titles Administrator and NOPSEMA of information under subsections 452A(1), (2), (3), (4) or (5) to fail to do so. An offence against subsection 452A(7) is an offence of strict liability. The application of strict liability to an offence means that a fault element, such as intention to do the act, or not do the act, is not required to be proved.

49. It is important that the Titles Administrator and NOPSEMA are provided with relevant contact details to ensure they can effectively undertake their regulatory responsibilities under the OPGGS Act and the regulations, including in relation to matters such as OHS, structural integrity, the environment, resource management and titles administration. The offshore greenhouse gas storage industry is a high risk industry, and there may be potentially serious consequences if the industry is not effectively regulated. The intention of the application of strict liability is to improve compliance in the regulatory regime.

50. Subsection 452A(9) provides that a person is liable to a civil penalty of 90 penalty units if the person contravenes subsection 452A(2), (3), (4) or (5). Further, under subsections 452A(10) and (11), a person is subject to a penalty for each day that an offence under subsection 452A(7) continues, and a civil penalty for each day that a contravention of subsection 452A(9) continues. The penalty for ongoing contravention is 10 per cent of the maximum penalty that can be imposed.

51. Subsection 452A(12) sets out definitions for the purposes of new section 452A, including setting out the specific contact details that must be provided.

**Items 18 and 19: After subsection 454(1); After subsection 454(2)**

52. Subsection 454(1) enables the Minister to require a greenhouse gas titleholder to lodge an additional security (if there is already one or more securities in force in relation to the title) if the Minister is satisfied that the total amount of the security or securities is insufficient. Under subsection 454(2), the Minister may require a greenhouse gas titleholder to lodge a security (if there is no security already in force in relation to the title) where the Minister is satisfied that it would be appropriate to do so.

53. These items insert new subsections 454(1A) and (2A) to include a specific ability for NOPSEMA to inform the Minister if, in the performance of its functions or the exercise of its powers, NOPSEMA becomes aware of circumstances relating to a greenhouse gas titleholder that may make it appropriate for the Minister to require the lodgement of an additional security under subsection 454(1) or a security under subsection 454(2).

**Item 20: Paragraph 454(3)(b)**

54. Paragraph 454(3)(b) refers to a direction given by the Minister under Chapter 6. As a result of the amendments to be made by this Schedule, NOPSEMA will also be able to give a direction to a greenhouse gas titleholder under Chapter 6. This item amends paragraph 454(3)(b) to include a reference to a direction given by NOPSEMA.

29
55. Paragraph 454(3)(b) also refers to a direction given to the titleholder by the Minister under Part 8.1. This is an anomaly, as the Minister does not have the ability to give a direction to a titleholder under Part 8.1; rather, it is the Titles Administrator who can give a direction under that Part. This item amends paragraph 454(3)(b) to include a reference to a direction given by the Titles Administrator.

Item 21: Paragraph 570(7)(c)

56. This item amends paragraph 570(7)(c) to ensure that section 570 (which imposes work practices obligations on greenhouse gas titleholders) has effect subject to a direction given by NOPSEMA or the Minister under Chapter 3 or 6. This includes a direction given by the Minister under the general power for the Minister to give a direction to a greenhouse gas titleholder in section 580, and a direction given by NOPSEMA under the new general power for NOPSEMA to give a direction to a greenhouse gas titleholder (see item 27).

57. It also includes a direction given by the Minister to a greenhouse gas titleholder under Chapter 3. For example, under section 316 the Minister may give a direction to a greenhouse gas assessment permittee for the purpose of eliminating, mitigating or managing the risk that operations carried on under the permit could have a significant adverse impact on petroleum exploration or recovery operations that are being, or could be, carried on under an existing or future petroleum title.

Item 22: Paragraph 572(7)(c)

58. This item amends paragraph 572(7)(c) to ensure section 572 (which sets out property maintenance and removal obligations of petroleum and greenhouse gas titleholders) has effect subject to a direction given by NOPSEMA or the Minister under Chapter 3 or 6. This includes the same directions as are outlined above in relation to the amendments to paragraph 570(7)(c) (see item 21).

Item 23: Subsection 572(7) (note)

59. This item repeals the note to subsection 572(7). Although section 572 applies to both petroleum and greenhouse gas titleholders, the note refers only to the requirement for a petroleum titleholder to comply with directions given by NOPSEMA or the Minister under section 574, 574A or 576B. Given that it is clear that a petroleum or greenhouse gas titleholder is required to comply with a direction given by NOPSEMA or the Minister, the note is unnecessary and is to be repealed.

Items 24 and 25: Subsection 574(5); Subsection 576B(7)

60. These items repeal subsections 574(5) and 576B(7).

61. Section 574 sets out a general power for NOPSEMA to give a direction to a petroleum titleholder as to any matter in relation to which regulations may be made. Section 576B enables NOPSEMA to give a direction to a petroleum titleholder to take action in
relation to an escape of petroleum, if a significant offshore petroleum incident has occurred in the title area.

62. Subsections 574(5) and 576B(7) provide that NOPSEMA must not give a direction of a standing or permanent nature except with the approval of the Joint Authority. Consistent with the independence of NOPSEMA, as enshrined in the regulatory reform legislation which came into effect on 1 January 2012 (the Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Act 2011 (the National Regulator Act)), the Joint Authority should have no role in the giving of directions by NOPSEMA. As a result of the amendment made by these items, NOPSEMA will continue to be able to give directions that are standing or permanent in nature, but will not require the approval of the Joint Authority to do so. It was an oversight that the amendment was not made in the National Regulator Act.

Item 26: Section 579

63. This item amends the simplified outline of Part 6.3 to reflect amendments made by the Bill regarding the general power for NOPSEMA to give a direction to a greenhouse gas titleholder.

Item 27: Before section 580

64. Under section 580 the Minister has the power to give a direction to a greenhouse gas titleholder as to any matter in relation to which regulations may be made.

65. As NOPSEMA will become the regulator of OHS, well operations and environmental management for offshore greenhouse gas storage activities, NOPSEMA’s powers should also include the ability to give a direction to a greenhouse gas titleholder to ensure it can regulate effectively. NOPSEMA already has this power in relation to petroleum operations (noting that the Minister also has power to give a direction to a petroleum titleholder for a purpose that relates to resource management, resource security or data management).

66. This item inserts new section 579A, which enables NOPSEMA to give a greenhouse gas titleholder a direction as to any matter in relation to which regulations may be made with no limitation in relation to the purpose for which a direction can be given. Since regulations can be made under table items 2A and 2B in subsection 782(1) in relation to all aspects of exploration for greenhouse gas storage formations and injection sites, and in relation to injection and storage of greenhouse gas, this will allow NOPSEMA to give directions as to OHS, well integrity and environmental management aspects of all greenhouse gas operations that can be carried out under a greenhouse gas title.

67. The general power of the Minister to give directions to a greenhouse gas titleholder in section 580 will continue to be expressed to be unlimited as to purpose. However, in practice, the Minister would only give directions in relation to the Minister’s functions under the OPGGGS Act and the Offshore Petroleum and Greenhouse Gas Storage (Greenhouse Gas Injection and Storage) Regulations 2011, under which the Minister assesses and determines the storage parameters of storage formations and exercises
regulatory oversight over operational aspects of injection and storage operations. This includes all aspects of managing storage capacity of the storage formation, monitoring of the movement of the greenhouse gas plume through the storage formation and operations required, if the Minister considers it necessary, to remediate any failure of the plume to behave in the manner predicted by the titleholder. These matters will also include remediation of the title area and end-of-project site closing. It is not desirable to include specific limitations in the direction-giving power in case any aspect of the Minister’s functions is inadvertently excluded.

68. If NOPSEMA gives a direction it must provide a copy of the direction to the Minister as soon as practicable after the direction was given (new subsection 579A(9)). This is to ensure that the Minister is aware of directions given by NOPSEMA under section 579A.

69. New subsections 579A(10) and (11) set out the status of directions under section 579A in relation to the Legislation Act 2003. Only a direction that is expressed to apply to the class of persons in paragraph 579A(3)(b) is a legislative instrument. This is because a direction under this paragraph can be regarded as determining the law or altering the content of the law (as it affects members of the public having no contractual relationship with the titleholder), rather than applying the law in a particular case.

70. Merits review will not be available for a decision by NOPSEMA to give a direction to a greenhouse gas titleholder. Although the OPGGS Act does not restrict the circumstances in which a direction may be given, the general policy of NOPSEMA is to give a direction as an enforcement action, as part of a graduated enforcement framework, where the titleholder is not otherwise complying with its obligations under the OPGGS Act or regulations. The decision to give a direction is therefore a decision of a law enforcement nature. The Administrative Review Council in its publication What decisions should be subject to merits review? (Merits Review Guide) states that decisions of a law enforcement nature should not be made subject to merits review.

Item 28: Section 580 (heading)

71. This item amends the heading to section 580 to specifically reference the Minister as a consequence of the insertion of a new general power for NOPSEMA to give a direction to a greenhouse gas titleholder (see item 27).

Item 29: Paragraph 580(5)(b)

72. This item amends paragraph 580(5)(b) to ensure that a direction given to a greenhouse gas titleholder by the Minister, under the Minister’s general power to give directions, is subject to the requirements of the Safety Regulations, the Environment Regulations and the Wells Regulations.

Item 30: After subsection 580(8)

73. This item inserts a provision to deal with the unlikely event that inconsistent directions are given to a greenhouse gas titleholder by NOPSEMA under new section 579A and
the Minister under section 580. New subsection 580(8A) provides that the direction by the Minister has no effect to the extent of the inconsistency. This is consistent with the provision which states that a direction given by the Minister is subject to compliance with the Safety Regulations, the Environment Regulations and the Wells Regulations (see item 29).

**Item 31: Before section 581**

74. This item inserts new section 580A, which makes it clear that a direction given by NOPSEMA or the Minister to a greenhouse gas titleholder may require the titleholder to do something (or not do something) anywhere in an offshore area, whether within or outside the title area.

75. Given that a greenhouse gas storage formation may have a boundary that is close to the outer boundary of the title area, it is appropriate that all greenhouse gas direction-giving powers include the ability to require the titleholder to do something outside the title area.

76. If a direction under section 579A would require the titleholder to take an action in, or in relation to, another title area, NOPSEMA will be required to give the other titleholder a copy of the direction as soon as practicable to ensure that the other titleholder is aware of the action to be taken and is able to raise any questions or concerns with NOPSEMA. Similarly, if a direction by the Minister under section 580 would require the titleholder to take an action in, or in relation to, another title area, a copy of the direction must be provided to the other titleholder by the Minister as soon as practicable.

**Item 32: Before subsection 581(1)**

77. This item inserts new subsections 581(1A) to (1C) to ensure that if a direction is given by NOPSEMA to a greenhouse gas titleholder under new section 579A which applies to the titleholder and another person, the titleholder is subject to notification requirements to ensure the other person becomes aware of the direction.

78. The new subsections replicate existing subsections 581(1) to (3) (which apply to directions given by the Minister to a greenhouse gas titleholder under section 580), which makes a titleholder to whom a direction is given responsible for ensuring that all relevant persons are aware of the direction. Subsection 581(1C) provides flexibility for NOPSEMA to specify how and where copies of the direction are to be displayed. The power would likely be used if NOPSEMA were of the opinion that persons at a number of separate locations needed to be aware of the substance of the direction.

79. The requirement in subsection 581(1C) is supplementary to that in subsection 581(1B). If NOPSEMA has given the titleholder a notice under subsection 581(1C) and the titleholder complies with that notice, the titleholder must still display another copy of the direction at a prominent place, or another prominent place, in the offshore area.
80. Failure to comply with a requirement in new subsection 581(1A), (1B) or (1C) will be an offence of strict liability as a result of the amendment made by item 34 (see paragraphs 82-83).

**Item 33: Subsection 581(1) (heading)**

81. This item amends the heading to subsection 581(1) as a consequence of the insertion of new subsections 581(1A) to (1C).

**Item 34: Paragraph 581(4)(a)**

82. This item amends subsection 581(4) so that a breach of new subsection 581(1A), (1B) or (1C) will be an offence of strict liability (as is the case for a breach of existing subsections 581(1), (2) and (3), which impose equivalent requirements in relation to directions given by the Minister). The application of strict liability to an offence means that a fault element, such as intention to do the act, or not do the act, is not required to be proved. Given the remote and complex nature of offshore operations and the prevalence of multiple titleholder arrangements it is extremely difficult to prove intent. The application of strict liability aims to improve compliance in the regulatory regime.

83. The penalty for an offence against subsections 581(1), (2) and (3) will also apply for an offence against new subsection 581(1A), (1B) or (1C). The penalty is set at 50 penalty units. This is within the preference stated in *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, September 2011 (the Guide), which is a maximum of 60 penalty units for offences of strict liability. A lower penalty is applied compared to some other strict liability offences in the OPGGS Act, which apply a penalty of 100 penalty units. This reflects that the requirements set out in section 581 are procedural, and the consequences of a breach are relatively less serious.

**Item 35: Paragraph 582(1)(a)**

84. This item amends paragraph 582(1)(a) so that a breach of a direction given by NOPSEMA to a greenhouse gas titleholder under new section 579A (see item 27) will be an offence of strict liability (as is the case for a breach of a direction given by the Minister to a greenhouse gas titleholder under existing section 580). A discussion of the reason for the application of strict liability in the offshore regulatory regime is at paragraph 82.

85. Setting the penalty at 100 penalty units is considered appropriate. This is higher than the preference stated in the Guide, which is a maximum of 60 penalty units for offences of strict liability. However, offshore resources activities, as a matter of course, require a very high level of expenditure and, by comparison, a smaller penalty would be an ineffective deterrent. This is also consistent with other provisions in the OPGGS Act, which set the penalty for a strict liability offence at 100 penalty units. This is the penalty that is already applied by section 581 for a breach of a direction given by the Minister. The higher penalty, compared to some other strict liability offences in the OPGGS Act which apply a penalty of less than 60 penalty units, reflects the potentially
serious consequences of a breach of a direction. In the case of a direction given by NOPSEMA, this may include serious consequences for safety and/or the environment.

**Item 36: Paragraph 582(3)(a)**

86. This item amends subsection 582(3) so that it will apply where a direction under new section 579A (see item 27) applies to a titleholder and another person. Subsection 582(3) provides a defence to an offence under subsection 582(1) (see discussion at item 35) that may be used by the other person if he or she is bound by a direction and inadvertently infringes it. This provision is necessary in view of the fact that it is possible that a person other than the registered titleholder may not be aware of a direction served on the titleholder.

87. In accordance with subsection 13.3(3) of the Criminal Code Act 1995 (the Criminal Code), a defendant who wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating an offence bears an evidential burden in relation to that matter. The defendant will therefore bear an evidential burden in relation to the question of whether the defendant did not know, and could not reasonably be expected to have known, of the existence of the direction. The burden is reversed because the matter is likely to be exclusively within the knowledge of the defendant. This is particularly the case given the remote nature of offshore greenhouse gas storage operations.

**Item 37: Division 3 of Part 6.3 (heading)**

88. This item amends the heading to Division 3 of Part 6.3 to reflect that NOPSEMA will also be able to give a direction to a greenhouse gas titleholder (see item 27) and take action in relation to a breach of such a direction.

**Item 38: Before section 583**

89. This item inserts new section 582A to provide the necessary machinery for NOPSEMA to ensure that things directed to be done under a greenhouse gas direction are done, even if the titleholder or another party who is bound by the direction does not comply with it. The new section mirrors existing section 583, which enables the Minister to take action if there is a breach of a greenhouse gas direction given by the Minister.

90. New section 582A refers not only to directions given under new section 579A (general power for NOPSEMA to give a direction to a greenhouse gas titleholder), but also to other directions that may be given to a greenhouse gas titleholder by NOPSEMA under Chapter 6 (e.g. remedial directions to a current or former greenhouse gas titleholder (see items 45 and 50)) and regulations under the OPGGS Act.

91. If a person breaches a direction, and NOPSEMA does any or all of the things required by the direction to be done, new subsection 582A(2) provides for NOPSEMA to recover in a court any costs or expenses incurred.
92. New subsection 582A(3) provides a defence that may be used by a person, other than the titleholder, where that person inadvertently infringed a direction under new section 579A and becomes subject to a civil action for cost recovery. This provision is necessary in view of the fact that it is possible that a person other than the registered titleholder may not be aware of a direction served on the titleholder.

93. New subsection 582A(4) provides another defence, one that is equally available to the titleholder and any other person bound by a direction. It is a defence in a civil action for cost recovery, after NOPSEMA has performed the action required by the direction, if the defendant proves that they took all reasonable steps to comply with the direction.

Item 39: Subparagraph 583(1)(a)(iii)

94. This item repeals subparagraph 583(1)(a)(iii) which refers to a direction given by the Minister under Part 8.1. This is an anomaly, as the Minister does not have the ability to give a direction under Part 8.1; rather, it is the Titles Administrator who can give a direction under that Part.

95. Further, section 583 enables the Minister to do any or all of the things required by a direction to be done, if a person has breached the direction. Directions which may be given under Part 8.1 (e.g. directions to keep records, accounts and other documents in connection with greenhouse gas operations) generally do not relate to actions that could be taken by the Minister if the party bound by the direction fails to comply.

Item 40: Section 584

96. Section 584 refers to a direction given by the Minister under Chapter 6. As a result of the amendments to be made by Schedule 1 to the Bill, NOPSEMA will also be able to give a direction to a greenhouse gas titleholder under Chapter 6. This item amends section 584 to include a reference to a direction given by NOPSEMA.

97. Section 584 also refers to a direction given to the titleholder by the Minister under Part 8.1. This is an anomaly, as the Minister does not have the ability to give a direction to a titleholder under Part 8.1; rather, it is the Titles Administrator who can give a direction under that Part, as a result of the allocation of the functions of the former Designated Authorities when reform of the regulatory regime came into effect on 1 January 2012. This item amends section 584 to include a reference to a direction given by the Titles Administrator.

98. A defendant bears a legal burden in relation to the matter in section 584. The burden is reversed because the matter is likely to be exclusively within the knowledge of the defendant. This is particularly the case given the remote nature of offshore greenhouse gas storage operations. One point of significance of the defendant bearing the legal burden is that the proof must be discharged on the balance of probabilities (see section 13.5 of the Criminal Code).

99. It is appropriate to apply a legal, rather than an evidential, burden to the defence in section 584 of taking reasonable steps to comply with a direction.
100. The task of regulators of the offshore resources industry is difficult given the remote location and high hazard nature of the industry’s key operations. For this reason, providing effective and comprehensive compliance and enforcement tools to the regulator is vital in order to deliver human health and safety and environmental protection outcomes. Furthermore and of relevance in consideration of a human rights protection context, it is regulation pertaining, by and large, to large multinational companies as opposed to individuals. The companies who participate in this industry are well-resourced, sophisticated and voluntarily engaging in activities for profit.

101. The OPGGS Act, in part, establishes a regulatory framework for the management of remote and high hazard industry activities associated with offshore resources exploration and production. These activities, if not conducted properly, have the potential to result in serious injury or death and/or extraordinary environmental harm. The robustness of the regulatory regime, including an effective compliance and enforcement framework, is critical to achieving this objective. The objective of the defence of taking reasonable steps to comply with a direction is to assist in achieving the objective of ensuring the safety of persons in the industry as well as the protection of the environment. As such, the regulatory regime positively engages with the right to life, and helps to protect other human rights which would be negatively affected by significant environmental damage.

102. A direction issued by NOPSEMA is an enforcement tool designed to achieve a very particular outcome, to direct the industry participant to either do or refrain from doing something in order to deliver OHS, environmental management or well integrity outcomes. Directions are not used frequently—they are used in extraordinary circumstances, usually to deal with a specific emergent risk that the regulations do not adequately cover, and their application and use is taken very seriously. The defence in connection with the offence of non-compliance with a direction allows an optional exception; it is an opportunity for the defendant to prove that they took all reasonable steps to comply with the direction. As a result, the measure is effective in achieving the objectives of the OPGGS Act.

103. The defence is not related to issues essential to culpability, but instead provides an exception or excuse for the conduct. In addition, the defence relates to the serious potential consequences of non-compliance (as outlined above—risks of serious injury or death and/or major environmental consequences). Conduct resulting in the offence would, in most circumstances, take place at a remote location and without the ability for the regulator to immediately or even quickly gain access in order to ascertain the facts directly relating to the defence. As a result, the facts and information directly relevant to the defence are entirely within the defendant’s knowledge; only the defendant, with their particular knowledge of, and involvement in, the circumstances happening in the event of the failure to comply with the direction is able to prove the requisite and exception-based matters of reasonable steps.

104. The defence is likely to be used by companies with significant resources, who are more than capable of shouldering the legal burden if they wish to claim a defence. The industry is highly regulated and companies involved have chosen to voluntarily
participate in this regulated environment on a for profit basis. In addition, the penalties for breach of a direction are generally 100 penalty units and do not involve imprisonment.

105. As a result, the measure contains a limitation that is both reasonable and proportionate to the achievement of the relevant objective. It is also the least rights restrictive approach while still balancing the ability of the measure to effectively achieve its objective.

106. Allowing for a reversal of the evidential burden of proof only would create internal inconsistencies in the OPGGS Act and its established treatment of offences and defences. It is essential to avoid any perception by the offshore petroleum and greenhouse gas storage industries that the Commonwealth is ‘soft’ on compliance. Defences should be available only to those who have genuinely done everything in their power to avert the occurrence of an adverse event and can demonstrate that they have done so.

107. To provide the ability of a defendant to simply point to evidence that suggests a reasonable possibility that reasonable steps were taken to comply with a direction would result in the regulator being unable to successfully and meaningfully take enforcement action in the case of an offence being committed, and this would undermine the legitimate objective in question.

108. In the aftermath of an event where one or more workers may have suffered serious injury or may have died, or where significant environmental damage may have occurred, it is appropriate that a titleholder should have to demonstrate, on the balance of probabilities, that the titleholder took all available action to prevent the occurrence, rather than merely to meet the evidential burden relating to the possibility of having done so.

109. Due to the remote occurrence of the regulated activities, the regulator is not able to, at the relevant time, independently assess and verify what is reasonable or practicable in the event of non-compliance. Accordingly, the defence would almost always succeed without the real ability of the prosecution to contest its veracity. The relevant facts are entirely within the defendant’s knowledge and not at all within the regulator’s knowledge. This puts the regulator at a significant disadvantage when attempting to establish the chain of causation of an adverse event and to meet a legal burden of proof that a defence cannot be relied upon. This would ultimately lead to suboptimal outcomes for OHS of offshore workers and protection of the marine environment.

Items 41 and 42: Section 591

110. These items amend the simplified outline of Division 2 of Part 6.4 to reflect amendments to the Division made by Schedule 1 to the Bill.
Item 43: Section 591A

111. This item inserts a reference to NOPSEMA in section 591A to reflect that NOPSEMA, in addition to the Minister, will be able to give directions to greenhouse gas titleholders.

Item 44: At the end of section 591A

112. Section 591A provides that the power to give a direction to a person in relation to a matter under Division 2 of Part 6.4 (greenhouse gas remedial directions) does not limit the power of the Minister to give a direction to a person in relation to the same (or a different) matter under another provision of Division 2 of Part 6.4, or a provision of Part 6.3 (which deals with the general power to give greenhouse gas directions). The power to give a direction under Division 2 of Part 6.4 should not limit the power of the Minister to give a direction to a greenhouse gas titleholder under Chapter 3. This item amends section 591A to also include a reference to a direction given under Chapter 3.

Item 45: After section 591A

113. Under section 592 the Minister has the power to give a remedial direction to a greenhouse gas titleholder in relation to the removal of property, the plugging or closing off of wells, the conservation and protection of natural resources, and/or the making good of damage to the seabed or subsoil.

114. Given that NOPSEMA will become the regulator of OHS, well operations and environmental management for offshore greenhouse gas storage activities, NOPSEMA’s powers should also include the ability to give a remedial direction to a greenhouse gas titleholder, to ensure it can regulate effectively. NOPSEMA has this power in relation to petroleum operations, noting that the Minister also has power to give a remedial direction to a petroleum titleholder, for a purpose that relates to resource management or resource security.

115. This item inserts new section 591B which will enable NOPSEMA to give a remedial direction to a greenhouse gas titleholder.

116. Section 593 enables the Minister to give a site closing direction to a greenhouse gas injection licensee, where operations for the injection of a greenhouse gas substance have ceased, and an application has been made for a site closing certificate (or the licensee has breached a requirement to apply for a site closing certificate). These site closing directions are a greenhouse gas-specific matter (i.e. there is no equivalent power in relation to petroleum), and the power is proposed to remain solely with the Minister, given that the OPGGS Act provides that the Commonwealth will eventually take over long-term civil liability.

117. Failure to comply with a direction given by NOPSEMA under new section 591B will be an offence of strict liability (this is the same as the provision in section 592 that enables the Minister to give a remedial direction to a greenhouse gas titleholder). A discussion of the reason for the application of strict liability in the offshore regulatory regime is at paragraph 82.
118. Setting the penalty at 100 penalty units is considered appropriate. This is consistent with the penalty that is applied by section 592 for a breach of a remedial direction given by the Minister. A discussion of setting certain penalties at 100 penalty units is at paragraph 85.

119. Merits review will not be available for a decision by NOPSEMA to give a remedial direction to a current greenhouse gas titleholder. A discussion of the reason for the exemption from merits review for directions by NOPSEMA is at paragraph 70.

Items 46 to 49: Section 592 (heading); Paragraph 592(2)(d); At the end of subsection 592(2);
At the end of section 592

120. These items amend section 592 to reflect that the Minister will continue to be able to issue remedial directions to greenhouse gas titleholders. Item 48 limits the purposes for which the Minister will be able to give a remedial direction to a greenhouse gas titleholder. This will ensure the Minister will only be able to give directions for the purposes of the performance of the functions and the exercise of the powers of the Minister under the OPGGS Act and the regulations.

121. Item 49 inserts a provision to deal with the unlikely event that inconsistent directions are given by NOPSEMA under new section 591B and the Minister under section 592. New subsection 592(8) provides that the direction by the Minister has no effect to the extent of any inconsistency.

Item 50: After section 594

122. Under section 595 the Minister has the power to give a remedial direction to a former greenhouse gas titleholder in relation to the removal of property, the plugging or closing off of wells, the conservation and protection of natural resources, and/or the making good of damage to the seabed or subsoil.

123. Given that NOPSEMA will become the regulator of OHS, well operations and environmental management for offshore greenhouse gas storage activities, NOPSEMA’s powers should also include the ability to give a remedial direction to a former greenhouse gas titleholder to ensure it can regulate effectively. NOPSEMA has this power in relation to petroleum operations, noting that the Minister also has power to give a remedial direction to a former petroleum titleholder, for a purpose that relates to resource management or resource security.

124. This item inserts new section 594A which will enable NOPSEMA to give a remedial direction to a former greenhouse gas titleholder.

125. Failure to comply with a direction given by NOPSEMA under section 594A will be an offence of strict liability (this is the same as the provision that enables the Minister to give a remedial direction to a former greenhouse gas titleholder). A discussion of the reason for the application of strict liability in the offshore regulatory regime is at paragraph 82.
126. Setting the penalty at 100 penalty units is considered appropriate. This is higher than the preference stated in the Guide, which is a maximum of 60 penalty units for offences of strict liability. However, offshore resources activities, as a matter of course, require a very high level of expenditure and therefore by comparison a smaller penalty would be an ineffective deterrent. This is also consistent with other provisions in the OPGGS Act, which set the penalty for a strict liability offence at 100 penalty units. This is consistent with the penalty that is applied by section 595 for a breach of a remedial direction given to a former greenhouse gas titleholder by the Minister. The higher penalty, compared to some other strict liability offences in the OPGGS Act which apply a penalty of less than 60 penalty units, reflects the potentially serious consequences of a breach of a direction. In the case of a direction given by NOPSEMA, this may include serious consequences for safety and/or the environment.

127. Merits review will not be available for a decision by NOPSEMA to give a remedial direction to a former greenhouse gas titleholder. Although the OPGGS Act does not restrict the circumstances in which a direction may be given, the general policy of NOPSEMA is to give a direction as an enforcement action, as part of a graduated enforcement framework. A remedial direction would be issued to a former titleholder in cases where the former titleholder did not comply with its obligations in relation to decommissioning under the OPGGS Act or regulations while they were a titleholder. The decision to give a direction is therefore a decision of a law enforcement nature. The Merits Review Guide states that decisions of a law enforcement nature should not be made subject to merits review.

Items 51 to 54: Section 595 (heading); Paragraph 595(2)(d); At the end of subsection 595(2); At the end of section 595

128. These items amend section 595 to reflect that the Minister will continue to be able to issue a remedial direction to a former greenhouse gas titleholder, but as appropriate to the scope of the Minister’s oversight of operations. Item 53 limits the purposes for which the Minister will be able to give a remedial direction to a former greenhouse gas titleholder. This will ensure that the Minister will only be able to give directions for the purposes of the performance of the functions and the exercise of the powers of the Minister under the OPGGS Act and the regulations.

129. Item 54 inserts a provision to deal with the unlikely event that inconsistent directions are given by NOPSEMA under new section 594A, and the Minister under section 595. New subsection 595(8) provides that the direction by the Minister has no effect to the extent of the inconsistency.

Items 55 and 56: After section 595; After section 596

130. Section 596 provides for the Minister to take certain actions if a direction given under section 595 (that is, a remedial direction to a former greenhouse gas titleholder) is breached. Given that NOPSEMA will also have the ability to issue a direction to a former greenhouse gas titleholder under new section 594A (see item 50), this item
inserts new section 595A, which will enable NOPSEMA to do the same things that the Ministe

131. Further, under new section 595A, if any property brought into the vacated area by any person engaged or concerned in operations authorised by the former title has not been removed, NOPSEMA may, by notifiable instrument, direct the owner or owners of that property to remove the property, or dispose of the property, to the satisfaction of NOPSEMA. Under new section 596A, if such a direction has been breached, NOPSEMA may itself remove, or dispose of, the property and, in certain circumstances, sell the property by public auction or otherwise. NOPSEMA may deduct costs and expenses incurred by NOPSEMA, or amounts payable under the OPGGS Act or the Regulatory Levies Act by the person to whom the property belonged, from the proceeds of a sale. The amounts that may be deducted may be amounts payable to NOPSEMA in its own right, or amounts payable to either the Commonwealth, to NOPSEMA on behalf of the Commonwealth, or to the Titles Administrator on behalf of the Commonwealth. If NOPSEMA deducts an amount that is payable to the Commonwealth, to NOPSEMA on behalf of the Commonwealth, or to the Titles Administrator on behalf of the Commonwealth, NOPSEMA must remit that amount to the Commonwealth.

132. Any costs or expenses incurred by NOPSEMA in relation to the removal, disposal or sale of property are a debt due by the owner of the property to NOPSEMA.

133. Merits review will not be available for a decision by NOPSEMA under new subsection 595A(3) to direct the owner(s) of property to remove property in the vacated area, or dispose of the property to the satisfaction of NOPSEMA. A direction of this nature can only be given where there has been non-compliance with a direction or arrangement under new section 594A, in relation to property brought into a vacated area. Further discussion of the reason for the exemption from merits review for directions by NOPSEMA is at paragraph 127.

Item 57: Paragraph 597(2)(d)

134. Under subsection 597(1), if a direction to remove property under subsection 596(3) or (4) has been breached, the Minister may remove or dispose of the property and, in certain circumstances, sell the property by public auction or otherwise. Under subsection 597(2) the Minister may deduct from the proceeds of a sale amounts payable, by the person to whom the property belonged, under the OPGGS Act (paragraph 597(2)(c)) or section 10E of the Regulatory Levies Act (paragraph 597(2)(d)).

135. This item amends paragraph 597(2)(d) to also refer to amounts payable to NOPSEMA on behalf of the Commonwealth under other sections of the Regulatory Levies Act.
This will ensure the provision is consistent with new paragraphs 596A(3)(c) and 589(2A)(c) (see item 5 of Schedule 11 to the Bill).

Items 58 and 59: After subsection 598(1); Subsection 598(2)

136. These items insert consequential amendments as a result of the insertion of new section 596A (see item 56). Item 58 inserts new subsection 598(1A) which replicates subsection 598(1) but includes a reference to new subsection 596A(6), rather than subsection 597(4). Item 59 inserts a reference to new subsection 598(1A) in subsection 598(2).

Item 60: Division 1 of Part 6.5 (heading)

137. This item amends the heading to Division 1 of Part 6.5 to reflect the amendments to provide for NOPSEMA inspectors to exercise powers in relation to monitoring and investigating compliance with greenhouse gas-related requirements of the OPGGS Act and regulations, equivalent to the current powers of NOPSEMA inspectors with respect to petroleum operations.

Item 61: Section 599

138. This item amends the simplified outline of Division 1 of Part 6.5 to reflect that sections 609 and 610 will be located within Division 1 (rather than Division 2) as a result of amendments made by Schedule 1 to the Bill.

Item 62: Section 600

139. This item inserts a definition of greenhouse gas title for the purposes of Division 1 of Part 6.5.

Items 63 to 75: Subsection 601(1)

140. Section 601 sets out the listed NOPSEMA laws for the purposes of the OPGGS Act. These provisions are, in effect, the provisions in relation to which NOPSEMA inspectors can exercise monitoring and investigation powers under Parts 2 and 3 of the Regulatory Powers Act, as it is applied under the OPGGS Act.

141. Prior to the amendments contained in the Bill, the listed NOPSEMA laws were only petroleum-related provisions, with the exception of those that also relate to OHS of offshore greenhouse gas storage operations. These items amend section 601 to also include greenhouse gas-related provisions as listed NOPSEMA laws.

142. NOPSEMA does not in all cases administer the provisions included in the table of listed NOPSEMA laws. NOPSEMA does, however, have a general function of monitoring and enforcing compliance by persons with their obligations under the OPGGS Act and regulations (see paragraph 646(gq)). Since the Titles Administrator does not currently have inspectors, it is necessary to use this default compliance function of NOPSEMA to avoid a regulatory gap.
Items 76 to 78: Subsection 602C(1) (before the note); Subsection 602C(1) (note)

143. Item 76 inserts a new note to subsection 602C(1) to include a reference to Schedule 2A, which sets out additional NOPSEMA inspection powers in relation to environmental management laws. Item 77 renumbers the existing note to subsection 602C(1) as “Note 2”, as a consequence of the insertion of the additional note. Item 78 amends the existing note to subsection 602C(1) to remove the reference to environmental management laws (which are not monitored under Schedule 3).

144. Item 78 also removes the reference to structural integrity laws in the existing note at the end of subsection 602C(1). While structural integrity of facilities is an OHS matter, it does not need separate mention in the existing note. Generic references to ‘structural integrity’ of wells and well-related equipment have been used since 2012 to justify NOPSEMA well inspectors carrying out well integrity inspections using the powers in Schedule 3 to the OPGGS Act, in the absence of a dedicated Schedule for well integrity inspections, because failure of well integrity undeniably has major safety consequences. Schedule 15 to the Bill will insert a new well integrity inspection Schedule into the OPGGS Act. It is therefore appropriate to delete the reference to structural integrity laws from the existing note.

Items 79 to 82: Subsection 602E(1); Paragraph 602E(2)(a); Subsection 602E(3)

145. Section 602E currently provides for a NOPSEMA inspector to exercise certain additional powers after entering premises under Part 3 (investigation powers) of the Regulatory Powers Act, as it is applied under Part 6.5 of the OPGGS Act. The powers are:
- If the inspector’s entry is in connection with a petroleum environmental law, the power that the inspector would have, if the inspector had entered the premises for the purposes of a petroleum environmental inspection under Schedule 2A to the OPGGS Act, to issue an environmental do not disturb notice, an environmental prohibition notice, or an environmental improvement notice.
- If the inspector’s entry is in connection with a listed OHS law, the power that the inspector would have, if the inspector had entered the premises for the purposes of an OHS inspection under Schedule 3 to the OPGGS Act, to issue an OHS do not disturb notice, an OHS prohibition notice, or an OHS improvement notice.

146. Item 79 amends section 602E to also enable a NOPSEMA inspector to exercise the additional powers after entering premises under Part 2 (monitoring powers) of the Regulatory Powers Act, as it is applied under Part 6.5 of the OPGGS Act. This will ensure inspectors can issue notices while conducting a monitoring inspection, having entered premises under consent or a monitoring warrant, if deemed necessary to do so on the basis of the findings of the inspection.

147. Items 80 to 82 amend subsections 602E(2) and (3) to replace references to “petroleum environmental law” with “environmental management law”, and to replace “petroleum environmental inspection” with “environmental inspection”. This reflects that NOPSEMA inspectors will have powers to monitor compliance by persons with greenhouse gas-related environmental management requirements under the OPGGS.
Act and regulations, in addition to (and equivalent to) their existing powers in relation to petroleum-related provisions, as a result of amendments of Schedule 2A made by Schedule 1 to the Bill.

Item 83: Paragraph 602F(3)(c)

148. For the reasons set out in paragraph 147, this item amends paragraph 602F(3)(c) to replace the reference to “petroleum environmental law” with “environmental management law”.

Item 84: Subsection 602G(3) (paragraph (b) of the definition of responsible person)

149. For the reasons set out in paragraph 147, this item amends subsection 602G(3) to ensure the definition of responsible person, for the purposes of section 602G, includes (where applicable) the registered holder of a greenhouse gas title.

Items 85 and 86: Section 602J (heading); Section 602J

150. For the reasons set out in paragraph 147, these items amend section 602J to replace references to “petroleum environmental laws” with “environmental management laws”.

Item 87: Subsection 602K(8) (definition of greenhouse gas title)

151. This item amends the definition of greenhouse gas title in subsection 602K(8), to reflect that a definition of greenhouse gas title has been inserted in section 600 (see item 62).

Item 88: Subsection 602K(8) (paragraph (b) of the definition of inspection)

152. For the reasons set out in paragraph 147, this item amends the definition of inspection in subsection 602K(8) to replace the reference to “petroleum environmental inspection” with “environmental management inspection”.

Item 89: Subsection 602K(8) (definition of offshore premises)

153. This item revises the current definition of offshore premises in section 602K as a consequence of the insertion of a new definition of offshore premises in Schedule 2A (see item 152).

Items 90 to 92: Subsection 602K(8) (definition of titleholder’s obligations)

154. For the reasons set out in paragraph 147, items 90 and 91 amend the definition of titleholder’s obligations to replace references to “petroleum environmental law” with “environmental management law”, and “petroleum environmental inspection” with “environmental inspection”.

155. Item 92 amends the definition of titleholder’s obligations to reflect that NOPSEMA inspectors will have powers to monitor and investigate compliance by persons with greenhouse gas well-related requirement under the Wells Regulations, in addition to (and equivalent to) their existing powers in relation to petroleum-related provisions.
Item 93: Section 602L (paragraph (a) of the note)

156. For the reasons set out in paragraph 147, this item amends the note to section 602L to replace the reference to “petroleum environmental laws” with “environmental management laws”.

Items 94 and 95: Division 2 of Part 6.5 (heading); Sections 605 to 608

157. These items remove the separate Division 2 of Part 6.5, and repeals sections 605 to 608, as there will no longer be a requirement for the separate appointment of, and exercise of powers by, greenhouse gas project inspectors. NOPSEMA inspectors will have powers to monitor and enforce compliance by persons with greenhouse gas-related requirements under the OPGGS Act and regulations.

158. Sections 609 and 610 are retained but will now be located within Division 1 of Part 6.5.

Items 96 and 97: Subsection 611B(2)

159. These items respectively provide for the Chief Executive Officer (CEO) of NOPSEMA and the Titles Administrator to be an “authorised applicant” in relation to the civil penalty provision in new subsection 452A(9) (see item 17). Under Part 4 of the Regulatory Powers Act, an “authorised applicant” may apply to a court for a civil penalty order in relation to contravention of a civil penalty provision.

Item 98: After paragraph 611E(1)(c)

160. This item makes new subsection 452A(7) (inserted by item 17) subject to an infringement notice under Part 5 of the Regulatory Powers Act. This is consistent with the equivalent provision in relation to petroleum titles at subsection 286A(7).

Items 99 to 101: Subsection 611E(2)

161. These items respectively provide for the CEO of NOPSEMA, the Titles Administrator and a NOPSEMA inspector to be an “infringement officer” in relation to new subsection 452A(7) (see item 17). Under Part 5 of the Regulatory Powers Act, an “infringement officer” can give an infringement notice to a person in relation to a contravention of a provision that is subject to an infringement notice.

Items 102 and 104: Subsection 611J(2) (table item 3, column headed “is an authorised person in relation to the following provisions in this Act (to the extent indicated) ...”, after paragraph (b)); Subsection 611J(2) (table item 4, column headed “is an authorised person in relation to the following provisions in this Act (to the extent indicated) ...”, after paragraph (d))

162. These items make new subsections 452A(2), (3), (4) and (5) (inserted by item 17) enforceable under Part 7 of the Regulatory Powers Act (which creates a framework for using injunctions to enforce provisions). They also provide for the CEO of NOPSEMA and the Titles Administrator to be an “authorised person”, for the purposes of Part 7 of the Regulatory Powers Act, in relation to those subsections. Under Part 7 of the Regulatory Powers Act, an “authorised person” may apply for an injunction in relation to a provision enforceable under that Part.
Item 103: Subsection 611J(2) (table item 3, column headed “is an authorised person in relation to the following provisions in this Act (to the extent indicated) …”, paragraph (v))

163. This item makes new subclause 12(2A) of Schedule 2A to the OPGGS Act (inserted by item 243) enforceable by injunction under Part 7 of the Regulatory Powers Act. It also provides for the CEO of NOPSEMA to be an “authorised person”, for the purposes of Part 7, in relation to the new subclause. An “authorised person” may apply for an injunction in relation to a provision enforceable under Part 7.

Items 105 to 110: Section 612; Section 614 (paragraph (d) of the definition of exempt vessel); Paragraph 615(1)(e); Subsection 615(3); Subsection 615(4); Subsection 617(1)

164. Part 6.6 provides for NOPSEMA to gazette a petroleum safety zone and for the Minister to gazette a greenhouse gas safety zone. A safety zone surrounds a well, a structure or an item of equipment in an offshore area, and certain vessels are prohibited from entering the safety zone.

165. As NOPSEMA will become the regulator for greenhouse gas safety and well operations, NOPSEMA will be best placed to determine whether a safety zone is required in order to protect a greenhouse gas well, structure or any equipment in an offshore area. These items amend Part 6.6 to provide for NOPSEMA, rather than the Minister, to have the ability to gazette a greenhouse gas safety zone.

166. A decision by NOPSEMA to gazette a greenhouse gas safety zone will not be subject to merits review. A decision to gazette a safety zone is not directed towards the circumstances of a particular person, but applies generally to vessels in the location of, or proposing to be in the location of, the safety zone. Further, a vessel may enter or be present in the safety zone with the written consent of NOPSEMA.

167. Gazettal of a safety zone is designed to ensure the protection of offshore greenhouse gas facilities from impact by a vessel or unauthorised boarding. Heavy penalties apply for entering or being present in a safety zone without authorisation, to ensure a conspicuous deterrent to persons committing acts of negligent or reckless navigation or otherwise dangerous conduct which could place at risk the lives of people on board offshore greenhouse gas facilities.

Item 111: Section 643 (definition of environmental management law)

168. This item repeals the definition of environmental management law in section 643. A new definition is inserted in section 7 (see item 2).

Item 112: Subsections 646A(5), (6) and (7)

169. Under subsection 646A(1), NOPSEMA cannot perform any petroleum-related functions conferred by or under a State or Territory coastal waters petroleum legislation (PSLA) (whether relating to OHS, structural integrity or environmental management) unless:
functions relating to both OHS and structural integrity are conferred; and
there are provisions of or under the State or Territory PSLA that substantially correspond to the relevant OHS, structural integrity and environmental management provisions of the OPGGS Act and regulations.

170. For greenhouse gas on the other hand, each matter is treated separately, e.g. NOPSEMA cannot perform functions conferred by or under a State or Territory PSLA:
• in relation to greenhouse gas OHS matters, unless there are provisions that substantially correspond to the relevant OHS provisions of the OPGGS Act and regulations; and
• in relation to greenhouse gas structural integrity, unless there are provisions that substantially correspond to the relevant structural integrity provisions of the OPGGS Act and regulations (subsections 646A(5) to (7)).

171. There is no requirement for both OHS and structural integrity functions to be conferred for greenhouse gas in order for NOPSEMA to perform any greenhouse gas-related functions conferred by or under a State or Territory PSLA.

172. The policy rationale for requiring both OHS and structural integrity functions to be conferred for petroleum was that an important part of the OHS regime is the titleholder’s duty of care in relation to wells in Schedule 3. NOPSEMA would be unable to monitor and enforce compliance with that duty of care effectively unless it was also the regulator of the integrity of wells and well operations. In addition, given the substantial overlap between the OHS and structural integrity functions, it is essential for the effective and efficient management of NOPSEMA’s regulatory processes that it be the regulator of both aspects of offshore operations. Similar considerations apply for greenhouse gas. This item repeals existing subsections 646A(5) to (7), and inserts new subsections for greenhouse gas that are equivalent to the limits on conferral of petroleum functions under a State or Territory PSLA set out in subsection 646A(1).

Items 113 and 114: Paragraph 695U(1)(b); After paragraph 695U(1)(b)

173. Part 6.11 provides for certain information, documents or things to be used within NOPSEMA, to be shared between the entities responsible for regulation and/or administration of the OPGGS Act, and to be shared by the CEO of NOPSEMA with other agencies.

174. Subsection 695U(1) provides that Part 6.11 applies in relation to information, a document, a copy of a document, an extract of a document, or a thing, obtained in the course of the:
• exercise of a power, or the performance of a function, under the OPGGS Act, or
• administration of the OPGGS Act.

175. Part 6.5 triggers the application of the Regulatory Powers Act so that NOPSEMA inspectors may use the powers provided in that Act for the purpose of monitoring and investigating compliance by persons with their obligations under the OPGGS Act and
regulations. Information, documents or things may be obtained during the course of an inspection or investigation carried out by a NOPSEMA inspector using the powers in the Regulatory Powers Act, and Part 6.11 of the OPGGS Act should also apply to such information, documents or things, to enable the use or sharing of the information, documents or things for the purposes of the effective administration of the OPGGS Act.

176. These items amend subsection 695U(1) to clarify that Part 6.11 also applies in relation to information, a document, a copy of a document, an extract of a document, or a thing, obtained in the course of:
- the exercise of a power, or the performance of a function, under the Regulatory Powers Act, so far as it applies in relation to a provision of the OPGGS Act, or
- the administration of the Regulatory Powers Act, so far as it applies in relation to a provision of the OPGGS Act.

Item 115: Subsection 695U(4)

177. This item inserts commas in subsection 695U(4) of the OPGGS Act to clarify the meaning of that subsection, and to ensure there is consistency with new subsection 695U(4A) (see item 116).

Item 116: After subsection 695U(4)

178. Subsection 695U(4) provides that Part 6.11 does not apply to offshore information, or a thing, covered by Part 7.3 (technical information relating to petroleum) or a legislative instrument made for the purposes of that Part. These provisions safeguard commercially sensitive or technical offshore information or things. Excluding these provisions from the operation of Part 6.11 therefore continues the protections applied by the OPGGS Act and regulations to commercial-in-confidence information.

179. Part 8.3, and regulations made for the purposes of that Part, provide similar protections in relation to technical information relating to greenhouse gas storage. To ensure the continuation of those protections, this item inserts a new subsection 695U(4A), which provides that Part 6.11 does not apply to offshore information, or a thing, covered by Part 8.3, or a legislative instrument made for the purposes of that Part.

180. This change is necessary given that the application of the information sharing provisions in Part 6.11 is to be extended to information relating to greenhouse gas storage operations (see item 117).

Item 117: Subsection 695U(6)

181. Part 6.11 deals with using and making available certain information, documents and things obtained for the purposes of the OPGGS Act. In particular, the information, documents and things may be: used within NOPSEMA for the purpose of exercising any of its powers or performing any of its functions; shared between the Minister, the Secretary of the Department of Industry, Innovation and Science, NOPSEMA, the Titles Administrator, and members of the Joint Authority; and shared between the CEO of NOPSEMA and certain other agencies.
182. Under subsection 695U(6), Part 6.11 does not apply to the extent that offshore information or a thing relates to offshore greenhouse gas storage operations, unless obtained in the course of the exercise of a power or performance of a function under or for the purposes of a listed OHS law. However, given regulatory responsibility for greenhouse gas wells and environmental management, in addition to OHS, will be transferred to NOPSEMA, it would be useful for NOPSEMA to be able to use information relating to offshore greenhouse gas storage operations generally, both internally and to be able to share that information with other agencies if necessary (for example, for the purposes of prosecutions or joint investigations).

183. This item therefore amends subsection 695U(6) so that Part 6.11 will apply to greenhouse gas-related information obtained in the course of the exercise of a power or performance of a function under the OPGGS Act or the Regulatory Powers Act, or the administration of those Acts. The amendment ensures that, where information is personal information (within the meaning of the Privacy Act 1988), and was obtained before the commencement of this amendment, it will not be able to be used or shared in accordance with Part 6.11. The provisions are not to be applied retrospectively as they relate to personal information. It is considered appropriate that personal information only be dealt with in accordance with the law as it applied at the time the information was collected.

Items 118 to 129: Section 722; Section 725 (heading); Paragraph 725(1)(b); Subsection 725(2); Section 727; Section 729; Section 730 (heading); Subsections 730(1), (2) and (4); Paragraph 731(a); Paragraph 732(b); Subsection 733A(1); Subsection 733A(2)

184. These items amend various provisions in Part 8.1 to replace references to a greenhouse gas project inspector with references to a NOPSEMA inspector. This reflects that NOPSEMA inspectors will undertake the functions and powers previously undertaken by greenhouse gas project inspectors, as a result of the amendments made by Schedule 1 to the Bill. There will no longer be provision for the separate appointment of, and exercise of powers by, greenhouse gas project inspectors.

Item 130: Paragraph 768(1)(h)

185. This item removes a reference to a greenhouse gas project inspector, as per items 118 to 129 above.

Items 142 and 143: Schedule 2A (heading); Clause 1 of Schedule 2A

186. These items replace the heading and simplified outcome to Schedule 2A, to reflect that the Schedule is being amended to provide for NOPSEMA inspectors to exercise powers in relation to monitoring compliance with greenhouse gas-related environmental management requirements of the OPGGS Act and regulations, equivalent to the current powers of NOPSEMA inspectors with respect to petroleum operations.
Item 144: Clause 2 of Schedule 2A

187. This item inserts a definition of **eligible premises** for the purposes of Schedule 2A, in particular for the purposes of the definition of **regulated business premises**. The type of premises included in the definition of **eligible premises** are those that are enclosed, including buildings and structures.

188. The existing definition of **premises** in Schedule 2A provides that “**premises** has the same meaning as in the Regulatory Powers Act in its application under Division 1 of Part 6.5 of this Act”. Section 4 of the Regulatory Powers Act provides that **premises** includes the following:
   a. a structure, building, vehicle, vessel or aircraft;
   b. a place (whether or not enclosed or built on);
   c. a part of a thing referred to in paragraph (a) or (b).

189. Amendments defining premises in these terms were inserted in Schedule 2A when the OPGGS Act was amended to apply various parts of the Regulatory Powers Act to inspections and investigations by NOPSEMA inspectors. Previously, there was no such definition in Schedule 2A, so that ‘premises’, when used in the term ‘regulated business premises’, was undefined and therefore bore its ordinary meaning.

190. The drafting of the powers of NOPSEMA inspectors at regulated business premises, and the obligations of persons in relation to the display of notices and prohibitions on tampering with notices at regulated business premises, assumed that the “**premises** would be a building or structure with perhaps a fenced yard where notices could physically be affixed, and where the occupier of the premises could prevent members of the public from making use of the space.

191. If **premises** is defined according to the Regulatory Powers Act meaning, it includes any place whatsoever. This includes, for example, a public park, a beach or any open space. It is therefore desirable that the term revert to its ordinary meaning when used in the definition of **regulated business premises** in Schedule 2A. The new definition of **eligible premises**, which is used in a revised definition of **regulated business premises** (see item 155), includes office blocks, and warehouses and sheds used to store equipment or substances for use in oil pollution emergencies.

192. The existing definition of **premises** in clause 2 of Schedule 2A will be retained so that the broader definition will continue to apply in contexts other than its use in the term **regulated business premises** (see item 154).

Item 145: Clause 2 of Schedule 2A (definition of **enter**)

193. This item replaces the reference to “offshore petroleum premises” (which is repealed by item 151) with a reference to “offshore premises” (new definition inserted by item 152).
Item 146: Clause 2 of Schedule 2A

194. This item inserts new definitions of environmental inspection and environmental management law. These replace the definitions of petroleum environmental inspection and petroleum environmental law (repealed by item 153).

Item 147: Clause 2 of Schedule 2A (definition of facility)

195. This item amends the definition of facility for the purposes of Schedule 2A so that it applies to a facility used for both offshore petroleum operations and offshore greenhouse gas storage operations.

Item 148: Clause 2 of Schedule 2A

196. This item inserts a definition of greenhouse gas title for the purposes of Schedule 2A.

Items 149 and 150: Clause 2 of Schedule 2A (definition of offence against a petroleum environmental law); Clause 2 of Schedule 2A

197. These items repeal the definition of offence against a petroleum environmental law and replaces it with a definition of offence against an environmental management law for the purposes of Schedule 2A.

Items 151 and 152: Clause 2 of Schedule 2A (definition of offshore petroleum premises); Clause 2 of Schedule 2A

198. These items repeal the definition of offshore petroleum premises and replaces it with a definition of offshore premises for the purposes of Schedule 2A. The new definition applies to certain premises used for either offshore petroleum or offshore greenhouse gas storage activities.

Item 153: Clause 2 of Schedule 2A

199. This item repeals the definitions of petroleum environmental inspection and petroleum environmental law. These are replaced by new definitions of environmental inspection and environmental management law (see item 146).

Item 154: Clause 2 of Schedule 2A (definition of premises)

200. This item amends the definition of premises for the purposes of Schedule 2A, to ensure the definition does not apply for the purposes of the new definition of eligible premises (see the discussion at paragraphs 187 to 192).

Item 155: Clause 2 of Schedule 2A (definition of regulated business premises)

201. Schedule 2A provides, amongst other things, for warrant-free entry to certain defined regulated business premises, for the purpose of conducting an inspection to determine whether an environmental management law has been, or is being complied with, or to
determine whether information given in compliance, or purported compliance, with an environmental management law is correct. A NOPSEMA inspector may enter any regulated business premises if the inspector is satisfied on reasonable grounds that there are likely to be at those premises documents or things that relate to operations conducted for the purposes of a petroleum title or a greenhouse gas title, or compliance or non-compliance with an environmental management law. A NOPSEMA inspector may also search for, inspect, take extracts from, or make copies of, any such documents at those premises.

202. The definition of regulated business premises in Schedule 2A refers to premises, other than offshore petroleum premises (as defined in Schedule 2A – see new definition of offshore premises inserted by item 152), that are occupied by the registered holder of a petroleum title, and are used, or proposed to be used, wholly or principally in connection with operations in relation to one or more petroleum titles, including that title.

203. This item will amend the definition of regulated business premises to extend its application to premises occupied by the registered holder of a greenhouse gas title.

204. There has been disagreement as to whether the definition of regulated business premises in Schedule 2A extends to any offshore premises that do not fall within the separate definition of offshore petroleum premises. This is on the basis that the term premises is defined in Schedule 2A to have the same meaning as in the Regulatory Powers Act, in its application under Division 1 of Part 6.5 of the OPGGS Act. On this approach, regulated business premises includes a vessel under the command of a master, or any vessel in state or territory coastal waters, or even an aircraft. This was never the intent of the definition of regulated business premises which was to be restricted to onshore business premises only.

205. This item amends the definition of regulated business premises to clarify that regulated business premises are premises that are on land. The definition is also amended to apply only to eligible premises (as defined in a new definition inserted by item 144). The types of premises that are contemplated by the new definition of eligible premises are buildings, structures, and other places that are enclosed (see discussion at paragraphs 187 to 192).

206. Further, the scope of (onshore) regulated business premises is proving to be inadequate in practice. One reason is that a company that is a titleholder may not be the entity that makes decisions about the operations being carried out under the authority of the title. For example, these decisions may be made by a parent company with a subsidiary established for the purposes of holding the title. Relevant documents or things may therefore be at the premises of the latter company. Another reason is that operations (for example drilling a well) may be carried out entirely by a contractor, so any documents or things relating to the operations will be located at the premises of the contractor, rather than at the premises of the titleholder.

207. This item will also amend the definition of regulated business premises to extend it to cover onshore premises of: (1) a related body corporate (within the meaning of the
Corporations Act 2001—see item 5) of a titleholder, and (2) a person who has carried out, is carrying out, or is to carry out operations under a contract, arrangement or understanding with a titleholder or a related body corporate of a titleholder. The reference to a “contract, arrangement or understanding” will ensure the full scope of relevant premises can be accessed by a NOPSEMA inspector. For example, the titleholder may have set up access to spill response materials and equipment, in the event of an oil spill, through an arrangement with an entity, such as the Australian Marine Oil Spill Centre. It is important that NOPSEMA inspectors can access premises of a spill response entity with which the titleholder has made such arrangements to ensure adequate and appropriate materials will be available in the event of an oil spill, in accordance with risk management arrangements in a titleholder’s environment plan.

208. The amendments extend the premises with respect to which NOPSEMA inspectors have warrant-free access. The ability to access premises without a warrant is limited to the purposes of conducting an inspection to determine whether an environmental management law has been or is being complied with, or to determine whether information given in compliance or purported compliance with an environmental management law is correct. Further, in order to access regulated business premises without a warrant under Schedule 2A, a NOPSEMA inspector must be satisfied on reasonable grounds that there are likely to be at those premises documents or things that relate to operations conducted for the purposes of a petroleum title or a greenhouse gas title, or compliance or non-compliance with an environmental management law.

209. Premises that are used as a residence will be specifically excluded from the expanded definition of regulated business premises. This is to ensure the definition does not capture residential premises of an employee (that is, a person working under a contract of employment with the titleholder). Entry to residential premises will require a warrant or consent under the Regulatory Powers Act, as it is applied by the OPGGS Act.

210. Further, NOPSEMA inspectors will in all cases be required to obtain a warrant or consent under Part 3 of the Regulatory Powers Act before entering premises to exercise powers to search for and gather evidential material (i.e. for the purposes of a prosecution).

Items 156 and 157: Clause 2 of Schedule 2A; Clause 2 of Schedule 2A (definition of titleholder)

211. These items insert a new definition of title and amend the definition of titleholder for the purposes of Schedule 2A. This will provide for NOPSEMA inspectors to exercise powers in relation to monitoring compliance with greenhouse gas-related environmental management requirements of the OPGGS Act and regulations, equivalent to the current powers of NOPSEMA inspectors with respect to petroleum operations.
Items 158 and 159: Part 2 of Schedule 2A (heading); Division 1 of Part 2 of Schedule 2A (heading)

212. These items amend the headings to Part 2 and Division 1 of Part 2 to replace the references to “petroleum environmental inspections” with “environmental inspections”.

Items 160 to 175: Clause 3 of Schedule 2A (heading); Subclause 3(1) of Schedule 2A (heading); Subclause 3(1) of Schedule 2A; Subclause 3(2) of Schedule 2A; Paragraph 3(2)(a) of Schedule 2A; Paragraph 3(2)(b) of Schedule 2A; Subclause 3(3) of Schedule 2A; Subclause 3(4) of Schedule 2A; Clause 4 of Schedule 2A (heading); Subclause 4(1) of Schedule 2A; Subparagraph 4(1)(a)(iv) of Schedule 2A; At the end of paragraph 4(1)(a) of Schedule 2A; Clause 4 of Schedule 2A; Clause 5 of Schedule 2A (heading); Subclause 5(1) of Schedule 2A; Paragraph 5(1)(a) of Schedule 2A

213. These items amend clauses 3, 4 and 5 to replace references to “petroleum environmental law” with “environmental management law”, to replace “petroleum environmental inspection” with “environmental inspection”, and to replace “offshore petroleum premises” with “offshore premises”.

214. Clauses 3, 4 and 5, as amended, will enable a NOPSEMA inspector at any reasonable time and without a warrant, to conduct an inspection at offshore premises or regulated business premises to determine whether an environmental management law has been or is being complied with, or to determine whether information given in compliance or purported compliance with an environmental management law is correct.

215. NOPSEMA has warrant-free compliance monitoring powers in Schedule 2A with respect to petroleum operations. As a result of the amendments made in Schedule 1 to this Bill, and supporting regulatory amendments, NOPSEMA will be the regulator of environmental management of offshore greenhouse gas storage activities. As with the construction and operation of a petroleum or greenhouse gas facility, it is an offence to carry out a greenhouse gas activity without the acceptance by NOPSEMA of an environment plan for the activity. The environment plan describes the means by which the responsible person will ensure environmental impacts of the activity will be kept as low as reasonably practicable. The environment plan functions as a licence to carry out the activity, with the offshore vessel or structure where the activity is to take place being an integral part of the operator’s environmental performance requirements.

216. Compliance monitoring is an important part of NOPSEMA’s functions. Monitoring inspections are carried out according to a monitoring strategy developed by NOPSEMA, as required by its functions as stated in section 646. Notably, at least for the purpose of inspecting premises offshore, an inspector would also need to arrange with a greenhouse gas titleholder to obtain transport to, and accommodation at, the premises. A titleholder would therefore be given advance notice of a forthcoming inspection. To interpose a further requirement that a NOPSEMA inspector obtain an external consent prior to carrying out each inspection would therefore provide little by means of an additional safeguard.
217. A requirement to go through the process of obtaining a warrant might also impede NOPSEMA’s ability to respond rapidly in an emergency. An incident such as a failure of well integrity can quickly escalate into a major accident event, with risks to the marine environment. In these circumstances, the ability of the regulator to access offshore and onshore premises of responsible persons without delay can be critical.

218. A warrant-free monitoring inspection in Schedule 2A is limited by purpose, that is, to monitor compliance by persons with environmental management laws. Further, entry to offshore premises (as specifically defined for the purpose of Schedule 2A – see item 152) under clause 4 of Schedule 2A will be limited to those premises where activities to which the inspection relates are being, or have been, carried on. An inspector will be able to enter regulated business premises (as specifically defined for the purpose of Schedule 2A – see item 155) under clause 5 of Schedule 2A if the inspector is satisfied on reasonable grounds that there are likely to be documents or things that relate to operations conducted for the purposes of a greenhouse gas title (or a petroleum title), or compliance or non-compliance with an environmental management law.

219. The ability to enter and search premises without a warrant is for the purposes of compliance monitoring only. In all cases, a NOPSEMA inspector will not be able to exercise powers to search for and gather evidential material, unless the inspector has first obtained a warrant for the purposes of Part 3 of the Regulatory Powers Act.

220. The amendment made by item 175 reflects that NOPSEMA inspectors will have additional powers at regulated business premises in relation to the inspection of plant, substances and things, as well as documents (see paragraphs 222 to 225). The amendments of clause 4 of Schedule 2A (which relates to inspections at offshore premises) made by items 170 and 171 are also a consequence of the provision of additional powers at regulated business premises. NOPSEMA inspectors already have the powers conferred by clauses 8 and 9 of Schedule 2A when undertaking an environmental inspection at offshore premises. The addition of the specific references to these clauses in clause 4 is to avoid any doubt that inspectors can continue to exercise these powers at offshore premises, in addition to the ability to exercise them at regulated business premises that is provided for by the amendments in this Bill.

Items 176 and 177: Subparagraph 5(1)(a)(i) of Schedule 2A; Subparagraph 5(1)(a)(ii) of Schedule 2A

221. These items amend paragraph 5(1)(a) to enable NOPSEMA inspectors to be able to enter regulated business premises without a warrant at any reasonable time. The inspector must be satisfied, on reasonable grounds, that there are likely to be at those premises documents or things that relate to operations conducted for the purposes of a petroleum or greenhouse gas title, or compliance or non-compliance with an environmental management law. The amendments provide for NOPSEMA inspectors to exercise powers in relation to monitoring compliance with greenhouse gas-related environmental management requirements of the OPGGS Act and regulations, equivalent to the powers of NOPSEMA inspectors with respect to petroleum operations.
Item 178: Paragraph 5(1)(b) of Schedule 2A

222. This item amends clause 5 to provide for NOPSEMA inspectors to have additional powers at regulated business premises in relation to the inspection of the premises, and plant, substances and things at those premises, as well as documents.

223. Item 155 of Schedule 1 to the Bill amends the definition of regulated business premises in Schedule 2A to the OPGGS Act to include premises (on land) that are occupied by a person who, under a contract, arrangement or understanding with a titleholder (or a related body corporate of a titleholder), has carried out, is carrying out, or is to carry out, one or more operations in connection with the exercise of the titleholder’s rights, or the performance of the titleholder’s obligations, under the OPGGS Act.

224. The powers of NOPSEMA inspectors, when undertaking inspections at regulated business premises, currently extend only to powers to search for, inspect, take extracts from, or make copies of, relevant documents at those premises. The types of premises that would be captured by the extended definition of “regulated business premises” will include, amongst other things, premises of spill response entities, and of drilling contractors. It is likely that there will be things other than documents (e.g. substances) at those premises that NOPSEMA inspectors may wish to examine as part of a monitoring inspection under Schedule 2A. For example, dispersants for use in the event of an oil spill may be stored at onshore premises of a spill response entity. Inspectors may also wish to examine structural parts of the premises that are relevant to the titleholder’s spill preparedness compliance – e.g. built-in tanks for storage of contaminated water, soil or other substances following clean-up operations.

225. The powers exercisable by NOPSEMA inspectors at regulated business premises, when undertaking an environmental management inspection under Schedule 2A, are therefore being extended to include additional powers to search the premises for relevant plant, substances and things, to inspect the premises, and to collect, inspect and undertake tests on plant, substances or things found at those premises. This will ensure NOPSEMA inspectors have a full set of powers to determine whether a titleholder is compliant with its environmental obligations under the OPGGS Act and regulations. This is particularly important, for example, in the case of oil spill response preparedness, to ensure adequate and appropriate spill response equipment will be available in the event of an oil spill.

Items 179 to 181: Subclause 5(2) of Schedule 2A; Subclause 5(3) of Schedule 2A

226. Item 179 amends subclause 5(2) of Schedule 2A to the OPGGS Act to clarify who must be notified by a NOPSEMA inspector on entering premises for the purposes of an inspection, at each of the categories of regulated business premises.

227. Items 180 and 181 amend subclause 5(3) of Schedule 2A as a consequence of the amendment to subclause 5(2).
Item 182: Clause 6 of Schedule 2A (heading)

228. This item amends the heading of clause 6 to reflect that the clause will apply to inspections in relation to monitoring compliance with greenhouse gas-related environmental management requirements of the OPGGS Act and regulations, as well as with respect to petroleum operations.

Item 183: Division 2 of Part 2 of Schedule 2A (heading)

229. This item amends the heading to Division 2 of Part 2, to reflect that the Schedule is to provide for NOPSEMA inspectors to exercise powers in relation to monitoring compliance with greenhouse gas-related environmental management requirements of the OPGGS Act and regulations, equivalent to the current powers of NOPSEMA inspectors with respect to petroleum operations.

Items 184 to 187: Clause 7 of Schedule 2A (heading); Subclause 7(1) of Schedule 2A

230. These items amend clause 7 to provide for NOPSEMA inspectors to exercise powers in relation to monitoring compliance with greenhouse gas-related environmental management requirements of the OPGGS Act and regulations, equivalent to the current powers of NOPSEMA inspectors with respect to petroleum operations. Clause 7 enables a NOPSEMA inspector to require a titleholder, or a titleholder’s representative, to provide the inspector with reasonable assistance and facilities that are reasonably connected with the conduct of an inspection at or near offshore premises, or for the effective exercise of the inspector’s powers in connection with the conduct of an inspection at or near the premises. This may include, for example, transport to or from the premises, and reasonable accommodation and means of subsistence while the inspector is at the premises.

231. It is an offence if a person fails to comply with a requirement under clause 7. Subclause 7(4) provides a reasonable excuse defence. In accordance with subsection 13.3(3) of the Criminal Code, a defendant who wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating an offence bears an evidential burden in relation to that matter. The defendant will therefore bear an evidential burden in relation to the question whether the defendant had a reasonable excuse. The burden of proof is reversed because the matter is likely to be exclusively within the knowledge of the defendant. This is particularly the case given the remote nature of offshore operations.

Item 188: Clause 8 of Schedule 2A (heading)

232. This item amends the heading to clause 8 to reflect that the Schedule is to provide for NOPSEMA inspectors to exercise powers in relation to monitoring compliance with greenhouse gas-related environmental management requirements of the OPGGS Act and regulations, equivalent to the current powers of NOPSEMA inspectors with respect to petroleum operations.
Items 189 to 192: Paragraph 8(1)(a) of Schedule 2A; Subparagraph 8(1)(b)(ii) of Schedule 2A

233. These items amend subclause 8(1) to provide for a NOPSEMA inspector to require a person to answer questions that are reasonably connected with the conduct of an environmental inspection in relation to a petroleum title or a greenhouse gas title.

Items 193 and 194: Subparagraph 8(1)(b)(iii) of Schedule 2A

234. These items amend subparagraph 8(1)(b)(iii) to provide for who is required to answer a question put by a NOPSEMA inspector, in accordance with subclause 8(1), in the case of an inspection at regulated business premises that are occupied by a titleholder. The amendment is required as a consequence of the amendments made by item 195, considered below.

Item 195: At the end of paragraph 8(1)(b) of Schedule 2A

235. This item amends subclause 8(1) to reflect the new categories of regulated business premises (see discussion at item 155). New subparagraphs 8(1)(b)(iv) to (vi) are inserted to set out who is required to answer a question put by a NOPSEMA inspector, in accordance with subclause 8(1), in the case of an inspection at regulated business premises that are occupied by a related body corporate of a titleholder, a contractor of a titleholder, or a contractor of a related body corporate of a titleholder respectively.

236. Under existing subclause 8(5), it is an offence if a person breaches a requirement under subclause 8(1). Subclause 8(6) provides a reasonable excuse defence, in relation to which the defendant will bear an evidential burden. See discussion in relation to evidential burden on a defendant at paragraph 231.

237. Under existing subclause 8(8), a person is not excused from answering a question when required to do so under subclause 8(1) on the ground that the answer to the question may tend to incriminate the person or make the person liable to a penalty. However, under existing subclause 8(9), the information, evidence or answer given, or any information obtained as a direct or indirect consequence of giving the information or evidence or answering the question, is not admissible in evidence against the person (a ‘use’ immunity). As a result of the amendments in Schedule 4 to the Bill, the immunity is to be limited to apply to individuals only, and not to bodies corporate (see discussion at Schedule 4).

238. Maintaining a privilege against self-incrimination would significantly hamper the regulator’s ability to monitor the titleholder’s compliance with applicable requirements or to understand the causes of incidents that have occurred that may, if they recur, cause a major accident event leading to fatalities, serious injury and/or damage to the environment. NOPSEMA faces difficulties in obtaining information about offshore operations for the purpose of monitoring compliance and in investigating the causes of incidents. Offshore operations are highly technologically complex. They take place far from land, and in the case of well operations, far below the seabed, making physical inspection difficult for an inspector. In many cases, the inspector’s best recourse is to ask questions of those carrying out the operations or to have them produce operational
records detailing, for example, maintenance schedules. Establishing the titleholder’s standards of compliance over time can be a particular challenge, especially if records are incomplete. In an environment where compliance requires a major financial investment, there should be nothing that hampers the inspector’s ability to establish the facts and investigate whether there has been compliance. Especially in an industry where non-compliance can result in serious incidents, an inspector must be able to follow-up any leads that are obtained from the answers given to questions. To shut-off any line of inquiry would not be in the public interest, given the nature of the potential harm that could occur.

Item 196: Subclause 8(2) of Schedule 2A

239. This item amends subclause 8(2) to replace the reference to “offshore petroleum premises” with “offshore premises”. This reflects that subclause 8(1) has been amended to enable NOPSEMA inspectors to exercise powers in relation to monitoring compliance with greenhouse gas-related environmental management requirements of the OPGGS Act and regulations, equivalent to the current powers of NOPSEMA inspectors with respect to petroleum operations.

Items 197 to 200: Paragraph 8(3)(a) of Schedule 2A; Subparagraph 8(3)(b)(ii) of Schedule 2A

240. These items amend subclause 8(3) to provide for NOPSEMA inspectors to exercise powers in relation to monitoring compliance with greenhouse gas-related environmental management requirements of the OPGGS Act and regulations, equivalent to the powers of NOPSEMA inspectors with respect to petroleum operations. Subclause 8(3) will provide for a NOPSEMA inspector to require a person to produce documents or things that are reasonably connected with the conduct of an environmental inspection in relation to a petroleum title or a greenhouse gas title.

Items 201 and 202: Subparagraph 8(3)(b)(iii) of Schedule 2A

241. These items amend subparagraph 8(3)(b)(iii) to provide for who may be required by a NOPSEMA inspector to produce a document or thing, in accordance with subclause 8(3), in the case of an inspection at regulated business premises that are occupied by a titleholder. The amendment is required as a consequence of the amendments made by item 203, considered below.

Item 203: At the end of paragraph 8(3)(b) of Schedule 2A

242. This item amends subclause 8(3) to reflect the new categories of regulated business premises which are inserted by item 155. New subparagraphs 8(3)(b)(iv) to (vi) are inserted to provide for who may be required by a NOPSEMA inspector to produce a document or thing, in accordance with subclause 8(3), in the case of an inspection at regulated business premises that are occupied by a related body corporate of a titleholder, a contractor of a titleholder, or a contractor of a related body corporate of a titleholder respectively.
Item 204: Subclause 8(4) of Schedule 2A

243. This item amends subclause 8(4) to replace the reference to “offshore petroleum premises” with “offshore premises”.

Items 205 to 208: Subclause 8(15) of Schedule 2A (heading); Subclause 8(15) of Schedule 2A; Subclause 8(17) of Schedule 2A (heading); Subclause 8(17) of Schedule 2A

244. These items amend subclauses 8(15) and 8(17) (which are inserted by item 11 of Schedule 4 to the Bill) to replace references to “offshore petroleum premises” with “offshore premises”.

Items 209 to 212: Clause 9 of Schedule 2A (heading); Subclause 9(1) of Schedule 2A

245. These items amend clause 9 so it applies to inspections in relation to petroleum titles and greenhouse gas titles. Clause 9 as amended, will provide for a NOPSEMA inspector to take possession of, or a sample of, any plant, substance or a thing at offshore premises. The inspector will have the power to remove it from the premises, for the purpose of further inspecting the plant, substance, thing or sample, in connection with an environmental inspection in relation to a petroleum title or a greenhouse gas title.

Item 213: Subclause 9(1) of Schedule 2A

246. This item amends subclause 9(1) to enable NOPSEMA inspectors, in conducting an environmental inspection at regulated business premises, to take possession of any plant, substance or thing and remove it from the premises, or take a sample of a substance or thing and remove the sample from the premises, to the extent that it is reasonably necessary to do so for the purposes of inspecting, examining, measuring, or conducting tests concerning, the plant, substance or thing. Currently, a NOPSEMA inspector only has the ability to take possession or a sample of plant, substances or things in the conduct of an environmental inspection at offshore premises. See discussion at paragraphs 222 to 225.

Item 214: Paragraph 9(2)(a) of Schedule 2A

247. This item amends paragraph 9(2)(a) to clarify that the paragraph only applies in relation to an inspection at offshore premises. A “titleholder’s representative” is only relevant in the case of an inspection at offshore premises (see definition in clause 2 of Schedule 2A and section 602K).

248. New paragraphs 9(2)(ca) to (cd) (inserted by item 215) provide for who is to be notified in the case of an inspection at each of the categories of onshore regulated business premises.
Item 215: After paragraph 9(2)(c) of Schedule 2A

249. Subclause 9(2) provides for the person(s) who must be informed by a NOPSEMA inspector of the taking of possession of plant, a substance or a thing, or the taking of a sample of a substance or thing, under subclause 9(1). This item amends subclause 9(2) to: (a) reflect that an inspector will have the power to take possession or a sample of plant, substance or a thing during an inspection at regulated business premises (see discussion at paragraphs 222 to 225); and (b) to reflect the new categories of regulated business premises (see discussion at paragraphs 206 to 210).

250. New paragraphs 9(2)(ca) to (cd) are inserted to provide for persons who must be given notice of the taking of possession of a plant, a substance or a thing, or the taking of a sample of a substance or thing, in the case of an inspection at regulated business premises that are occupied by titleholder, a related body corporate of a titleholder, a contractor of a titleholder, or a contractor of a related body corporate of a titleholder respectively.

Item 216: Paragraph 9(2)(d) of Schedule 2A

251. This item amends paragraph 9(2)(d) as a consequence of the amendment made by item 215 to provide for additional categories of persons who must be notified of the taking possession of plant, a substance or a thing, or the taking of a sample of a substance or thing.

Item 217: Subclause 9(3) of Schedule 2A

252. This item amends subclause 9(3) as a consequence of the amendments made by items 213 and 215. The amendment provides for subclause 9(3) to continue to provide for display of a notice of the taking of possession of a plant, substance, etc., at offshore premises only.

253. New subclause 9(3A) (inserted by item 218) provides for the display of notices at onshore regulated business premises.

Item 218: After subclause 9(3) of Schedule 2A

254. This item inserts new subclause 9(3A), which requires a notice of the taking of possession of plant, a substance or a thing, or the taking of a sample of a substance or thing, issued under subclause 9(2) in relation to an inspection at regulated business premises, to be displayed in a prominent place at the premises. The new subclause also sets out who is responsible for displaying a notice.

Item 219: Paragraph 9(4)(b) of Schedule 2A

255. This item clarifies the requirement for a NOPSEMA inspector to return plant, a substance or a thing that the inspector has taken possession of during an inspection.
256. Consistent with previous paragraph 9(4)(b), if the inspector took possession at offshore premises, the inspector must return it to the premises as soon as practicable after the inspection, examination, measuring or testing of the plant, substance or thing.

257. In the case of an inspection at regulated business premises, the premises may be used for operating a number of different titles, or for provision of services to a range of industry customers. There needs, therefore, to be more precision about the return of plant, substances or things to such premises. New paragraph 9(4)(c) provides for plant, a substance or a thing to be returned to a representative of the occupier of the premises as soon as practicable after the inspection, examination, measuring or testing of the plant, substance or thing. It is inherent in the concept of “representative” that the person to whom the item is returned would, by virtue of the person’s position in the business, have authority to receive the item. The NOPSEMA inspector should have reason to believe that the person has that authority.

Items 220 to 223: Clause 10 of Schedule 2A (heading); Subclause 10(1) of Schedule 2A; Clause 11 of Schedule 2A (heading)

258. These items amend clauses 10 and 11 so they apply to inspections in relation to petroleum titles and greenhouse gas titles. Clause 10 enables a NOPSEMA inspector to issue an environmental do not disturb notice, if the inspector is satisfied on reasonable grounds that it is reasonably necessary to issue the notice in order to allow the inspection, examination or measurement of, or the conducting of tests concerning, offshore premises, or particular plant, a substance or a thing at the premises. Clause 11 provides for the notification of the issue, and display in a prominent place, of an environmental do not disturb notice issued under clause 10.

Items 224 to 232: Clause 11A of Schedule 2A (heading); Subclause 11A(1) of Schedule 2A; Subclause 11A(9) of Schedule 2A (definition of premises); Clause 11B of Schedule 2A (heading); Paragraph 11B(1)(a) of Schedule 2A; Paragraph 11B(1)(b) of Schedule 2A; Subclause 11B(5) of Schedule 2A; Subclause 11B(7) of Schedule 2A (definition of premises)

259. These items amend clauses 11A and 11B so that they apply to inspections in relation to petroleum titles and greenhouse gas titles. Clause 11A enables a NOPSEMA inspector to issue an environmental prohibition notice to a titleholder if, in conducting an environmental inspection in relation to offshore premises, the inspector is satisfied on reasonable grounds that:

- an activity is occurring at the premises that involves an immediate and significant threat to the environment;
- an activity may occur at the premises that, if it occurred, would involve an immediate and significant threat to the environment;
- the operation or use of the premises involves an immediate and significant threat to the environment; or
- the operation or use of the premises, if it occurred, would involve an immediate and significant threat to the environment.

260. The inspector must also consider it reasonably necessary to issue the notice in order to remove the threat.
261. Clause 11B provides for the notification of the issue, and display in a prominent place, of an environmental prohibition notice issued under clause 11A.

Items 233 to 240: Clause 11C of Schedule 2A (heading); Subclause 11C(1) of Schedule 2A; Clause 11C of Schedule 2A; Clause 11D of Schedule 2A (heading); Subclause 11D(1) of Schedule 2A

262. These items amend clauses 11C and 11D so that they apply to inspections in relation to petroleum titles and greenhouse gas titles. Clause 11C enables a NOPSEMA inspector to issue an environmental improvement notice to a titleholder if, in conducting an environmental inspection in relation to offshore premises, the inspector is satisfied on reasonable grounds that the titleholder is contravening, or has contravened and is likely to again contravene, a provision of an environmental management law, and as a result there is, or may be, a significant threat to the environment.

263. Clause 11D provides for the notification of the issue, and display in a prominent place, of an environmental improvement notice issued under clause 11C. It also makes it an offence and establishes a civil penalty provision if a person fails to comply with an environmental improvement notice.

Item 241: Clause 12 of Schedule 2A (heading)

264. This item amends the heading to clause 12 to replace the reference to “petroleum environmental inspections” with “environmental inspections”. That clause makes it an offence of strict liability for a person to tamper with a notice, or remove a notice, issued under Schedule 2A.

Item 242: Subclause 12(1) of Schedule 2A

265. This item amends subclause 12(1) to prohibit a person from tampering with a notice that has been displayed under subclause 9(3A). See discussion in relation to subclause 9(3A) at paragraph 254.

Items 243 and 244: After subclause 12(2) of Schedule 2A; Paragraph 12(4)(a) of Schedule 2A

266. Item 243 inserts a new subclause 12(2A) to prohibit removal of a notice that has been displayed under subclause 9(3A). See discussion in relation to subclause 9(3A) at paragraph 254. The notice must not be removed until the plant, substance or thing to which the notice relates is returned to a representative of the occupier of the premises from which it was removed.

267. Item 244 amends subclause 12(4) as a consequence of the insertion of new subclause 12(2A).

Item 245: Clause 12A of Schedule 2A (heading)

268. This item amends the heading to clause 12A to replace the reference to “petroleum environmental inspections” with “environmental inspections”. That clause provides for
the publication of environmental prohibition notices and environmental improvement notices, issued under clauses 11A and 11C respectively, on NOPSEMA’s website.

Item 246: Division 3 of Part 2 of Schedule 2A (heading)

269. This item amends the heading to Division 3 of Part to replace the reference to “petroleum environmental laws” with “environmental management laws”.

Items 247 to 251: Clause 13 of Schedule 2A (heading); Subclause 13(1) of Schedule 2A; Paragraph 13(1)(a) of Schedule 2A; Subclause 13(2) of Schedule 2A

270. These items amend clause 13 to replace references to “petroleum environmental law” with “environmental management law”, replace references to “petroleum environmental inspection” with “environmental inspection”, and insert a reference to an inspection in relation to a greenhouse gas title, as well as a petroleum title.

Item 252: Clause 14 of Schedule 2A

271. This item repeals the definition of offence against a petroleum environmental law in clause 14 and replaces it with offence against an environmental management law, for the purposes of Schedule 2A. The new definition applies more generally to environmental laws in relation to both petroleum and greenhouse gas storage activities.

Items 253 to 261: Clause 15 of Schedule 2A (heading); Clause 15 of Schedule 2A; Clause 16 of Schedule 2A (heading); Subclause 16(1) of Schedule 2A; Subclause 16(8) of Schedule 2A; Clause 17 of Schedule 2A (heading); Clause 17 of Schedule 2A; Clause 18 of Schedule 2A (heading); Clause 18 of Schedule 2A

272. These items amend clauses 15 to 18 to replace references to “petroleum environmental law” with “environmental management law”, and to replace “petroleum environmental inspection” with “environmental inspection”.

Items 262 and 263: Clause 3 of Schedule 3; Clause 3 of Schedule 3 (definition of premises)

273. Item 262 inserts a definition of eligible premises for the purposes of Schedule 3, in particular for the purposes of the definition of regulated business premises. See discussion at paragraphs 187 to 192 in relation to equivalent amendments to Schedule 2A.

Items 264 to 267: Clause 3 of Schedule 3 (paragraph (b) of the definition of regulated business premises); Clause 3 of Schedule 3 (before subparagraph (b)(i) of the definition of regulated business premises); Clause 3 of Schedule 3 (paragraphs (c) and (d) of the definition of regulated business premises); Clause 3 of Schedule 3

274. Schedule 3 provides for warrant-free entry to defined regulated business premises for the purpose of conducting an inspection to determine whether a listed OHS law has been or is being complied with, to determine whether information given in compliance or purported compliance with a listed OHS law is correct, or concerning an accident or dangerous occurrence that has happened at or near a facility. Currently, a NOPSEMA
The definition of *regulated business premises* in Schedule 3 currently refers to the following:
- a facility;
- premises that are occupied by the operator of a facility, and used or proposed to be used wholly or principally in connection with offshore petroleum operations or offshore greenhouse gas storage operations;
- premises that are occupied by a petroleum titleholder, and used or proposed to be used wholly or principally in connection with offshore petroleum operations; and
- premises that are occupied by a greenhouse gas titleholder, and used or proposed to be used wholly or principally in connection with offshore greenhouse gas storage operations.

Recently, an argument has been put forward that the definition of *regulated business premises* in Schedule 3 extends to any offshore premises (see discussion at paragraphs 204 and 205 regarding a similar definition in Schedule 2A).

For the reasons discussed at paragraphs 204 and 205, item 266 amends the definition of *regulated business premises* to clarify that regulated business premises (with the exception of a facility) are premises that are on land. The definition is also amended to apply only to *eligible premises* (as defined in a new definition inserted by item 262). The types of premises that are contemplated by the new definition of *eligible premises* are buildings, structures, and other places that are enclosed (see discussion at paragraphs 187 to 192).

Further, the scope of (onshore) regulated business premises is proving to be inadequate in practice (see discussion at paragraph 206).

This item will therefore also amend the definition of *regulated business premises* to extend it to cover onshore premises of a related body corporate (within the meaning of the Corporations Act 2001 – see item 5) of a titleholder or operator, and onshore premises of a person who has carried out, is carrying out, or is to carry out, operations under a contract, arrangement or understanding with a titleholder, a related body corporate of a titleholder, an operator or a related body corporate of an operator. (Under clause 3 of Schedule 3 to the OPGGS Act, *contract* is defined to include an arrangement or understanding.)

These amendments will extend the premises with respect to which NOPSEMA inspectors have warrant-free access. The ability to access premises without a warrant is limited as to purpose; that is, for the purposes of conducting an inspection to determine whether a listed OHS law has been or is being complied with, to determine whether information given in compliance or purported compliance with a listed OHS law is
correct, or concerning an accident or dangerous occurrence that has happened at or near a facility.

281. Further, in order to access regulated business premises without a warrant under Schedule 3, a NOPSEMA inspector must be satisfied on reasonable grounds that there are likely to be at those premises documents that relate to a facility that is, or facility operations that are, the subject of the inspection, or a titleholder’s well-related obligations.

282. Premises that are used as a residence will be specifically excluded from the expanded definition of regulated business premises (see discussion at paragraph 209).

283. NOPSEMA inspectors will also in all cases be required to obtain a warrant or consent under Part 3 of the Regulatory Powers Act before entering premises to exercise powers to search for and gather evidential material (i.e. for the purposes of a prosecution).

Items 268 and 269: Subparagraph 50(1)(a)(iv) of Schedule 3; At the end of paragraph 50(1)(a) of Schedule 3

284. These items amend clause 50 (which relates to inspections at facilities) as a consequence of the provision of additional powers at onshore regulated business premises, inserted by item 271. NOPSEMA inspectors already have the powers conferred by clauses 74 and 75 when undertaking an OHS inspection at a facility. The addition of the specific references to these clauses in clause 50 is to avoid any doubt that inspectors can continue to exercise these powers at facilities, in addition to the ability to exercise them at onshore regulated business premises that is provided for by the amendments in the Bill.

Items 270 and 271: Paragraph 51(1)(a) of Schedule 3; Paragraph 51(1)(b) of Schedule 3

285. These items amend paragraphs 51(1)(a) and (b) to provide for NOPSEMA inspectors to have additional powers at onshore regulated business premises in relation to the inspection of plant, substances and things, as well as documents. Item 266 of Schedule 1 to the Bill amends the definition of regulated business premises in Schedule 3 to include premises (on land) that are occupied by a related body corporate of a titleholder or an operator, or by a person who is conducting specified operations or activities under a contract, arrangement or understanding with an operator or a titleholder (or a related body corporate of an operator or a titleholder). The powers of NOPSEMA inspectors when undertaking inspections at regulated business premises currently extend only to powers to search for, inspect, take extracts from, or make copies of, relevant documents at those premises. The types of premises that would be captured by the extended definition of regulated business premises will include premises of drilling contractors and diving contractors.

286. It is likely that there will be things other than documents (e.g. substances) at those premises that may be relevant to compliance by a titleholder or an operator with their obligations under the OPGGS Act and regulations, and that NOPSEMA inspectors may therefore wish to examine as part of a monitoring inspection under Schedule 3.
287. The powers exercisable by NOPSEMA inspectors at onshore regulated business premises when undertaking an OHS inspection under Schedule 3 are therefore being extended to include additional powers to search for, collect, inspect and undertake tests on plant, substances or things found at those premises. To facilitate this, the amendment made by this item will enable a NOPSEMA inspector to be able to enter regulated business premises, without a warrant, at any reasonable time, if the inspector is satisfied on reasonable grounds that there are likely to be at those premises plant, substances, documents or things that relate to: (a) a facility that is, or facility operations that are, the subject of an OHS inspection; or (b) a titleholder’s well-related obligations. This will ensure NOPSEMA inspectors have a full set of powers to determine whether a titleholder or operator is compliant with its OHS obligations under the OPGGS Act and regulations.

Items 272 to 274: Subclause 51(2) of Schedule 3; Subclause 51(3) of Schedule 3

288. Item 272 amends subclause 51(2) to clarify who must be notified by a NOPSEMA inspector on entering premises for the purposes of an inspection, at each of the categories of onshore regulated business premises.

289. Items 273 and 274 amend subclause 51(3) as a consequence of the amendment to subclause 5(2).

Item 275: After subparagraph 74(1)(b)(v) of Schedule 3

290. This item amends subclause 74(1) to reflect the new categories of regulated business premises (see discussion at item 266). New subparagraphs 74(1)(b)(va) to (vf) are inserted to provide for who is required to answer a question put by a NOPSEMA inspector, in accordance with subclause 74(1), in the case of an inspection at regulated business premises that are occupied by a related body corporate of an operator or a titleholder, a contractor of an operator or a titleholder, or a contractor of a related body corporate of an operator or a titleholder respectively.

291. Under existing subclause 74(5), it is an offence if a person breaches a requirement under subclause 74(1). Subclause 74(6) provides a reasonable excuse defence, in relation to which the defendant will bear an evidential burden. See discussion in relation to evidential burden on a defendant at paragraph 231.

292. Under existing subclause 74(8) a person is not excused from answering a question when required to do so under subclause 74(1) on the ground that the answer to the question may tend to incriminate the person or make the person liable to a penalty. For discussion about the reasons for removing the privilege against self-incrimination see paragraph 238. However, under existing subclause 74(9), the information, evidence or answer given, or any information obtained as a direct or indirect consequence of giving the information or evidence or answering the question, is not admissible in evidence against the person (a ‘use’ immunity). As a result of the amendments in Schedule 4 to the Bill, the immunity is to be limited to apply to individuals only, and not to bodies corporate (see discussion at Schedule 4).
Item 276: After subparagraph 74(3)(b)(v) of Schedule 3

293. This item amends subclause 74(3) to reflect the new categories of “regulated business premises” (see discussion at item 266). New subparagraphs 74(3)(b)(va) to (vf) are inserted to set out who may be required by a NOPSEMA inspector to produce a document or thing in accordance with subclause 74(3) in the case of an inspection at regulated business premises that are occupied by a related body corporate of an operator or a titleholder, a contractor of an operator or a titleholder, or a contractor of a related body corporate of an operator or a titleholder respectively.

294. Under existing subclause 74(5), it is an offence if a person breaches a requirement under subclause 74(3). Subclause 74(6) provides a reasonable excuse defence, in relation to which the defendant will bear an evidential burden. See discussion in relation to evidential burden on a defendant at paragraph 231.

295. Under existing subclause 74(8), a person is not excused from producing a document or thing when required to do so under subclause 74(3) on the ground that the document or thing may tend to incriminate the person or make the person liable to a penalty. For discussion about the reasons for removing the privilege against self-incrimination, see paragraph 238.

Items 277 to 279: Subclause 75(1) of Schedule 3; Paragraphs 75(1)(a) and (b) of Schedule 3

296. These items amend subclause 75(1) to enable NOPSEMA inspectors, in conducting an OHS inspection at onshore regulated business premises, to take possession of any plant, substance or thing and remove it from the premises, or take a sample of a substance or thing and remove the sample from the premises, to the extent that it is reasonably necessary to do so for the purposes of inspecting, examining, measuring, or conducting tests concerning, the plant, substance or thing. Currently, a NOPSEMA inspector only has the ability to take possession or a sample of plant, substances or things in the conduct of an OHS inspection at regulated business premises that are a facility (see discussion at paragraphs 285 to 287).

Item 280: Subclause 75(2) of Schedule 3

297. This item amends subclause 75(2) to ensure the subclause continues to apply only in the case of an OHS inspection at regulated business premises that are a facility. New subclause 75(2A) provides for who must be notified of the taking of possession of plant, a substance or a thing, or the taking of a sample of a substance or a thing, in the case of an OHS inspection at onshore regulated business premises (see item 281).

Item 281: After subclause 75(2) of Schedule 3

298. This item inserts new subclause 75(2A) to provide for persons who must be given notice of the taking of possession of plant, a substance or a thing, or the taking of a sample of a substance or thing, in the case of an inspection at onshore regulated business premises occupied by an operator of a facility, a titleholder, a related body corporate of an operator or a titleholder, a contractor of an operator or a titleholder, or a contractor of a related body corporate of an operator or a titleholder.
Item 282: Subclause 75(3) of Schedule 3

299. This item provides for subclause 75(3) to continue to provide for display of a notice of the taking of possession of plant, a substance, etc., during an OHS inspection at a facility only.

300. A notice will not be required to be displayed in relation to an OHS inspection at onshore regulated business premises.

Item 283: Subclause 75(4) of Schedule 3

301. This item provides for subclause 75(4) to continue to provide for the duties of a NOPSEMA inspector if the inspector takes possession of plant, a substance or a thing during an OHS inspection at a facility only.

302. New subclauses 75(6) and (7) (inserted by item 284) provide for the duties of a NOPSEMA inspector if possession is taken of plant, a substance or a thing during an OHS inspection at onshore regulated business premises.

Item 284: At the end of clause 75 of Schedule 3

303. This item inserts new subclause 75(6) to provide the requirement for a NOPSEMA inspector to return plant, a substance or a thing that the inspector has taken possession of during an OHS inspection at onshore regulated business premises.

304. In the case of an inspection at onshore regulated business premises, the premises may be used for operating a number of different titles, or for provision of services to a range of industry customers. There needs to be more precision about the return of plant, substances or things to such premises. New subclause 75(6) provides for plant, a substance or a thing to be returned to a representative of the occupier of the premises as soon as practicable after the inspection, examination, measuring or testing of the plant, substance or thing. See discussion at paragraph 257 about the concept of a “representative”.

305. This item also inserts new subclause 75(7) to require the inspector to give a written statement setting out the results of an inspection, examination, measurement or testing of plant, a substance or a thing to each person who must be notified of the taking of possession of the plant, substance or thing under subclause 75(2A).

Items 285 and 286: Subclause 80A(1) of Schedule 3 (table item 3, column headed “If the inspector makes the following decision …”); Subclause 80A(1) of Schedule 3 (after table item 3)

306. These items amend the table in subclause 80A(1) to set out who has standing to appeal a decision of a NOPSEMA inspector, under clause 75, to take possession of plant, a substance or thing, or take a sample.
307. Currently item 3 of the table only applies to inspections at a facility. Item 285 amends this item to clarify that it will continue to apply only in relation to inspections that took place at a facility.

308. New table item 3A, inserted by item 286, provides for who has standing to appeal a decision under clause 75 in relation to an inspection at onshore regulated business premises. The provision ensures that in all cases of an inspection at regulated business premises other than a facility, the occupier of the premises and the owner of plant, a substance or a thing will have standing to appeal a decision of a NOPSEMA inspector to take possession of the plant, substance or thing, or to take a sample, at those premises.

**Division 2—Amendments to be made if Schedule 2 to the Timor Sea Maritime Boundaries Treaty Consequential Amendments Act 2019 has not commenced**

*Offshore Petroleum and Greenhouse Gas Storage Act 2006*

309. This Division removes references to greenhouse gas project inspectors in section 780F, while maintaining references to Greater Sunrise visiting inspectors in advance of commencement of Schedule 2 to the Maritime Boundaries Treaty Act. References to Greater Sunrise visiting inspectors will be removed from the provisions with the commencement of Schedule 2 to the Maritime Boundaries Treaty Act. See also the amendments made by Division 3 of Part 1 of Schedule 1 to the Bill.

310. This Division will not commence at all if Schedule 2 to the Maritime Boundaries Treaty Act commences before Division 1 of Part 1 of Schedule 1 to the Bill.

**Items 286A to 286J: Section 780F**

311. These items amend section 780F to remove references to greenhouse gas project inspectors, as per items 118 to 129 above.

**Division 3—Amendments contingent on the commencement of Schedule 2 to the Timor Sea Maritime Boundaries Treaty Consequential Amendments Act 2019**

*Offshore Petroleum and Greenhouse Gas Storage Act 2006*

312. This Division commences either immediately after the commencement of Division 1 of Part 1 of Schedule 1 to the Bill, or immediately after the commencement of Schedule 2 to the Maritime Boundaries Treaty Act – whichever is later.

313. In the former case, Schedule 2 to the Maritime Boundaries Treaty Act will have already amended section 780F to remove references to Greater Sunrise visiting inspectors. This Division will remove references to greenhouse gas project inspectors, and clarify the drafting of affected subsections in section 780F.

314. In the latter case, Division 2 of Part 1 of Schedule 1 to the Bill will have already amended section 780F to remove references to greenhouse gas project inspectors. Schedule 2 to the Maritime Boundaries Treaty Act will remove references to Greater
Sunrise visiting inspectors. This Division will commence immediately after those amendments to clarify the drafting of affected subsections in section 780F.

315. The Division will not commence at all if Schedule 2 to the Maritime Boundaries Treaty Act does not commence. In that case, Division 2 of Part 1 of Schedule 1 to the Bill will have already removed references to greenhouse gas project inspectors. There will be no need for further amendment to clarify the drafting of affected subsections.

Items 286K and 286L: Subsections 780F(1) and (2); Subsections 780F(7), (8), (8A) and (9)

316. These items amend various subsections of section 780F to redraft the relevant provisions in a simpler format to ensure clarity, following the removal of references to both greenhouse gas project inspectors and Greater Sunrise visiting inspectors.

Part 2—Transitional and application provisions

Item 287: Transitional—listed NOPSEMA laws and environmental management laws

317. Item 287 provides transitional provisions for the avoidance of doubt. Subitem 287(1) provides that if particular provisions or a particular requirement became a listed NOPSEMA law as a result of amendments made by Schedule 1 to the Bill, a reference to a listed NOPSEMA law in the OPGGS Act, as amended, includes a reference to those provisions or that requirement as in force before commencement of item 287. Similarly, subitem 287(2) provides that if particular provisions became an environmental management law as a result of amendments made by Schedule 1 to the Bill, a reference to an environmental management law in the OPGGS Act, as amended, includes a reference to those provisions as in force before commencement of item 287.

Items 288 to 290: Application—general Ministerial directions; Application—remedial directions to current holders of leases, permits and licences; Application—remedial directions to former holders of leases, permits and licences

318. Amendments made by Schedule 1 to the Bill will result in amendments to the general power of the Minister to give a direction to a greenhouse gas titleholder under section 580, and the power of the Minister to give a remedial direction to a current or former greenhouse gas titleholder under sections 592 and 595 respectively. These items insert application provisions to ensure the amendments do not apply to a direction given by the Minister before the commencement of the amendments.

Schedule 2—Protection of technical information


319. Sections 712 to 714 prescribe, amongst other things, the circumstances in which documentary information or petroleum mining samples (as defined in section 711) may be disclosed by the Titles Administrator. Subsection 714(1) expressly empowers the Titles Administrator to disclose documentary information or a petroleum mining sample to a Commonwealth Minister, a State Minister or a Northern Territory Minister.
320. Sections 715 and 716 control the circumstances in which a Minister may disclose documentary information or a petroleum mining sample which has been disclosed by the Titles Administrator under section 714. However, the current headings of sections 715 and 716 are at odds with the content of those provisions. While the headings suggest that the provisions deal with the disclosure of documentary information or petroleum mining samples by any Minister to whom such information has been disclosed by the Titles Administrator, the provisions only cover disclosure of documentary information or a petroleum mining sample by the responsible Commonwealth Minister. This is anomalous, given that section 714 also permits the Titles Administrator to disclose documentary information or petroleum mining samples to Ministers other than the responsible Commonwealth Minister. This anomaly leads to uncertainty about the circumstances in which a Commonwealth Minister (other than the responsible Commonwealth Minister), a State Minister or a Northern Territory Minister may disclose documentary information or a petroleum mining sample.

321. The items in this Schedule broaden the scope of sections 715 and 716 to restrict disclosure of documentary information and petroleum mining samples by any Minister to whom the Titles Administrator has disclosed such information under section 714. These restrictions replicate the restrictions that already apply to the disclosure of documentary information or petroleum mining samples by the Titles Administrator and the responsible Commonwealth Minister. The Schedule also makes equivalent amendments to the analogous greenhouse gas provisions in Part 8.3.

**Item 1: Section 711**

322. This item inserts a definition of *recipient Minister* for the purposes of Part 7.3.

323. The reference to “a Minister” in paragraph (a) is a reference to any Commonwealth Minister, including the responsible Commonwealth Minister.

**Items 2 and 3: Subsection 714(3) (note 1); Subsection 714(3) (note 2)**

324. These items amend the notes to section 714 as a consequence of amendments made to sections 715 and 716.

**Items 4 and 5: Subdivision B of Division 2 of Part 7.3 (heading); Section 715 (heading)**

325. These items amend the headings to Subdivision B of Division 2 of Part 7.3 and section 715 of the OPGGS Act as a consequence of amendments made to sections 715 and 716 by this Schedule.

**Items 6 to 8: Subsection 715(1); Subsection 715(2)**

326. These items amend section 715 to clarify that that section restricts what a Commonwealth Minister, State Minister or Northern Territory Minister *(recipient Minister)*, who has had documentary information made available to them by the Titles Administrator under section 714 may do with that information. The
restrictions on the recipient Minister are the same as the restrictions on what the Titles Administrator may do with documentary information (see section 712).

Item 9: At the end of section 715

327. This item inserts new subsection 715(3) which applies if a Commonwealth Minister, State Minister or Northern Territory Minister (recipient Minister), who has received documentary information from the Titles Administrator under section 714, then makes that information available to another Commonwealth Minister, State Minister or Northern Territory Minister (second recipient Minister), in accordance with paragraph 715(2)(b). The new subsection restricts what the second recipient Minister may do with the information.

328. The second recipient Minister cannot make the information publicly known or available to any other person (including a Commonwealth Minister, State Minister or Northern Territory Minister), other than in accordance with regulations or for the purposes of the administration of the OPGGS Act or regulations.

Item 10: Section 716 (heading)

329. This item amends the heading to section 716 as a consequence of amendments made to section 716.

Items 11 to 13: Subsection 716(1); Subsection 716(2)

330. These items amend section 716 to clarify that that section restricts what a Commonwealth Minister, State Minister or Northern Territory Minister (recipient Minister), who has had a petroleum mining sample made available to them by the Titles Administrator under section 714, may do with that sample. The restrictions on the recipient Minister are the same as the restrictions on what the Titles Administrator may do with a petroleum mining sample (see section 713).

Item 14: At the end of section 716

331. This item inserts new subsection 716(3), which applies if a Commonwealth Minister, State Minister or Northern Territory Minister (recipient Minister), who has had a petroleum mining sample made available to them by the Titles Administrator under section 714, then makes that sample available to another Commonwealth Minister, State Minister or Northern Territory Minister (second recipient Minister), in accordance with paragraph 716(2)(b). The new subsection restricts what the second recipient Minister may do with the sample.

332. The second recipient Minister cannot make the sample publicly known or available to any other person (including a Commonwealth Minister, State Minister or Northern Territory Minister), other than in accordance with regulations or for the purposes of the administration of the OPGGS Act or regulations.
Items 15 and 16: After paragraph 717(1)(c); At the end of subsection 717(1)

333. These items amend subsection 717(1) to include references to regulations made for the purposes of new paragraphs 715(3)(c) and 716(3)(c) (see items 9 and 14). Section 717 enables regulations to prescribe a fee to recover expenses incurred in giving a member of the public access to documentary information or a petroleum mining sample (where permitted to do so by the regulations).

Item 17: Section 736

334. This item inserts a definition of recipient Minister for the purposes of Part 8.3.

335. The reference to “a Minister” in paragraph (a) is a reference to any Commonwealth Minister, including the responsible Commonwealth Minister.

Item 18: At the end of section 740

336. This item adds notes at the end of section 740 to inform the reader that sections 740A and 740B (inserted by item 19) set out what a Commonwealth Minister, a State Minister or a Northern Territory Minister (recipient Minister) may do with documentary information or an eligible sample respectively that has been made available to that Minister under section 740.

Item 19: After Subdivision A of Division 2 of Part 8.3

337. This item inserts new Subdivision AA, which sets out what a Commonwealth Minister, a State Minister or a Northern Territory Minister (recipient Minister) may do with documentary information or an eligible sample (as defined in section 736) made available by the Minister or the Titles Administrator under section 740. If a recipient Minister subsequently makes the information or sample available to a further Commonwealth Minister, State Minister or Northern Territory Minister (second recipient Minister), the new sections also set out what the second recipient Minister may do with the information or sample. The new sections are consistent with the analogous petroleum provisions in Part 7.3 (as amended by this Schedule).

Item 20: At the end of subsection 741(1)

338. This item amends subsection 741(1) to enable regulations to provide for fees relating to making information available to a person, or permitting a person to inspect a sample, under regulations made for the purposes of new paragraph 740A(2)(c), 740A(3)(c), 740B(2)(c) or 740B(3)(c).

Item 21: Section 745 (paragraph (a) of the definition of reviewable Ministerial decision)

339. This item amends the definition of reviewable Ministerial decision in section 745 to ensure an application may be made to the Administrative Appeals Tribunal for review of a decision of the Minister to make documentary information or a sample publicly...
known or available under regulations made for the purposes of new paragraph 715(3)(c), 716(3)(c), 740A(2)(c), 740A(3)(c), 740B(2)(c) or 740B(3)(c).

340. It also ensures that an application may be made to the Administrative Appeals Tribunal for review of a decision of the Minister to make documentary information or a sample publicly known or available under regulations made for the purposes of paragraph 715(2)(c) or 716(2)(c). These paragraphs are currently referred to in the definition of *reviewable Titles Administrator decision*; however it is the Minister rather than the Titles Administrator who can make information or a sample publicly known or available under regulations made for the purposes of these paragraphs.

**Item 22: Section 745 (notes 1 and 2 to the definition of reviewable Ministerial decision)**

341. This item repeals notes 1 and 2 at the end of the definition of *reviewable Ministerial decision*. The notes do not refer to the current content of the definition and were intended to be repealed when amendments were previously made to the definition.

**Item 23: Section 745 (definition of reviewable Titles Administrator decision)**

342. This item amends the definition of *reviewable Titles Administrator decision* to remove the reference to a decision of the Titles Administrator under regulations made for the purposes of paragraph 715(2)(c) or 716(2)(c). These were originally included in error; it is the Minister rather than the Titles Administrator who can make information or a sample publicly known or available under regulations made for the purposes of these paragraphs (see related amendment at item 21).

**Schedule 3 – Directions given by the responsible Commonwealth Minister**

*Offshore Petroleum and Greenhouse Gas Storage Act 2006*

**Item 1: Paragraph 574A(6)(b)**

343. This item amends paragraph 574A(6)(b) to ensure a direction given to a petroleum titleholder by the Minister, under the Minister’s general power to give directions, is subject to the requirements of the Safety Regulations, the Environment Regulations and the Wells Regulations.

**Schedule 4—Compliance powers**

**Part 1—Amendments**

*Offshore Petroleum and Greenhouse Gas Storage Act 2006*

344. Subclauses 8(3) of Schedule 2A (environmental inspections) and 74(3) of Schedule 3 (OHS inspections) enable a NOPSEMA inspector to require a person to produce a document or thing if the inspector is satisfied on reasonable grounds that the
person is capable of producing a document or thing that is reasonably connected with the conduct of an environmental or OHS inspection respectively.

345. There is no provision in clause 8 of Schedule 2A or clause 74 of Schedule 3 for an inspector to retain a document or thing produced under either subclause, which would enable the inspector to consider, examine and assess the document or thing further. NOPSEMA inspectors often face difficulties in obtaining information about offshore petroleum activities for the purposes of monitoring compliance and investigating the cause of incidents.

346. If an inspector has reasonable grounds to retain a document or thing produced, in order to enable the inspector to consider the document or thing further, it is not always possible for the inspector to obtain a warrant over the phone, as inspections are often conducted offshore with limited access to telecommunications. Further, due to the nature of offshore operations, there is a risk that a thing may be disturbed in the time it takes to obtain a warrant.

347. The amendments in this Schedule enable a NOPSEMA inspector to retain a document or thing that has been produced in response to a request under subclause 8(3) of Schedule 2A or subclause 74(3) of Schedule 3. An inspector would be able to take possession of documents or things produced whether or not the inspection is being carried out offshore.

348. This Schedule also makes amendments in relation to the ‘use’ immunity in subsections 702(2), 728(2) and 761(2), and in subclauses 8(9) of Schedule 2A and 74(9) of Schedule 3.

349. Currently, subsections 702(1) and 728(1) provide that a person is not excused from giving information or evidence or producing a document under section 699 or 725 on the ground that the information, evidence, or production of the document might tend to incriminate the person, or expose the person to a penalty. Subsection 761(1) provides that a person is not excused from giving information or producing a document under section 759 on the ground that the information given or production of the document might tend to incriminate the person or expose the person to a penalty. Similarly, subclauses 8(8) of Schedule 2A and 74(8) of Schedule 3 provide that a person is not excused from answering a question, or producing a document or thing, under subclause 8(1) or (3) of Schedule 2A or subclause 74(1) or (3) of Schedule 3 on the ground that the answer given, or production of the document or thing, might tend to incriminate the person or expose the person to a penalty. For discussion about the reasons for removing the privilege against self-incrimination in these provisions, see paragraph 238.

350. Subsections 702(2), 728(2) and 761(2), and subclauses 8(9) of Schedule 2A and 74(9) of Schedule 3 provide that information, evidence or an answer given, or a document or thing produced, or any information obtained as a direct or indirect consequence of giving the information or evidence, answering the question or production of the document or thing, is not admissible in evidence against the person (a ‘use’ immunity). The use of a “person” in these provisions is not limited to an individual and as a result the ‘use’ immunity is extended to corporations. This creates a problem where
NOPSEMA obtains documents, information, evidence or a thing from a corporate entity that may at some time be the subject of a prosecution. Should NOPSEMA obtain information, evidence, a document or a thing under one of these provisions from a corporate entity (which make up the majority of participants in the offshore petroleum sector), by nature of the definition of “person” it will be inadmissible as evidence against the corporation. The amendments in this Schedule will therefore restrict the ‘use’ immunity to individuals. This is consistent with other Commonwealth legislation, such as the Work Health and Safety Act 2011 and the Telecommunications Act 1997.

Items 1 and 2: Subsection 611J(2) (table item 3, column headed “is an authorised person in relation to the following provisions in this Act (to the extent indicated) …”, paragraph (v)); Subsection 611J(2) (table item 3, column headed “is an authorised person in relation to the following provisions in this Act (to the extent indicated) …”, paragraph (ze))

351. These items amend the table in subsection 611J(2) to ensure new subclauses 12(1A) of Schedule 2A (inserted by item 13) and 79(1A) of Schedule 3 (inserted by item 20) are enforceable by injunction. The CEO of NOPSEMA is an authorised person (i.e. has the ability to apply for an injunction under Part 7 of the Regulatory Powers Act) in relation to the provisions.

Items 3 to 10: Subsection 702(2); Subsection 728(2); Subsection 761(2); Subclause 8(9) of Schedule 2A

352. These items replace references to a “person” (which would include a body corporate) in subsections 702(2), 728(2), 761(2) and subclause 8(9) of Schedule 2A with references to an “individual”. This ensures that the ‘use’ immunity in each of subsections 702(2), 728(2), 761(2), and subclause 8(9) is limited to an individual. This ensures information or evidence given, or a document or thing produced, under any of sections 699, 725, and 759, or subclause 8(1) or (3) Schedule 2A is admissible in evidence against a corporation.

Item 11: At the end of clause 8 of Schedule 2A

353. This item inserts new subclauses 8(10) to (13), which would enable a NOPSEMA inspector to take possession of a document produced under subclause 8(3) and retain it for as long as reasonably necessary.

354. To minimise inconvenience to the person who is otherwise entitled to possession of the document, the new subclauses will ensure such a person is entitled to be supplied, as soon as practicable, with a copy certified by a NOPSEMA inspector to be a true copy. The certified copy must be received in all courts and tribunals as evidence as if it were the original. Until the certified copy is supplied, a NOPSEMA inspector must ensure the person is given reasonable access to the document.

355. This item also inserts new subclauses 8(14) to (19), which would enable a NOPSEMA inspector to take possession of a ‘thing’ produced under subclause 8(3) and retain it for as long as reasonably necessary. Subclauses 8(15) and (17) provide for certain persons to be notified of the taking of possession of the thing, and the reasons for it. Where a
NOPSEMA inspector takes possession of a thing at offshore petroleum premises (such as a facility or a seismic vessel), these persons include the owner of the thing, and the person with overall control at the relevant premises, to ensure they are aware that the thing has been removed. Where a NOPSEMA inspector takes possession of a thing otherwise than at offshore petroleum premises, only the owner of the thing must be informed.

356. For safety purposes, where a thing has been taken from offshore petroleum premises, subclause 8(16) ensures that a notice must be displayed at the premises so that persons at the premises are aware that the thing has been removed.

357. To minimise inconvenience to the person/s who produced and/or owns the thing, subclause 8(18) ensures that, if a thing is retained by a NOPSEMA inspector, the person/s will be given reasonable access to the thing.

358. Subclause 8(19) ensures that once it is no longer necessary for the NOPSEMA inspector to retain the thing, it must be returned to the person who produced the thing, the owner of the thing, or a person authorised by one of those persons.

Items 12 to 15: Subclause 12(1) of Schedule 2A; After subclause 12(1) of Schedule 2A; Subclause 12(2) of Schedule 2A (heading); Paragraph 12(4)(a) of Schedule 2A

359. These items amend existing subclauses 12(1) and (4) and insert new subclause 12(1A) to make it an offence of strict liability for a person to:

- tamper with a notice that has been displayed under new subclause 8(16) (see item 11); or
- remove the notice before the thing to which the notice relates is returned under subclause 8(19) (see item 11).

360. It is appropriate to apply strict liability to these offences to ensure they may be enforced more effectively as, given the remote and complex nature of offshore operations, it is extremely difficult to prove intent. The application of strict liability is therefore to improve compliance in the regime, consistent with the principles outlined in the Guide. This is particularly important given that the purpose of displaying the notice is to ensure the safety of persons at the premises by ensuring that they are aware that the thing has been removed. The penalty of 50 penalty units is consistent with the preference stated in the Guide for a maximum of 60 penalty units for offences of strict liability. This is the penalty that is already applied by clause 12. A lower penalty is applied compared to some other strict liability offences in the OPGGS Act which apply a penalty of 100 penalty units. The offence is of a kind that is likely to be committed by an individual, and it is therefore considered appropriate to apply a lower penalty, particularly given the application of strict liability.

361. The clause provides a ‘reasonable excuse’ defence, in relation to which the defendant will bear an evidential burden (see discussion in relation to evidential burden on a defendant at paragraph 231).
Items 16 and 17: Subclause 74(9) of Schedule 3

362. These items replace the reference to a “person” (which would include a body corporate) in subclause 74(9) with a reference to an “individual”. This ensures that the ‘use’ immunity in subclause 74(9) is limited to an individual to ensure an answer given, or document or thing produced, under clause 74 is admissible in evidence against a corporation.

Item 18: At the end of clause 74 of Schedule 3

363. This item inserts new subclauses 74(11) to (14), which would enable a NOPSEMA inspector to take possession of a document produced under subclause 74(3) and retain it for as long as reasonably necessary.

364. To minimise inconvenience to the person who is otherwise entitled to possession of the document, the new subclauses will ensure such a person is entitled to be supplied, as soon as practicable, with a copy certified by a NOPSEMA inspector to be a true copy. The certified copy must be received in all courts and tribunals as evidence as if it were the original. Until the certified copy is supplied, a NOPSEMA inspector must ensure the person is given reasonable access to the document.

365. This item also inserts new subclauses 74(15) to (20), which would enable a NOPSEMA inspector to take possession of a ‘thing’ produced under subclause 74(3) and retain it for as long as reasonably necessary. Subclauses 74(16) and (18) provide for certain persons to be notified of the taking of possession of the thing, and the reasons for it. Where a NOPSEMA inspector takes possession of a thing at a facility, these persons include the operator of the facility, the operator’s representative at the facility, the titleholder (if the inspection wholly or partly relates to the titleholder’s well-related obligation) and the owner of the thing. Where a NOPSEMA inspector takes possession of a thing otherwise than at a facility, only the owner of the thing must be informed.

366. For safety purposes, where a thing has been taken at a facility, subclause 74(17) ensures that a notice must be displayed at the facility so that persons at the facility are aware that the thing has been removed.

367. To minimise inconvenience to the person/s who produced and/or owns the thing, subclause 74(19) ensures that, if a thing is retained by a NOPSEMA inspector, the person/s will be given reasonable access to the thing.

368. Subclause 74(20) ensures that, once it is no longer necessary for the NOPSEMA inspector to retain the thing, it must be returned to the person who produced the thing, the owner of the thing, or a person authorised by one of those persons.
Items 19 to 22: Subclause 79(1) of Schedule 3; After subclause 79(1) of Schedule 3; Subclause 79(2) of Schedule 3 (heading); Paragraph 79(4)(a) of Schedule 3

369. These items amend clause 79 to make it an offence of strict liability for a person to:
- tamper with a notice that has been displayed under new subclause 79(17) (see item 18); or
- remove the notice before the thing to which the notice relates is returned under subclause 74(20) (see item 18).

370. It is appropriate to apply strict liability to these offences to ensure they may be enforced more effectively as, given the remote and complex nature of offshore operations, it is extremely difficult to prove intent.

371. The clause provides a ‘reasonable excuse’ defence, in relation to which the defendant will bear an evidential burden (see discussion in relation to evidential burden on a defendant at paragraph 231).

Part 2—Application provisions

Item 23: Application of amendments

372. This item provides for the amendments to subsections 702(2), 728(2) and 761(2) and to subclauses 8(9) of Schedule 2A and 74(9) of Schedule 3, which remove the application of the ‘use’ immunity to bodies corporate, to only apply in relation to information, evidence or an answer given, or a document or thing produced, after commencement of the amendments. This ensures that the ‘use’ immunity is not retrospectively removed from bodies corporate.

Schedule 5—Variation of petroleum access authority


373. Part 2.8 sets out provisions in relation to petroleum access authorities. Following a review of its cost recovery arrangements, the Titles Administrator proposes to introduce a fee for an application to vary a petroleum access authority. However, there is currently no specific provision in Part 2.8 for the holder of an access authority to apply for a variation of the authority. Section 246 only provides that the Titles Administrator may vary an access authority, by written notice given to the holder of the authority. In practice, however, the Titles Administrator currently considers variation of an access authority on the request of the holder of the authority.

374. Amendments will therefore include a specific provision in Part 2.8 enabling the holder of an access authority to apply for variation of the authority. The proposed fee for assessment of an application for variation of an access authority will be able to be linked to the new provision.
Items 1 and 2: Section 246; At the end of section 246

375. These items amend section 246 to specifically provide that the Titles Administrator may vary a petroleum access authority either on the application of the registered holder of the authority, or on the Titles Administrator’s own initiative. New subsection 246(3) sets out the requirements for an application.

376. A variation referred to in this section applies to variation of the area covered by the access authority. Section 268 provides for the Titles Administrator to vary a condition of an access authority, and section 241 provides for the Titles Administrator to extend the duration of an access authority.

Item 3: Paragraph 255(1)(g)

377. This item ensures that an application for the variation of a petroleum access authority must be made in an approved manner (as is the case for applications for grant, renewal and/or variation of other petroleum titles). The approved manner can be found on the Titles Administrator’s website under applications and forms.

Item 4: At the end of section 695L

378. As is the case for the current fee for an application for the grant of an access authority, the proposed fee for an application for variation of an access authority would be charged under section 695L (by way of amendments to the Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011). However, section 256 of the OPGGS Act provides for an application fee for an application for grant, renewal or variation of various other petroleum titles (not including an access authority). Section 427 provides for an application fee for an application for grant, renewal or variation of various greenhouse gas titles. To avoid any question that sections 256 and 427 potentially override the operation of section 695L (and any associated fees for an application for grant or variation of an access authority charged under that section), this item amends section 695L to make clear that sections 256 and 427 do not by implication limit, and are taken never to have limited, section 695L.

Schedule 6—Directions by the Titles Administrator


Items 1 to 3: Paragraph 274(b); Paragraph 577(1)(a); Paragraph 578(2)(a)

379. These items correct a minor anomaly. Paragraph 274(b) refers to a direction given to a titleholder by the Minister; NOPSEMA or the Joint Authority under Chapter 2, Chapter 6 or Part 7.1. However, it is the Titles Administrator that may give a direction under Part 7.1. A similar anomaly exists in paragraphs 577(1)(a) and 578(2)(a). These items amend the relevant provisions to also include references to a direction given by the Titles Administrator.
Item 4: Application of amendments

The amendments made by this Schedule only apply in relation to a direction given by the Titles Administrator after commencement of the amendments.

Schedule 7—Listed NOPSEMA laws


Item 1: Subsection 601(1) (after table item 4)

Section 601 sets out the provisions of the Act and the regulations that are a ‘listed NOPSEMA law’. These are provisions in relation to which NOPSEMA inspectors can exercise monitoring and investigation powers.

Part 6.1A sets out the polluter pays provisions, which require a titleholder to control, clean up and carry out environmental monitoring in relation to an escape of petroleum resulting from a petroleum activity in the titleholder’s title area.

The polluter pays provisions in Part 6.1A were inserted after the insertion of section 601. At the time, Part 6.1A was not added to the table of listed NOPSEMA laws. This was an oversight that is corrected by this item; it is essential that NOPSEMA inspectors have powers to carry out monitoring and investigations in relation to a titleholder’s compliance with Part 6.1A in the unlikely event of an oil spill. If a titleholder fails to comply with the polluter pays requirements, NOPSEMA or the Minister can take the action required and recover the costs from the titleholder.

This item provides for Part 6.1A to be a ‘listed NOPSEMA law’.

Schedule 8—Fees payable to the Titles Administrator on behalf of the Commonwealth


Subsection 636(1) sets out fees that are payable to the Titles Administrator on behalf of the Commonwealth. Subsection 636(2) sets out fees that are payable to the Commonwealth.

Section 695J sets out the amounts that must be credited to the National Offshore Petroleum Titles Administrator Special Account (the Special Account), and includes amounts equal to any other amounts paid to the Titles Administrator on behalf of the Commonwealth (including the fees referred to in subsection 636(1)).

As part of a review of its cost recovery arrangements, the Titles Administrator proposes to amend or introduce fees, including fees under subsection 427(2) (applications for grant or renewal of a greenhouse gas assessment permit, grant or renewal of a greenhouse gas holding lease, grant of a greenhouse gas injection licence, grant of a
greenhouse gas search authority, and for a site closing certificate) and subsection 536(2) (change of company name). These are fees that under subsection 636(2) are payable to the Commonwealth.

388. All of the fees referred to in subsection 636(2) relate to functions that will be undertaken by the Titles Administrator, in its role to provide information, assessments, analysis, reports, advice and recommendations to the Minister, and to manage the title registers and data and information management. To ensure the Titles Administrator, which operates on a full cost-recovery basis, can be adequately cost recovered for carrying out these functions, it is appropriate that the fees referred to in subsection 636(2) should all be payable to the Titles Administrator, on behalf of the Commonwealth. The fee amounts will therefore be credited to the Special Account.

Items 1 to 4: Subsection 636(1); After paragraph 636(1)(a); After paragraph 636(1)(eaa); After paragraph 636(1)(f)

389. These items provide for the fees currently referred to in subsection 636(2) to be payable to the Titles Administrator, on behalf of the Commonwealth, rather than payable to the Commonwealth.

Item 5: Subsection 636(2)

390. Given that all of the fees that were previously payable to the Commonwealth under subsection 636(2) will instead be payable to the Titles Administrator on behalf of the Commonwealth, subsection 636(2) will be redundant. This item repeals that subsection.

**Schedule 9—Functions and powers of NOPSEMA**

*Offshore Petroleum and Greenhouse Gas Storage Act 2006*

Item 1: Section 649 (heading)

391. The amendment in this item will correct a technical error in the heading to section 649. The current heading to section 649 is “Functions and powers of NOPSEMA under State or Territory PSLA or other laws”. The reference to “other laws” in the heading is anomalous.

392. Previously, section 649 contained two subsections, the second of which referred to “powers conferred on NOPSEMA by or under a law of a State or the Northern Territory as permitted by section 650”. This referred specifically to powers conferred on NOPSEMA under laws other than a State or Northern Territory PSLA. This subsection justified a reference in the heading to “other laws”. The subsection was repealed by the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Miscellaneous Measures) Act 2015*; however the heading to section 649 was not also amended at that time.
Schedule 10—Courts


Items 1 to 22: Paragraph 216(6)(b); Paragraph 398(2)(b); Paragraph 572D(3)(b); Paragraph 572E(3)(b); Paragraph 572F(2)(b); Paragraph 577(3)(b); Paragraph 577A(2)(b); Paragraph 583(2)(b); Paragraph 589(4)(b); Paragraph 589(5)(b); Paragraph 597(4)(b); Paragraph 597(5)(b); Subsection 634(3); Paragraph 685(3)(b); Paragraph 686(5)(b); Paragraph 687(7)(b); Paragraph 688(5)(b); Paragraph 688A(5)(b); Paragraph 688B(5)(b); Paragraph 688C(5)(b); Paragraph 695L(3)(b); Paragraph 695M(7)(b)

393. The items in this Schedule replace all general references to “a court of competent jurisdiction” with references to specific courts.

394. Government policy is that Commonwealth legislation should be clear about which courts have jurisdiction to hear matters arising under it. This is generally achieved by explicitly listing which courts have jurisdiction in order to reduce the risk of any uncertainty and ensure the conferral of jurisdiction is clear and unambiguous.

Schedule 11—Recovery of costs and expenses


Item 1: Subsection 577(3)

395. This item amends subsection 577(3) to correct an erroneous reference to "the Commonwealth" with "NOPSEMA".

Items 2 and 3: Paragraph 589(2)(c)

396. These items amend paragraph 589(2)(c) to clarify that NOPSEMA may deduct from the proceeds of a sale under subsection 589(1) of property that belongs to a person, any fees or amounts that are payable by the person to NOPSEMA in its own right under the OPGGS Act (rather than amounts payable to another entity, or to NOPSEMA on behalf of the Commonwealth). New subsection 589(2A) (see item 5) will enable NOPSEMA, on behalf of the Commonwealth, to deduct fees or amounts payable to the Commonwealth, to NOPSEMA on behalf of the Commonwealth, or to the Titles Administrator on behalf of the Commonwealth.

Items 4 and 5: Paragraphs 589(2)(d) and (e); After subsection 589(2)

397. Item 4 repeals paragraphs 589(2)(d) and (e), which enable NOPSEMA to deduct, from the proceeds of a sale under subsection 589(1) of property that belongs to a person, any fees or amounts payable by the person under the Offshore Petroleum (Royalty) Act 2006 (Royalty Act) and under section 10E of the Regulatory Levies Act (annual titles administration levy payable to the Titles Administrator on behalf of the Commonwealth). Neither of the fees or amounts referred to in these paragraphs are...
payable to NOPSEMA in its own right. Although NOPSEMA can deduct the amounts in question, in doing so it is acting on behalf of the Commonwealth.

398. To ensure this is clear in the OPGGS Act, paragraphs 589(2)(d) and (e) are replaced (by item 5) with new subsection 589(2A), which sets out fees or amounts that NOPSEMA may, on behalf of the Commonwealth, deduct from the proceeds of sale of property. These include the fees or amounts currently referred to in paragraphs 589(2)(d) and (e), as well any fees or amounts payable to the Commonwealth under the OPGGS Act, and any amounts payable to NOPSEMA on behalf of the Commonwealth under the Regulatory Levies Act.

399. The new subsection makes it clear that these amounts are being deducted by NOPSEMA on behalf of the Commonwealth. New subsection 589(2B), which is also inserted by item 5, requires NOPSEMA to remit to the Commonwealth any fees or amounts payable to the Commonwealth that NOPSEMA deducts in accordance with new subsection 589(2A).

Item 6: Subsection 589(3)

400. This item amends subsection 589(3) as a consequence of new subsection 589(2A).

Item 7: Clause 33 of Schedule 6

401. This item amends clause 33 to ensure it will continue to operate correctly following the amendments of subsection 589(2) made by items 2 to 5.

Item 8: Application—recovery of costs and expenses incurred by NOPSEMA

402. This item is an application provision which applies the amendment of section 577 made by item 1 only in relation to costs and expenses incurred by NOPSEMA after commencement of Schedule 11.

Schedule 12—Appeals


Item 1: After subclause 81(7) of Schedule 3

403. Decisions of the Fair Work Commission from 2015 and 2016 in relation to appeals made by Sedco Forex International Inc. (Sedco) against a decision of a NOPSEMA inspector to issue an improvement notice to Sedco (see Sedco Forex International Inc. v National Offshore Petroleum Safety and Environmental Management Authority T/A NOPSEMA [2015] FWC 7239; Sedco Forex International Inc. v National Offshore Petroleum Safety and Environmental Management Authority T/A NOPSEMA [2016] FWCFB 2066), have created ambiguity as to whether an appeal against a decision of a NOPSEMA inspector to issue an improvement notice under clause 78 of Schedule 3 should be considered based on the circumstances that exist at the time an appeal is
heard, or the circumstances that existed at the time the inspector decided to issue the relevant notice.

404. Although not the subject of the appeal decisions noted above, the ambiguity also extends to an appeal against any of the decisions of a NOPSEMA inspector referred to in the table in subclause 80A(1) of Schedule 3.

405. The uncertainty about circumstances which may be taken into account in appeals decisions undermines the intended purpose of decisions made by NOPSEMA inspectors to effectively deal with compliance and risk matters identified during an inspection. For example, this issue has potential consequences in cases where, despite lodging an appeal against a decision of a NOPSEMA inspector to issue an improvement notice, the person to whom the notice was issued has since carried out the improvements that the notice requires.

406. If, in these cases, an appeal is determined solely or primarily on the basis of circumstances existing at the time the appeal is heard, it must inevitably succeed. This risks the appeals process becoming a mechanism (with a predetermined outcome) for expunging notices, rather than serving as a proper administrative check on the powers of NOPSEMA inspectors.

407. This item amends the OPGGS Act to clarify that, in an appeal against a decision of a NOPSEMA inspector, the appeal is to be determined on the basis of the circumstances which prevailed at the time the decision was made.

**Item 2: Application—appeals**

408. This item applies the amendment made by item 1 to appeals instituted after the commencement of the amendment, so as not to interfere with any existing appeals.

**Schedule 13—Boundary changes**

*Offshore Petroleum and Greenhouse Gas Storage Act 2006*

**Item 1: At the end of section 11**

409. Geoscience Australia has an ongoing responsibility to define the limits of Australia’s maritime jurisdiction. The boundary between Commonwealth waters and State/Territory coastal waters changes automatically by operation of the Commonwealth Coastal Waters (State Title) Act 1980 and the Coastal Waters (Northern Territory Title) Act 1980 to reflect actual changes to the territorial sea baseline. In practice, however, changes to Australia’s maritime boundaries are only identified through the publication of new maps or datasets.

410. The OPGGS Act contains provisions to address the immediate impacts of a boundary change on existing Commonwealth petroleum and greenhouse gas titles. Those provisions (in sections 283 and 463 respectively) maintain certainty for titleholders by postponing the effect of boundary changes until affected titles cease to be in force
Section 11 also contains provisions to remove doubt that petroleum titles may be renewed in the event of a boundary change (subsections 11(1A) to (1F)). The provisions are necessary because references to the renewal of certain petroleum titles (for example retention leases) are taken to be references to the grant of a title over all of the blocks in relation to which the original title was in force (subsection 11(1)). If a boundary change results in part of a title moving from Commonwealth waters to State or Territory coastal waters, it is arguable that a renewal could not be granted. This is because titles cannot be renewed under the OPGGS Act in relation to blocks that are no longer under Commonwealth jurisdiction and the title therefore cannot be renewed in relation to all the blocks to which it relates.

The OPGGS Act does not, however, include equivalent provisions for the removal of doubt that greenhouse gas titles can similarly be renewed in the event of a boundary change. This is of concern as, under subsection 11(2) of the OPGGS Act, references to the renewal of a greenhouse gas assessment permit or greenhouse gas holding lease are, similarly to petroleum retention leases, taken to be references to the grant of a permit or lease over all of the blocks over which the original permit or lease was in force. This doubt may be increased given the existence of specific provisions in relation to the renewal of petroleum titles.

It is arguable that in the event of a boundary change, these greenhouse gas titles could not be renewed. This is an undesirable outcome from the perspective of government and industry, particularly where a program to explore for and assess greenhouse gas injection and storage sites is already underway. This item removes doubt that greenhouse gas assessment permits and greenhouse gas holding leases can be renewed following a boundary change.

New subsections 11(3) and (4) apply if a greenhouse gas assessment permit has been granted on the basis that an area (the relevant area) is within Commonwealth waters and, as a result of a boundary change, the relevant area ceases to be in Commonwealth waters and falls within State or Territory coastal waters. The provisions are concerned with title blocks in the assessment permit area that remain in Commonwealth waters (remainder blocks).

The effect of new subsections 11(3) and 11(4) is that, for the purpose of determining what constitutes a renewal of an assessment permit, table item 1A in subsection 11(2) has effect as if the permit had been varied to exclude any area that is not within Commonwealth waters. The notional variation is taken to have occurred immediately after the boundary change. It is immaterial whether the change occurred before, at or after the commencement of the new subsections.

New subsections 11(5) and 11(6) make the same provision for renewals of Commonwealth greenhouse gas holding leases over remainder blocks as subsections 11(3) and 11(4) do in relation to renewals of assessment permits.
Schedule 14—Fixed-term petroleum production licences


Item 1: Section 7 (definition of fixed-term petroleum production licence)

417. Amendments to the OPGGS Act that commenced on 3 April 2015 provided for the automatic grant of a petroleum production licence if, as a result of a change to the boundary of the coastal waters of a State or Territory, all or part of the area covered by a fixed term State/Territory petroleum production title ceases to be within the coastal waters of the State or Territory, and falls within Commonwealth offshore waters (section 183A). A new table item was added in subsection 165(1) to provide that a petroleum production licence granted under section 183A remains in force for a period of 21 years, beginning on the day on which the licence is granted.

418. Subsection 165(4) was amended to provide that a petroleum production licence covered by table item 2, 3 or 5 in subsection 165(1) is called a “fixed-term petroleum production licence”. However, at the time, the definition of “fixed-term petroleum production licence” in section 7 was not similarly revised. This item amends the definition of fixed-term petroleum production licence in section 7 to include a reference to a petroleum production licence covered by table item 5 in subsection 165(1).

Schedule 15—Additional NOPSEMA inspection powers relating to well integrity laws

419. NOPSEMA has powers to conduct inspections without a warrant to monitor compliance by duty holders with environmental management or OHS obligations under the OPGGS Act and regulations. However, NOPSEMA does not have comprehensive powers to undertake inspections without a warrant to monitor compliance by titleholders with well integrity-related obligations under the OPGGS Act and regulations. In the context of a high-hazard industry, it is particularly important to ensure that the regulator has sufficient powers to ensure regulatory obligations are being complied with. Non-compliance by a person with well integrity-related obligations, such as failure to comply with a well operations management plan in force for a well activity, may increase the risks to health or safety of persons and the environment from offshore operations, which may have potentially serious consequences.

420. Given the difficulty in accessing offshore facilities, the risks associated with offshore activities, and the frequent changes to operational decisions by titleholders about the timing of well activities, the requirement to obtain a warrant may impede NOPSEMA’s ability to conduct monitoring inspections of well activities at the time they are being undertaken. To date, NOPSEMA has generally used warrant-free access to offshore facilities under Schedule 3 to the OPGGS Act (OHS inspections) to conduct well-related inspections; however, this access is only permitted to the extent the inspection relates to compliance with OHS obligations. There is no stand-alone provision for
warrant-free access to a facility to monitor compliance with well-integrity related obligations. If NOPSEMA were to undertake a well-related inspection other than under Schedule 3, the delay involved in obtaining a warrant, where the well activity has been brought forward for operational reasons, could mean the well activity is completed, and the rig has departed, before the NOPSEMA inspector has authority to conduct the inspection. Further, a requirement to obtain a warrant before conducting a monitoring inspection would impede NOPSEMA’s ability to respond quickly in an emergency.

421. The amendments in this Schedule expressly enable NOPSEMA inspectors to conduct warrant-free monitoring inspections in relation to titleholders’ compliance with well integrity-related obligations under the OPGGS Act and regulations. The new powers mirror the powers of NOPSEMA inspectors in Schedule 2A to conduct environmental management inspections without a warrant, with the relevant modifications specific to well integrity matters.

422. NOPSEMA inspectors will still in all cases be required to obtain a warrant or consent before exercising powers to search for and gather evidential material.

Part 1—Amendments


Item 1: Section 7

423. This item inserts a definition of well integrity law for the purposes of the OPGGS Act. Under new Schedule 2B (inserted by item 13 of this Schedule), NOPSEMA inspectors will have powers to conduct inspections without a warrant to monitor compliance by titleholders with well integrity laws.

Item 2: Subsection 601(1) (after table item 13)

424. This item makes new Schedule 2B a “listed NOPSEMA law”. The listed NOPSEMA laws are the provisions of the OPGGS Act and regulations that are subject to monitoring under Part 2 of the Regulatory Powers Act and subject to investigation under Part 3 of that Act, as those Parts are applied by the OPGGS Act.

Item 3: Subsection 602C(11) (after note 1)

425. This item inserts a note to inform the reader that, in addition to the monitoring powers in Part 2 of the Regulatory Powers Act as it is applied by the OPGGS Act, NOPSEMA inspectors have monitoring powers in relation to well integrity laws under Schedule 2B.

Items 4 to 6: After paragraph 602E(2)(a); Subsection 602E(3) (heading); After subsection 602E(3)

426. These items provide for additional powers that a NOPSEMA inspector may exercise after entering premises under Part 2 or 3 of the Regulatory Powers Act (as applied by
the OPGGS Act), if the inspector’s entry is in connection with a listed NOPSEMA law that is a well integrity law.

427. The intention of including the powers to issue a well integrity do not disturb notice, a prohibition notice, or an improvement notice is that a NOPSEMA inspector who is exercising powers under Part 2 or 3 of the Regulatory Powers Act will be able to issue the same notices as could be issued under Schedule 2B to the OPGGS Act in order to deal with risks to well integrity and ensure premises, structures and plant are not disturbed.

428. The power to issue notices are applied as if the inspector were conducting an inspection under Schedule 2B.

Item 7: After section 602J

429. This item inserts new section 602JA, which confers on NOPSEMA and NOPSEMA inspectors the functions and powers given by Schedule 2B in relation to well integrity laws.

Items 8 and 9: Subsection 602K(8) (after paragraph (b) of the definition of inspection); Subsection 602K(8) (after paragraph (b) of the definition of titleholder’s obligations)

430. These items extend the application of section 602K to ensure a NOPSEMA inspector can require a titleholder to nominate a representative to be present at a facility during a well integrity inspection under Schedule 2B. The purpose of the requirement is so that there will be someone on board who has knowledge of the titleholder’s operations at the facility, who is therefore likely to be able to give the inspector information about the operations that are the subject of the inspection and to answer questions the inspector might have.

Item 10: Section 602L (after paragraph (a) of the note)

431. This item inserts a new paragraph in the note to section 602L to advise the reader that NOPSEMA inspectors may exercise powers under section 602JA and Schedule 2B, in relation to well integrity laws. Section 602L ensures that NOPSEMA or a NOPSEMA inspector is not prevented, by having exercised powers or performed a function under Part 2 or 3 of the Regulatory Powers Act, from exercising a power or performing a function under any provision of the OPGGS Act, and vice versa.

Item 11: Subsection 611B(2) (table item 2, column headed “is an authorised applicant in relation to the following civil penalty provisions in this Act (to the extent indicated) …”, before paragraph (k))

432. This item provides for the CEO of NOPSEMA to be an “authorised applicant”, for the purposes of Part 4 of the Regulatory Powers Act, in relation to the civil penalty provisions in subclauses 6(2) and 15(4) of new Schedule 2B to the OPGGS Act.
Subsection 611B(1) of the OPGGS Act provides for all civil penalty provisions in the Act to be enforceable under Part 4 of the Regulatory Powers Act.

433. The Regulatory Powers Act enables an “authorised applicant” to apply to a court for a civil penalty order in relation to contraventions of civil penalty provisions.

Item 12: Subsection 611J (2) (table item 3, column headed “is an authorised person in relation to the following provisions in this Act (to the extent indicated) …”, after paragraph (v))

434. This item provides for the offence and civil penalty provisions in new Schedule 2B to be enforceable by injunction under Part 7 of the Regulatory Powers Act. It also provides for the CEO of NOPSEMA to be an “authorised person” (i.e. a person who may apply to a court to seek an injunction) in relation to the provisions.

Item 13: After Schedule 2A

435. This item inserts new Schedule 2B, which provides for additional powers for NOPSEMA inspectors to monitor compliance by petroleum and greenhouse gas titleholders with well integrity-related obligations under the OPGGS Act and regulations (see discussion at paragraphs 419 to 422).

436. The new Schedule is equivalent to Schedule 2A (additional environmental management inspection powers), with revisions where necessary to reflect matters that are of relevance to well integrity.

Clause 3 Well integrity inspections—nature of inspections

437. Clause 3 defines well integrity inspection. An inspection in relation to compliance with well integrity-related obligations at a facility need not involve a NOPSEMA inspector going offshore. An inspection can be a “desk” inspection.

438. Subclause 3(2) confers the power to conduct a well integrity inspection. It may be conducted by a NOPSEMA inspector to determine whether a “well integrity law” has been or is being complied with, or to determine whether information given in compliance, or purported compliance, with a “well integrity law” is correct.

439. Well integrity law is defined in clause 2 of Schedule 2B to mean Part 5 of the Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011 and provisions of the OPGGS Act that relate to well integrity, as well as requirements made under those provisions.

Clause 4 Well integrity inspections—facility

440. Clause 4 confers powers of entry and search without a warrant in relation to a facility, and provides for the NOPSEMA inspector to give notification of entry to the operator’s representative at the facility and the titleholder’s representative at the facility nominated for the inspection (see section 602K as amended by items 8 and 9 of this Schedule to
the Bill). If there is no titleholder’s representative, notice must be given to the person at the facility who appears to be in overall control of the activities to which the well integrity inspection relates.

**Clause 5 Well integrity inspections—regulated business premises**

441. Clause 5 confers powers of entry and search without a warrant at onshore regulated business premises and provides for the NOPSEMA inspector to give notification of entry to the occupier of the premises. **Regulated business premises** is defined in clause 2 of Schedule 2B. Relevant premises include premises occupied by a related body corporate of a titleholder, or premises occupied by a person acting under a contract, arrangement or understanding with a titleholder or related body corporate of a titleholder. See the discussion in relation to the definition of regulated business premises in Schedule 2A at paragraphs 206 to 210, which are also applicable in relation to well integrity inspections.

442. The term “eligible premises” is used in the definition of **regulated business premises** to confine the types of premises to those that are enclosed. See discussion at paragraphs 187 to 192 in relation to the definition in Schedule 2A, which are also applicable in relation to well integrity inspections.

**Clause 6 Well integrity inspections—obstructing or hindering NOPSEMA inspector**

443. Clause 6 makes it an offence for a person to obstruct or hinder a NOPSEMA inspector in the exercise of the inspector’s powers under Schedule 2B. A person may also be liable to a civil penalty for obstructing or hindering a NOPSEMA inspector.

444. It is a defence to an offence against subclause 6(1) or a breach of the civil penalty provision in subclause 6(2) if the person has a reasonable excuse. Under subsection 13.3 of the Criminal Code and section 96 of the Regulatory Powers Act respectively, the defendant bears an evidential burden in relation to this matter. The burden of proof is reversed because the matter is likely to be exclusively within the knowledge of the defendant. This is particularly the case given the remote nature of offshore operations. It is therefore reasonable to require the defendant to adduce evidence in relation to this defence. This is consistent with the Guide.

**Clause 7 Well integrity inspections—power to require assistance**

445. Clause 7 establishes that it is an offence in certain circumstances to fail to provide reasonable assistance to a NOPSEMA inspector in connection with the conduct of an inspection at or near a facility.

446. Subclause 7(1) establishes that the titleholder, or the titleholder’s representative at the facility, must provide an inspector with “reasonable assistance and facilities” in connection with the conduct of the inspection or for the effective exercise of the inspector’s powers. Subclause 7(2) establishes that the reasonable assistance that must be provided includes transport to and from the facility, and accommodation and means of subsistence while at the facility.
447. Subclause 7(3) establishes that it is an offence for a person who is subject to a requirement under clause 7 to breach the requirement. It is a defence to an offence against clause 7 if the person has a reasonable excuse. Under subsection 13.3 of the Criminal Code, the defendant bears an evidential burden in relation to this matter (see discussion in relation to reversal of the burden of proof at paragraph 444).

Clause 8 Well integrity inspections—power to require information, and the production of documents and things

448. This clause enables a NOPSEMA inspector, for the purposes of a well integrity inspection, to require the titleholder, or persons in specified relationships with the titleholder, to answer questions or to produce documents or things. If the person is not physically present at the premises at the time of the requirement being made, the requirement must be made in writing and the time for compliance must be at least 14 days.

449. It is an offence for a person who is subject to a requirement under clause 8 to breach the requirement. It is a defence to an offence against clause 8 if the person has a reasonable excuse. Under subsection 13.3 of the Criminal Code, the defendant bears an evidential burden in relation to this matter (see discussion in relation to reversal of the burden of proof at paragraph 444).

450. It is also an offence for a person to give information in compliance or purported compliance with clause 8, knowing that the information is false or misleading in a material particular.

451. Subclauses 8(8) and (9) abrogate the privilege against self-incrimination and provide an immunity for natural persons against use of the information, document or thing in civil or criminal proceedings other than for specified offences (i.e. a ‘use’ immunity). For discussion about the reasons for removing the privilege against self-incrimination in these provisions, see paragraph 238.

452. See paragraph 350 for discussion in relation to the reasons for limiting the ‘use’ immunity to natural persons.

453. Subclauses 8(10) to (19) provide for a NOPSEMA inspector to retain documents or things produced under clause 8 and associated matters. See the discussion in relation to subclauses 8(10) to (19) of Schedule 2A at paragraphs 353 to 358, which are also applicable in relation to well integrity inspections.

Clause 9 Well integrity inspections—power to take possession of plant and samples etc.

454. Clause 9 provides for a NOPSEMA inspector to take possession of plant, a substance or a thing, or a sample of a substance or thing, during an inspection at a facility or regulated business premises. The inspector can only do so where it is reasonably necessary for the purposes of inspecting, examining, measuring or conducting tests concerning the plant, substance or thing.
455. Subclause 9(2) lists the persons whom the inspector must notify in writing of any exercise of this power.

456. Subclauses 9(3) to (6) set out the arrangements that must apply after possession has been taken of plant, a substance or a thing, or a sample of a substance or thing. These arrangements relate to displaying the notice given under subclause 9(2), returning the item to the facility or premises, and notifying persons such as the titleholder of the results of any inspection, examination, measurement or testing of the plant, substance, thing or sample.

457. In the case of an inspection at regulated business premises, the plant, substance or thing is to be returned to a representative of the occupier of the premises from which the plant, substance or thing was taken. See discussion at paragraph 257 about the concept of a “representative”.

Clause 10 Well integrity inspections—well integrity do not disturb notices (general)

458. This clause establishes the powers of NOPSEMA inspectors to direct that workplaces, plant, substances or things not be disturbed.

459. A NOPSEMA inspector may, by written notice, direct a titleholder to take all reasonably practicable steps to ensure that a particular part of a facility, and/or particular plant or a particular substance or thing at the facility, not be disturbed for a specified period. The purpose of a notice is to allow an inspection, examination, measurement or tests concerning the facility, substance or thing. The notice must be accompanied by a statement setting out the reasons for issuing the direction.

460. The notice may be issued to the titleholder by being given to the titleholder’s representative at the facility who is nominated for the inspection (see section 602K as amended by items 8 and 9 of this Schedule to the Bill).

461. The period specified in a notice must be the period that the inspector has reasonable grounds to believe is necessary in the circumstances. However, subclause 10(6) establishes that the direction may be renewed by another direction in the same terms.

462. It is an offence for a person to breach a well integrity do not disturb notice.

463. No right to seek merits review has been provided against a decision of a NOPSEMA inspector to issue a well integrity do not disturb notice. The Merits Review Guide states that decisions where there is no apparent remedy should not be subject to merits review. This includes decisions which operate for such a short period that their effect would be spent by the time of the review. Given the length of time taken to review the decision on its merits, the period for requiring part of a facility, plant, a substance or a thing not to be disturbed could have eventuated. The conditions under which a NOPSEMA inspector can give these notices are very strict and the need for the notice must be demonstrated by the inspector in the terms of the notice itself. Merits review is therefore not appropriate.
Clause 11 Well integrity inspections—well integrity do not disturb notices (notification and display)

464. Subclause 11(1) establishes that, as soon as practicable after giving a well integrity do not disturb notice under clause 10, a NOPSEMA inspector must take reasonable steps to give a copy of the notice to the operator’s representative at the facility, and the owner of the facility, plant, substance or thing (if owned by a person other than the titleholder).

465. Subclause 11(2) requires the operator’s representative, on being given a copy of the notice, to display the notice in a prominent place at the facility.

Clause 12 Well integrity inspections—well integrity prohibition notices (issue)

466. Clause 12 enables a NOPSEMA inspector who is conducting a well integrity inspection in relation to a facility to issue a well integrity prohibition notice.

467. Subclause 12(2) provides that an inspector may issue a well integrity prohibition notice to a titleholder in writing, if the inspector, in conducting the inspection, is satisfied on reasonable grounds that an activity is occurring or may occur that involves, or would involve, an immediate and significant threat to the integrity of a well, and that it is reasonably necessary to issue the notice in order to remove the threat. The notice may be issued to the titleholder by giving it to the titleholder’s nominated representative (see section 602K as amended by items 8 and 9 of this Schedule to the Bill).

468. The notice must direct the titleholder to ensure that the activity is either not conducted or is not conducted in a specified manner. The notice may specify action that may be taken to satisfy an inspector that adequate action has been taken to remove the threat to well integrity.

469. The notice issued by the NOPSEMA inspector is required to contain a substantial amount of information. It must state that the inspector is satisfied as mentioned in subclause 12(2), identifying the particular circumstances in whichever subparagraph in paragraph 12(2)(a) is applicable, and giving the grounds on which the inspector is satisfied. It must specify the activity at the facility that involves the threat to well integrity, and the threat to well integrity.

470. Subclause 12(6) makes it an offence to fail to comply with a well integrity prohibition notice. Subclauses 12(7) and (8) provide for continuing offences.

471. No right to seek merits review has been provided against a decision of a NOPSEMA inspector to issue a well integrity prohibition notice (for the same reasons as are discussed at paragraph 463). In the case of a prohibition notice, given the length of time taken to review the decision, the threat to well integrity could have eventuated, making the notice useless.

472. The provision authorising the issue by NOPSEMA inspectors of well integrity prohibition notices raises issues of delegation of offence content to officials. The issue
of a prohibition notice triggers the requirement that the titleholder ensure the specified activity is not conducted, or not conducted in a specified manner. Failure by the titleholder to comply is an offence.

473. The well integrity obligations that the OPGGS Act and regulations impose on a titleholder are relatively generic, and it is not until those obligations are given content by the well operations management plan, relating to highly technical operations such as drilling a well, that those generic requirements can be subject to inspection and enforcement. The operations at each offshore site are unique and give rise to a unique set of challenges and hazards. It is necessary for an inspector to carry out an inspection before he or she will be aware of the existence of specific issues that affect the relevant well activity at that particular time. It is therefore necessary to put in place processes that will enable the inspector to assess the well integrity performance of the particular titleholder and to tailor the actual requirements to be imposed on the titleholder to remove specific threats to well integrity.

474. In order to put strict parameters around the exercise by a NOPSEMA inspector of these powers, the provisions being inserted require that the inspector provide a considerable amount of detail in the notice prior to its issue, including the inspector’s reasons for being satisfied of the key matters that form the basis for the exercise of the power.

Clause 13 Well integrity inspections—well integrity prohibition notices (notification)

475. Clause 13 imposes notification requirements if a NOPSEMA inspector issues a well integrity prohibition notice under clause 12. Subclause 13(2) requires that a copy of the prohibition notice be given to the operator’s representative at the facility. Subclause 13(3) requires the titleholder to cause a copy of the notice to be prominently displayed at the facility.

476. Subclause 13(4) provides that if a NOPSEMA inspector is satisfied that action taken by the titleholder to remove the threat to well integrity is not adequate, the inspector must inform the titleholder accordingly. (It is not an offence to fail to implement the action set out in the notice as being sufficient to remove the threat, because the threat has been removed by the prohibition on the activity.) The notice continues in force until an inspector notifies the titleholder that the inspector is satisfied that adequate action has been taken to remove the threat to well integrity. This may be a different inspector from the one who initially issued the prohibition notice.

Clause 14 Well integrity inspections—well integrity improvement notices (issue)

477. New clause 14 enables a NOPSEMA inspector who is conducting a well integrity inspection in relation to a facility to issue a well integrity improvement notice.

478. A NOPSEMA inspector may issue a well integrity improvement notice to a titleholder, in writing if, in conducting the inspection, the inspector is satisfied on reasonable grounds that the titleholder is currently contravening a well integrity law or has contravened such a law and is likely to contravene it again and, as a result, there is or may be a significant threat to the integrity of a well. The notice may be issued to the
titleholder by giving it to the titleholder’s representative at the premises who has been
nominated for the inspection (see section 602K, as amended by items 8 and 9 of this
Schedule to the Bill).

479. The notice must state the inspector’s grounds for satisfaction that a specified
contravention is occurring, or has occurred and is likely to occur again. It must also
state the inspector’s grounds for satisfaction that the contravention will or may result in
a significant threat to well integrity. It is important, for constitutional reasons, that these
improvement notices not be able to be used simply to enforce compliance with
well integrity laws. The improvement notice must be directed at removing the threat to
well integrity, not merely at securing compliance with the law.

480. The notice must also specify the threat to well integrity, and specify action that is
required to be taken by the titleholder to remove the threat and a reasonable period
within which the titleholder is to take the action. This period may be extended by the
inspector.

481. No right to seek merits review has been provided against a decision of a NOPSEMA
inspector to issue a well integrity improvement notice (for the same reasons as are
discussed at paragraph 463). In the case of an improvement notice, given the length of
time taken to review the decision, the threat to well integrity could have eventuated,
making the notice useless.

482. The provision authorising the issue by NOPSEMA inspectors of well integrity
improvement notices raises issues of delegation of offence content to officials. The
issue of an improvement notice triggers the requirement that the titleholder take the
action specified by the inspector in the notice. Failure by the titleholder to comply is an
offence (see discussion at paragraphs 472 to 474).

Clause 15 Well integrity inspections—well integrity improvement notices (compliance and
notification)

483. Subclause 15(2) provides that a titleholder to whom a well integrity improvement
notice has been issued under clause 14 must ensure the notice is complied with.
Subclause 15(3) makes it an offence to fail to comply. Subclause 15(4) provides that a
person who contravenes a requirement under subclause 15(2) is liable to a civil penalty.
Subclauses 15(7) and (8) provide for continuing penalties and continuing
contraventions of civil penalty provisions, for each day that a titleholder continues to
contravene the requirement to comply with an improvement notice.

484. Subclause 15(5) requires the NOPSEMA inspector to take reasonable steps to give a
copy of the well integrity improvement notice to other persons potentially affected by
the notice – i.e. the operator’s representative at the facility and the owner of the facility
(if the facility is owned by a person other than the titleholder or operator). Subclause
15(6) requires the titleholder to cause a copy of the notice to be displayed at a
prominent place at the facility.
Clause 16 Well integrity inspections—tampering with and removing notices

485. This clause establishes that it is an offence to tamper with or remove a notice that has been displayed under relevant provisions of Schedule 2B.

486. Subclause 16(1) establishes that no person must tamper with any notice displayed because possession has been taken of any plant, substance or thing, or because a part of the facility is not to be disturbed, or with any displayed well integrity prohibition or improvement notice.

487. Subclauses 16(2) to (5) establish when notices may be removed.

488. Subclause 16(6) establishes that it is an offence if a person is subject to a requirement under subclauses 16(1), (2), (3), (4) or (5) and the person breaches the requirement.

489. Subclause 16(7) provides a defence to an offence against clause 16 if the person has a reasonable excuse. Under subsection 13.3 of the Criminal Code, the defendant bears an evidential burden in relation to this matter. See discussion in relation to reversal of the burden of proof at paragraph 444.

490. Subclause 16(8) establishes that the offence is one of strict liability. This means the prosecution does not have to prove intention. The offence created by the statutory obligation in this clause could be difficult to establish if the prosecution were required to prove intention. See discussion of strict liability at paragraph 82.

Clause 17 Well integrity inspections—publishing well integrity prohibition notices and well integrity improvement notices

491. This clause requires NOPSEMA to publish on its website well integrity prohibition notices and well integrity improvement notices issued by NOPSEMA inspectors under clauses 12 and 14 of new Schedule 2B to the OPGGS Act. The purpose of publication would be to enable lessons learned from inspections to be shared with other members of the offshore petroleum and greenhouse gas storage industry, which will in turn assist those companies to comply with regulatory requirements, and will also help to increase the transparency of NOPSEMA’s operations.

492. Publication of notices will enable lessons to be shared by enabling companies to view and consider the content of notices, in particular the types of activities in relation to which notices have been given due to threats to well integrity arising from those activities. Companies will be able to assess their own activities against the activities described and, where necessary, implement measures to improve and reduce potential risks caused by their operations. By assisting companies to comply with regulatory requirements through the publication of notices, potential threats to well integrity can thereby be reduced or removed.

493. The application of subsection 602E(3A) of the OPGGS Act (inserted by item 6 of this Schedule to the Bill) extends the requirement to publish a notice, so that the requirement would apply whether the notice was given by a NOPSEMA inspector
during an inspection under Schedule 2B to the OPGGS Act or under the Regulatory Powers Act. Section 602E (as amended by item 4 of this Schedule to the Bill) enables a NOPSEMA inspector who has entered premises under the Regulatory Powers Act to exercise certain powers the inspector would have been able to exercise if the inspector had entered premises under Schedule 2B to the OPGGS Act, including the power to give a well integrity prohibition notice or a well integrity improvement notice. Subsection 602E(3A) then states that Schedule 2B (including the requirement to publish notices) applies in relation to the exercise of those powers by the inspector as if the inspector had entered premises under Schedule 2B rather than under the Regulatory Powers Act.

494. Subclause 17(1) requires NOPSEMA to publish a well integrity prohibition notice or well integrity improvement notice within 21 days after the notice is issued by a NOPSEMA inspector. This timeframe may enable NOPSEMA to become aware of any application for judicial review of the decision to issue a notice prior to publishing the notice on its website.

495. Subclause 17(2) ensures that NOPSEMA must not publish a notice if NOPSEMA is aware that the decision to issue the notice is the subject of an application for judicial review by a court. To ensure fairness to the titleholder who is making the application, the notice will not be able to be published unless the decision to issue the notice is upheld by the court – see subclause 17(4).

496. Subclause 17(3) ensures that, where a notice has already been published by NOPSEMA under subclause 17(1), and the notice is or subsequently becomes the subject of an application for judicial review by a court, NOPSEMA must remove the notice from its website as soon as practicable after becoming aware of the application. To ensure fairness to the titleholder who is making the application in relation to the decision to issue the notice, the notice will not be able to be published again unless the decision to issue the notice is upheld by the court – see new subclause 17(4).

497. If the decision to issue the notice is upheld by the court, and all rights for judicial review, including any right of appeal, have been exhausted, subclause 17(4) requires NOPSEMA to publish the notice within 21 days after becoming aware that the rights have been exhausted. The notice must not be published, however, if the decision to issue the notice is not upheld.

498. Subclauses 17(5) and (6) require NOPSEMA to take such steps as are reasonable in the circumstances to ensure any personal information (within the meaning of the Privacy Act 1988) that is contained in the notice is de-identified. This is to ensure the protection of personal information and the right to privacy. Further discussion in relation to the privacy impacts of this clause are discussed in the statement of compatibility with human rights in this Explanatory Memorandum.
Clause 18 Reports on inspections concerning well integrity laws

499. This clause provides for reports on inspections in relation to compliance with well integrity laws. The clause applies whether the inspection is undertaken under new Schedule 2B, or under the Regulatory Powers Act as it is applied by the OPGGS Act.

500. Subclause 18(2) establishes that a NOPSEMA inspector must prepare a written report related to any inspection he or she has conducted, and give that report to NOPSEMA.

501. Subclause 18(3) establishes such a report must include the information set out in paragraphs (a) to (c), namely the inspector’s conclusions from the inspection and reasons for those conclusions, any recommendations arising, and any such other matters as are prescribed.

502. Subclause 18(4) establishes that NOPSEMA must, as soon as practicable after receiving any such report, give a copy of it to the titleholder.

503. Subclauses 18(5) and (6) establish that NOPSEMA may make a binding request of the titleholder to provide details of the actions proposed in respect of the conclusions and recommendations of the report.

Clause 19 Meaning of offence against a well integrity law

504. This clause defines offence against a well integrity law for the purpose of Schedule 2B. The term is defined to include an offence against section 6 of the Crimes Act 1914 in relation to an offence against a well integrity law (i.e. the prohibition against receiving or assisting another person who has committed an offence to help that person escape punishment or dispose of the proceeds of an offence).

Clause 20 Offences against well integrity laws—prosecutions

505. This clause provides for proceedings for an offence against any well integrity law to be instituted by NOPSEMA or a NOPSEMA inspector. For discussion about the definition of “offence against a well integrity law”, see paragraph 504.

Clause 21 Offences against well integrity laws—conduct of directors, employees and agents

506. This clause establishes certain matters in relation to alleged offences against well integrity laws, and to related prosecutions and sentencing.

507. Subclause 21(1) establishes that this clause has effect only for the purposes of proceedings for an offence against a well integrity law. For discussion about the definition of “offence against a well integrity law”, see paragraph 504.

508. Subclause 21(2) provides that, in order to establish the state of mind of a body corporate in relation to particular conduct – for example, whether the conduct was wilful – it is sufficient to show that the state of mind was held by the director, employee or agent who engaged in the conduct while that person was acting within the authority
given to him or her by the body corporate. Subclause 21(4) makes equivalent provision for establishing the state of mind of an individual. Subclause 21(7) clarifies that state of mind includes a person’s knowledge, intention, opinion, belief or purpose, and the person’s reasons for the intention, opinion, belief or purpose.

509. Subclause 21(3) provides that a body corporate is taken to have engaged in conduct where a director, employee or agent engaged in that conduct while the person was acting within the authority given to him or her by the body corporate, unless the body corporate can establish that it took reasonable precautions and exercised due diligence to avoid that conduct by the director, employee or agent. Subclause 21(5) makes equivalent provision for determining when an individual is taken to have engaged in conduct.

510. Subclause 21(6) limits the penalty that may apply where an individual is convicted of an offence in circumstances where he or she would not have been convicted if subclauses 21(4) and (5) had not been enacted. A penalty of imprisonment cannot be applied in such circumstances.

511. Subclause 21(8) establishes that Part 2.5 of the Criminal Code does not apply to an offence against a well integrity law. That Part relates to corporate criminal responsibility, and is disapplied because matters relating to bodies corporate are dealt with in clause 21.

Clause 22 Well integrity inspections—civil proceedings

512. This clause provides that Schedule 2B does not confer any right on a person to take action in any civil proceedings in respect of any alleged contravention of a well integrity law. It also provides that it does not confer a defence (or otherwise affect any right) in any civil proceedings.

513. This does not apply in relation to enforcement of a well integrity law that is a civil penalty provision.

Clause 23 Offences against well integrity laws—defence of circumstances preventing compliance

514. This clause establishes that it is a defence to a prosecution for failing or refusing to do something that is required by a well integrity law, if the defendant proves that it was not practicable to do those things because of a prevailing emergency.

515. Under subsection 13.4 of the Criminal Code, the defendant bears a legal burden in relation to this matter.

516. It is appropriate to apply a legal, rather than an evidential, burden to the defence.

517. The task of regulators of the offshore resources industry is difficult given the remote location and high hazard nature of the industry’s key operations. For this reason, providing effective and comprehensive compliance and enforcement tools to the
regulator is vital in order to deliver human health and safety and environmental protection outcomes. Furthermore and of relevance in consideration of a human rights protection context, it is regulation pertaining, by and large, to large multinational companies as opposed to individuals. The companies who participate in this industry are well-resourced, sophisticated and voluntarily engaging in activities for profit.

518. The OPGGS Act, in part, establishes a regulatory framework for the management of remote and high hazard industry activities associated with offshore resources exploration and production. These activities, if not conducted properly, have the potential to result in serious injury or death and/or extraordinary environmental harm. The robustness of the regulatory framework, including an effective compliance and enforcement framework, is critical to achieving this objective. The objective of the defence in clause 23 is to assist in achieving the objective of ensuring the safety of persons in the industry as well as the protection of the environment. As such, the regulatory regime positively engages with the right to life, and helps to protect other human rights which would be negatively affected by significant environmental damage.

519. Well integrity laws relate specifically to the regulatory oversight of the structural integrity of wells, the management of which is seen as posing the greatest risk to both OHS and the environment. A failure in well integrity can result in the death of workers and widespread damage to the environment, such as that recently seen in the Gulf of Mexico with the explosion of the Macondo rig. Strict compliance with these laws is deemed critical and a central tenet of the offshore regime. However, this defence acknowledges and provides for an exception to strict compliance in emergency circumstances. As a result, the measure is effective in achieving the objectives of the OPGGS Act.

520. The defence is not related to issues essential to culpability, but instead provides an exception or excuse for the conduct. In addition, the defence relates to the serious potential consequences of non-compliance (as outlined above—risks of serious injury or death and/or major environmental consequences). Conduct resulting in the offence would, in most circumstances, take place at a remote location and without the ability for the regulator to immediately or even quickly gain access in order to ascertain the facts directly relating to the defence. As a result, the facts and information directly relevant to the defence is entirely within the defendant’s knowledge. Only the defendant, with their particular knowledge of, and involvement in, the circumstances happening during a well integrity emergency, is able to prove the requisite and exception-based matters of practicable actions.

521. The defence is likely to be used by companies with significant resources, who are more than capable of shouldering the legal burden if they wish to claim a defence. The industry is highly regulated and companies involved have chosen to voluntarily participate in this regulated environment on a for profit basis.

522. As a result, the measure contains a limitation that is both reasonable and proportionate to the achievement of the relevant objective. It is also the least rights restrictive approach while still balancing the ability of the measure to effectively achieve its objective.
523. Allowing for a reversal of the evidential burden of proof only would create internal inconsistencies in the OPGGS Act and its established treatment of offences and defences. It is essential to avoid any perception by the offshore petroleum and greenhouse gas storage industries that the Commonwealth is ‘soft’ on compliance. Defences should be available only to those who have genuinely done everything in their power to avert the occurrence of an adverse event and can demonstrate that they have done so.

524. To provide the ability of a defendant to simply point to evidence that suggests a reasonable possibility that compliance with well integrity laws was not practicable in the face of an emergency would result in the regulator being unable to successfully and meaningfully take enforcement action in the case of an offence being committed, and this would undermine the legitimate objective in question.

525. In the aftermath of an event where one or more workers may have suffered serious injury or may have died, or where significant environmental damage may have occurred, it is appropriate that a titleholder should have to demonstrate, on the balance of probabilities, that the titleholder took all available action to prevent the occurrence, rather than merely to meet the evidential burden relating to the possibility of having done so.

526. Due to the remote occurrence of the regulated activities, the regulator is not able to, at the relevant time, independently assess and verify what is reasonable or practicable in the event of non-compliance. Accordingly, the defence would almost always succeed without the real ability of the prosecution to contest its veracity. The relevant facts are entirely within the defendant’s knowledge and not at all within the regulator’s knowledge. This puts the regulator at a significant disadvantage when attempting to establish the chain of causation of an adverse event and to meet a legal burden of proof that a defence cannot be relied upon. This would ultimately lead to suboptimal outcomes for OHS of offshore workers and protection of the marine environment.

**Part 2—Application provisions**

**Item 14: Application—well integrity inspections**

527. This item enables NOPSEMA inspectors to exercise the powers in Schedule 2B to conduct an inspection to monitor compliance by titleholders with well integrity-related obligations in relation to acts or omissions occurring, or information given, before, on or after commencement of Schedule 2B.

528. While Schedule 2B will apply to enable inspections in relation to acts or omissions of, or information given by, a titleholder that occurred prior to commencement, this will not make the amendments retrospective in a legal sense. This is because the new inspection powers will not change the substantive rights or obligations of titleholders, either before or after the commencement date. Previously compliant acts or omissions will remain compliant and previously non-compliant acts or omissions will remain non-compliant. Only the inspection powers of NOPSEMA inspectors will change on
commencement. These are procedural changes only. Titleholders have no vested rights in any particular procedure being followed by inspectors, provided the change does not result in any injustice.

Schedule 16—Civil penalties, enforceable undertakings, infringement notices, injunctions etc.

529. The amendments in this Schedule will enable the Minister, the Titles Administrator, and the CEO of NOPSEMA to accept and enforce undertakings in relation to compliance with provisions of the OPGGS Act and regulations, as part of a graduated enforcement framework.

530. A review by the Australian Government of Commonwealth legislation applicable to offshore petroleum activities and the marine environment (the Legislative Review), undertaken in the wake of the incident at the Montara Wellhead Platform in August 2009, concluded that the enforcement mechanisms, sanctions and penalties available under the OPGGS Act at the time were insufficient to provide an effective and meaningful deterrent against non-compliance. A combination of factors – including the complexity of the legislation, the technical nature of the evidence pertaining to prosecutions, and the criminal standard of proof applicable to court proceedings – had operated as impediments to effective enforcement of the requirements of the OPGGS Act.

531. The Legislative Review considered strong evidence that regulators are best able to secure compliance when they have a range of graduated sanctions that can be imposed, depending upon the severity of the misconduct or breach of statutory requirements. The ability to apply a range of enforcement tools can ensure a more targeted enforcement response, which can also be directed at achieving future behavioural change, rather than serving a purely punitive function. The introduction of enforceable undertakings into the OPGGS Act will therefore ensure the regulator has the capacity to apply an appropriate and proportionate response to incidents of non-compliance with the OPGGS Act and regulations, in order to encourage improved compliance outcomes. These amendments will also complement the existing alternative enforcement tools that were introduced in amendments to the OPGGS Act made in 2013, including civil penalties, infringement notices and injunctions.

532. The amendments trigger the application of the standard provisions in Part 6 of the Regulatory Powers Act. This Part creates a framework for accepting and enforcing undertakings relating to compliance with provisions, where another Act makes the provision enforceable under that Part. An undertaking accepted by a regulator may be enforced in a court, which may make an order directing compliance, an order requiring any financial benefit from the failure to comply to be surrendered, and/or an order for damages. Failure to comply with an enforceable undertaking would also be an offence under the OPGGS Act.

533. The amendments require the regulator who accepts an undertaking to publish a notice of the undertaking on its website. Reasonable steps will be required to be taken to
de-identify any personal information which is contained in an undertaking before it is published.

534. Although the regulators currently have access to a range of enforcement tools, enforceable undertakings offer a unique benefit. While existing tools can require a duty holder to cease an activity or reach a minimum standard of compliance, enforceable undertakings can go beyond this to effect meaningful changes to overall compliance culture. Enforceable undertakings allow the regulator to secure more timely and cost-effective outcomes that would not be achievable by a prosecution. For example, a prosecution may take months or years to achieve a result, whereas an enforceable undertaking can require the duty holder to take steps to comply as soon as the regulator has accepted the undertaking. Further, enforceable undertakings remove the need for the regulator to pay the potentially sizeable costs associated with prosecution in a court. The undertakings also enable the regulator to tailor the enforcement response to individual circumstances, taking specific titleholder and broader industry considerations into account.

Part 1—Amendments commencing the day after Royal Assent


535. This Part contains the provisions necessary for triggering the operation of Part 6 of the Regulatory Powers Act for the purposes of the application of enforceable undertakings in the OPGGS Act. The Regulatory Powers Act does not apply of its own force. It only applies if another Commonwealth Act triggers its application.

536. This Part also makes minor policy and technical amendments to existing provisions of the OPGGS Act relating to civil penalties, infringement notices, and injunctions.

Items 1 and 2: At the end of section 602C; At the end of section 602D

537. These items amend sections 602C (monitoring powers) and 602D (investigation powers) to respectively provide that Parts 2 and 3 of the Regulatory Powers Act, as they are applied by the OPGGS Act, apply in relation to all external Territories referred to in section 34 to the OPGGS Act. This is to ensure the Regulatory Powers Act, in its application under the OPGGS Act, applies in all geographical areas in relation to which the OPGGS Act applies.

Item 3: Subsection 611B(2) (table item 2, column headed “is an authorised applicant in relation to the following civil penalty provisions in this Act (to the extent indicated) …”, after paragraph (j))

538. This item inserts references to subclauses 6(2) and 11D(4) of Schedule 2A in the table in subsection 611B(2) of the OPGGS Act, to rectify an omission that an authorised applicant for the civil penalty provisions in Schedule 2A to the OPGGS Act had not been included. The CEO of NOPSEMA will be the authorised applicant, as Schedule 2A relates to NOPSEMA’s environmental management function.
Items 4 to 6: At the end of section 611B; At the end of section 611E; At the end of section 611J

539. These items amend sections 611B (civil penalties), 611E (infringement notices) and 611J (injunctions) to provide that Parts 4, 5 and 7 of the Regulatory Powers Act, as they are applied by the OPGGS Act, apply in relation to all external Territories referred to in section 34 to the OPGGS Act. This is to ensure the Regulatory Powers Act, in its application under the OPGGS Act, applies in all geographical areas in relation to which the OPGGS Act applies.

Item 7: At the end of Part 6.5

540. This item inserts new Division 8 of Part 6.5, which is about enforceable undertakings.

Section 611N Enforceable undertakings

541. New subsection 611N(1) triggers the application of Part 6 of the Regulatory Powers Act to enforce provisions in the OPGGS Act that are enforceable by enforceable undertakings.

542. New subsection 611N(2) sets out the provisions that are enforceable by enforceable undertakings. An enforceable undertaking may be accepted in relation to all of the criminal and civil penalty provisions in the OPGGS Act, with the exception of indictable offences. In the case of indictable offences, prosecution is considered a more appropriate course of action.

543. New subsection 611N(2) also provides for the persons who can accept a written undertaking under Part 6 of the Regulatory Powers Act. The “authorised persons” for the purposes of the OPGGS Act are the Minister, the CEO of NOPSEMA and the Titles Administrator, with respect to their respective functions or powers.

544. Where a provision relates to the powers or functions of the Joint Authority, the Titles Administrator will be the “authorised person” for accepting an undertaking. However, in practice, the decision to enter into an enforceable undertaking with an entity will be approved/endorsed by the Joint Authority. The Titles Administrator would brief and advise the Joint Authority on the suitability of a proposed enforceable undertaking, and would have authority to accept the final form of the undertaking.

545. New subsection 611N(3) provides for a “relevant court” for the purposes of Part 6 of the Regulatory Powers Act to be the Federal Court, the Federal Circuit Court, and the Supreme Court of a State or Territory. An authorised person may make an application to a relevant court for an order in relation to enforcement of undertakings, if the authorised person considers that a person has breached an undertaking.

546. New subsection 611N(4) places limitations, as imposed by the existence of specific express circumstances, on the ability of an authorised person to accept an enforceable undertaking. The limitations would apply when an undertaking is given by a person in response to an alleged contravention of a listed OHS law. “Listed OHS laws” are set
out in section 638 of the OPGGS Act, and are the substantive OHS provisions of the OPGGS Act and regulations for which regulatory responsibility lies with NOPSEMA. The relevant authorised person to which the limitations would apply will in practice be the CEO of NOPSEMA.

547. The authorised person will not accept the undertaking if:

a) the alleged contravention contributed, or may have contributed, to the death of another person; or
b) the alleged contravention involved recklessness (within the meaning of the Criminal Code – see section 5.4); or
c) during the previous five years, the person giving the undertaking has been convicted of an offence against a listed OHS law that contributed to the death of another person; or
d) both:
   a. during the previous 10 years, the person giving the undertaking has been convicted of two or more offences against a listed OHS law; and
   b. at least two of those convictions arose from separate investigations.

548. These express limitations are considered to be appropriate in the context of a high-hazard industry.

549. New subsection 611N(5) provides that the prohibition does not apply if there are exceptional circumstances. The person giving the undertaking will be given an opportunity to make submissions as to why there are exceptional circumstances that would make an enforceable undertaking an appropriate enforcement outcome for the alleged contravention.

550. New subsection 611N(7) provides that Part 6 of the Regulatory Powers Act applies in relation to all offshore areas. New subsection 611N(8) provides that Part 6 of the Regulatory Powers Act applies in relation to all external Territories referred to in section 34 of the OPGGS Act. This is to ensure the Regulatory Powers Act, in its application under the OPGGS Act, applies in all geographical areas in relation to which the OPGGS Act applies.

Section 611P Publication of enforceable undertakings

551. New subsections 611P(1), (3) and (5) require that if the responsible Commonwealth Minister, the CEO of NOPSEMA, or the Titles Administrator (respectively) is an authorised person in relation to a provision mentioned in subsection 611N(1), the responsible Commonwealth Minister, the CEO of NOPSEMA, or the Titles Administrator must publish an undertaking that they have accepted under section 114 of the Regulatory Powers Act in relation to the provision. It is considered desirable that enforceable undertakings are required to be published, given ongoing work across government to increase transparency. The publicity attached to undertakings may also act as a deterrent for duty holders from non-compliance with the OPGGS Act and regulations.
552. New subsections 611P(2), (4) and (6) require that the relevant authorised person must also take reasonable steps to ensure any personal information (within the meaning of the Privacy Act 1988) that is contained in the undertaking is de-identified before the undertaking is published. This is to ensure the protection of personal information and the right to privacy.

553. Duty holders and regulators can work together to ensure that undertakings are written in a manner that will avoid or reduce risks of prejudice to commercial interests when they are published.

Section 611Q Contravening enforceable undertaking provisions

554. New section 611Q makes it an offence for a person to fail to comply with an enforceable undertaking given by that person and that has been accepted by the Minister, the CEO of NOPSEMA or the Titles Administrator (as applicable). The ability to prosecute for failure to comply with an undertaking would be in addition to any orders that a court can make under Part 6 of the Regulatory Powers Act. This provides an additional incentive for a duty holder to comply with an undertaking.

555. Section 611Q also sets out the penalty to be applied for failure to comply with an enforceable undertaking. The penalty applied is 250 penalty units, similar to the penalty that applies in section 219 of the Work Health and Safety Act 2011, which has been utilised as a precedent.

Item 8: Section 790A

556. This item amends section 790A, so that section will be renumbered to subsection (1). New subsections 790A(2) to (12) are inserted by item 15.

Item 9: Paragraph 790A(aa)

557. This item repeals paragraph 790A(aa), which deals with the maximum daily penalty that may be imposed for a continuing contravention of a civil penalty provision in regulations under the OPGGS Act, and substitutes new paragraphs (aa), (aaa) and (aab). Item 15 inserts a new regulation-making power dealing with the penalty that may be imposed for a continuing contravention of a civil penalty provision in the regulations (see discussion at paragraphs 571 to 575).

558. New paragraph 790A(aa) enables the regulations under the OPGGS Act to provide for a civil penalty provision of the regulations to be enforced under Part 4 of the Regulatory Powers Act. That Part sets out standard provisions for enforcing civil penalty provisions by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

559. New paragraphs 790A(aaa) and (aab) provide for the regulations to set out relevant matters for the purposes of the application of Part 4 of the Regulatory Powers Act. Paragraph (aaa) enables the regulations to provide for who is an “authorised applicant” (i.e. who may apply to a court for a civil penalty order in relation to contraventions of
civil penalty provisions). Paragraph (aab) enables the regulations to provide for the courts that are a “relevant court” (from which civil penalty orders may be sought).

Item 10: Paragraph 790A(ab)

560. This item inserts the word “provision” after the word “offence”, as a matter of standard drafting practice.

Item 11: After paragraph 790A(ab)

561. This item inserts new paragraphs 790A(aba), (abb), (abc), (abd) and (abe) to provide for making provisions of the regulations under the OPGGS Act enforceable by infringement notices and enforceable undertakings.

562. Paragraph 790A(ab) provides that regulations may make an offence provision or civil penalty provision subject to an infringement notice, through application of Part 5 of the Regulatory Powers Act. New paragraphs 790A(aba) and (abb) provide for the regulations to set out relevant matters for the purposes of application of Part 5 of the Regulatory Powers Act. Paragraph 790A(aba) enables the regulations to provide that a person is an “infringement officer” (i.e. a person who can give an infringement notice) in relation to one or more provisions of the regulations.

563. New paragraph 790A(abb) enables the regulations to provide that a person is the “relevant chief executive” in relation to one or more provisions of the regulations. A “relevant chief executive” has functions and powers in relation to infringement notices, such as the ability to extend the period within which a notice must be paid, or to withdraw an infringement notice.

564. New paragraph 790A(abc) provides that regulations under the OPGGS Act may make a provision of the regulations enforceable by enforceable undertakings. The regulation-making power would enable the regulations to apply Part 6 of the Regulatory Powers Act, which creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

565. New paragraph 790A(abd) provides for the regulations to set out relevant matters for the purposes of application of Part 6 of the Regulatory Powers Act. Paragraph (abd) enables the regulations to provide that a person is an “authorised person” (i.e. a person who can accept and seek enforcement of an undertaking) in relation to one or more provisions of the regulations.

566. New paragraph 790A(abe) enables the regulations to provide that a court is a “relevant court” (i.e. a court in which an undertaking may be enforced) in relation to one or more provisions of the regulations.

Item 12: Paragraph 790A(ac)

567. This item omits “a legislative instrument” in paragraph 790A(ac) and replaces it with “an OP/GGS legislative instrument” to eliminate any potential ambiguity as to which legislative instruments the provision refers. The term “OP/GGS legislative instrument”
is defined in new subsection 790A(12) (inserted by item 15) as a legislative instrument
made under the OPGGS Act.

Item 13: Paragraph 790A(ad)

568. This item inserts “of an OP/GGS legislative instrument” after “provisions” to clarify
the paragraph.

Item 14: After paragraph 790A(ad)

569. This item inserts new paragraph 790A(ae) to enable regulations to provide that a court
is a “relevant court” in relation to one or more provisions of an OP/GGS legislative
instrument for the purposes of Part 7 of the Regulatory Powers Act (which relates to
injunctions). Paragraphs 790A(ac) and (ad) respectively provide for a provision of a
legislative instrument to be enforceable under Part 7 of the Regulatory Powers Act, and
for regulations to provide that a person is an “authorised person” for the purposes of
Part 7 of the Regulatory Powers Act. New paragraph 790A(ae) will remove any doubt
that the regulations can also provide for the court(s) that are a “relevant court” (i.e. a
court in which an injunction may be sought), for the purposes of Part 7 of the

Item 15: At the end of section 790A

570. This item inserts new subsections 790A(2) to (12).

571. Where a contravention of a civil penalty provision in the regulations under the
OPGGS Act is a continuing contravention, new subsection 790A(2) provides for the
maximum penalty for each day that non-compliance with the provision continues to be
set at 10 per cent of the maximum penalty that can be imposed in respect of
contravention of that civil penalty provision. This provision replaces the maximum
amount of 50 penalty units for a continuing contravention, which was previously set out
in paragraph 790A(aa) (see item 9).

A person who contravenes a civil penalty provision that requires an act or thing to be
done within a particular period or before a particular time commits a separate
contravention of that provision in respect of each day during which the contravention
continues to occur.

573. The purpose of providing daily penalties for continuing contraventions of civil penalties
in the regulations is to encourage persons to promptly rectify breaches and return to a
position of compliance with their regulatory obligations. Given the high investment
costs and potential profits associated with offshore petroleum operations, strong
financial penalties are likely to be one of the most significant methods to deter
non-compliance with the OPGGS Act and regulations. Where daily penalties are
applied to continuing civil penalty provisions in the regulations, the cumulative impact
of those penalties will provide an additional incentive for companies to comply with
those provisions, and to quickly remedy any non-compliance. This in turn will reduce
the potential safety, environmental or resource risks that may be associated with the particular conduct.

574. The Regulatory Powers Act does not place a different limit on penalty units prescribed for continuing contraventions; each day during which the contravention continues is treated as a separate contravention, subject to the penalty unit amount prescribed under the relevant civil penalty provision. However, penalty amounts for contraventions of civil penalty provisions in the regulations under the OPGGS Act are likely to be set quite high, to reflect the high-risk, high-return nature of the offshore petroleum industry, and to act as a sufficient deterrent to non-compliance. Given that the maximum penalty that applies for contravention of a civil penalty provision will in many cases be high, new subsection 790A(2) will instead enable a lower daily penalty to be applied for continuing contraventions.

575. The daily penalty for a continuing contravention will be 10 per cent of the maximum, consistent with penalties for continuing contraventions of civil penalty provisions in the OPGGS Act. In some cases this will be higher than 50 penalty units, therefore requiring a new regulation-making power to replace paragraph 790A(aa).

576. New subsections 790A(3) to (6) extend the application of Parts 4, 5, 6 and 7 of the Regulatory Powers Act, as they will be applied in regulations under the OPGGS Act, to each offshore area. This is to ensure the Regulatory Powers Act, in its application under the regulations, applies in all geographical areas in relation to which the regulations apply.

577. New subsections 790A(7) to (10) extend the application of Parts 4, 5, 6 and 7 of the Regulatory Powers Act, as they will be applied in regulations under the OPGGS Act, to each external Territory referred to in section 34 of the OPGGS Act. This is to ensure the Regulatory Powers Act, in its application under the regulations, applies in all geographical areas in relation to which the regulations apply.

578. The Regulatory Powers Act provides for “an Act” to trigger the application of the Regulatory Powers Act. It also provides for relevant matters, such as who is an “authorised applicant” or a “relevant court”, to be provided for by “an Act”. It does not specifically enable application of the Regulatory Powers Act or provision for relevant matters to be done by regulation.

579. New subsection 790A(11) therefore deems regulations made under the regulation-making powers in subsection 790A(1), which provide for application of or matters to be specified for the purposes of the Regulatory Powers Act, to be taken to be an Act.

580. New subsection 790A(12) clarifies that OP/GGS legislative instrument, for the purposes of section 790A, refers to a legislative instrument made under the OPGGS Act.
Part 2—Amendments commencing the same time as Schedule 1 commences


Items 16 to 18: Subsection 611N(2) (table item 2, column headed “is an authorised person in relation to the following provisions in this Act (to the extent indicated) …”, after paragraph (b)); Subsection 611N(2) (table item 2, column headed “is an authorised person in relation to the following provisions in this Act (to the extent indicated) …”, after paragraph (i)); Subsection 611N(2) (table item 2, column headed “is an authorised person in relation to the following provisions in this Act (to the extent indicated) …”, after paragraph (j))

581. Subsections 452A(7) and (9), 581(4), 582(1), 591B(5) and 594A(6) are inserted by Schedule 1 to the Bill, which commences later than the amendments in Part 1 of Schedule 16 to the Bill. These items insert new paragraphs in table item 2 of subsection 611N(2) to provide for those provisions (from commencement) to be enforceable by enforceable undertakings, and for the CEO of NOPSEMA to have the ability to accept and seek enforcement of an undertaking in relation to compliance with these provisions.

Item 19: Subsection 611N(2) (table item 3, column headed “is an authorised person in relation to the following provisions in this Act (to the extent indicated) …”, after paragraph (e))

582. Subsections 452A(7) and (9) are inserted by Schedule 1 to the Bill, which commences later than the amendments in Part 1 of Schedule 16 to the Bill. This item inserts a new paragraph in table item 3 of subsection 611N(2) to provide for subsections 452A(7) and (9) (from commencement) to be enforceable by enforceable undertakings, and for the Titles Administrator to have the ability to accept and seek enforcement of an undertaking in relation to compliance with these provisions.

Part 3—Amendments commencing the same time as Schedule 15 commences


Item 20: Subsection 611N(2) (table item 2, column headed “is an authorised person in relation to the following provisions in this Act (to the extent indicated) …”, after paragraph (v))

583. New subclauses 6(1) and (2), 7(3), 8(5) and (7), 10(7), 12(6), 15(3) and (4) and 16(6) of Schedule 2B to the OPGGS Act are inserted by Schedule 15 to the Bill, which commences later than the amendments in Part 1 of Schedule 16 to the Bill. This item inserts a new paragraph in table item 2 of subsection 611N(2) to provide for the new subclauses (from commencement) to be enforceable by enforceable undertakings, and for the CEO of NOPSEMA to have the ability to accept and seek enforcement of an undertaking in relation to compliance with those provisions.
Schedule 17—Designated frontier areas


584. The Designated Frontier Area tax incentive (DFA) was a measure designed to encourage petroleum exploration in Australia’s remote offshore areas. It was active between 2004 and 2009. As part of the measure, the Minister responsible for the then Petroleum (Submerged Lands) Act 1967 (the predecessor legislation to the OPGGS Act) had the power under subsection 36B(1) of the Petroleum Resource Rent Tax Assessment Act 1987 (PRRTA Act) to designate in writing up to and including 20 per cent of the offshore petroleum acreage release areas in each of the years from 2005 to 2008 as ‘designated frontier areas’.

585. Where an exploration permit was awarded over a frontier area, the registered holder(s) of that permit could claim up to 150 per cent of expenditure on particular exploration activities conducted in the area as a deduction for the purposes of Petroleum Resource Rent Tax (PRRT), rather than the 100 per cent of expenditure that could ordinarily be claimed.

586. The requirement to designate areas in writing was not met for the 2005 acreage release. The Resources Minister had provided in-principle agreement to the designation of areas for the 2005 acreage release prior to commencement of the relevant provisions of the PRRTA Act; however a subsequent process to formally designate the areas in writing was not undertaken once the provisions commenced. Consequently, four exploration permits were awarded over areas promoted in 2005 as frontier areas that were not validly designated as frontier areas.

587. To avoid potential for doubt regarding validity of claims under the tax incentive scheme, the amendments to the OPGGS Act will retrospectively designate the areas as Designated Frontier Areas. This will remove any doubt that the relevant titleholders are entitled to the uplifted PRRT deductions.

Item 1: At the end of Schedule 6

588. This item amends the OPGGS Act to retrospectively designate as ‘frontier areas’ the four areas that were not formally designated in 2005. Although five areas were advertised as part of the DFA in 2005, only four were ultimately converted into exploration permits. Consequently, only those four areas (S05-2, W05-5, W05-23 and W05-24) are to be included in the designation. The designation would have effect from 17 April 2005 (two days after the latest gazettel of the relevant release areas).

589. The amendment ensures that the PRRTA Act will have effect going forward, and will be taken to always have had effect, as if the areas had been formally designated in writing by the then Resources Minister on 17 April 2005. The amendment therefore has a retrospective application.

590. The intention to apply the amendments retrospectively will remove any doubt that relevant companies are entitled to uplifted PRRT deductions. It is likely that the
application of the DFA tax incentive measure was an incentive for companies to apply for permits over the relevant areas in 2005. Retrospective application will ensure any risk to companies associated with the identified administrative error is reduced to nil. It will also minimise any reputational risk to government associated with companies potentially being detrimentally affected as a result of the administrative error.

591. There will be no detriment or negative effect on other parties as a result of the retrospective application, and there are no new obligations that will be applied retrospectively.

Schedule 18—Regulations references


Items 1 to 3: Paragraph 316(2)(b); Paragraph 351(2)(b); Paragraph 376(3)(b)

592. Paragraphs 316(2)(b), 351(2)(b) and 376(3)(b) of the OPGGS Act provide that a direction under section 316, 351 or 376 respectively has effect and must be complied with despite anything in the regulations, other than the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (the Environment Regulations), Part 5 of the Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011 (the Resource Management Regulations) and the Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009 (the Safety Regulations).

593. These items omit the references to the specific titles of the regulations under the OPGGS Act, and instead provide for the names of the relevant regulations, or provisions of regulations, to be prescribed by regulation.

Item 4: Subsection 571(3) (note)

594. This item repeals the note to subsection 571(3). The note included a specific reference to the Environment Regulations, and is not required for effective operation of the OPGGS Act.

Items 5 and 6: Subsection 571(5) (definition of environment plan); Subsection 571(5) (definition of petroleum activity)

595. Subsection 571(5) defines environment plan and petroleum activity for the purpose of section 571 (financial assurance requirements for petroleum titleholders). The definitions include specific references to the Environment Regulations.

596. These items repeal the definitions and replace them with new definitions that provide for environment plan and petroleum activity to have the meaning given by prescribed regulations, or a prescribed provision of regulations, made under the OPGGS Act.
Items 7 and 8: Subsection 572C(3) (definition of \textit{environment plan}); Subsection 572C(3) (definition of \textit{petroleum activity})

597. Subsection 572C(3) defines \textit{environment plan} and \textit{petroleum activity} for the purpose of section 572C (polluter pays obligations of petroleum titleholders). The definitions include specific references to the Environment Regulations.

598. These items repeal the definitions and replace them with new definitions that provide for \textit{environment plan} and \textit{petroleum activity} to have the meaning given by prescribed regulations, or a prescribed provision of regulations, made under the OPGGS Act.

Items 9 and 10: Paragraph 574A(6)(b); Paragraph 580(5)(b)

599. Paragraphs 574A(6)(b) and 580(5)(b) of the OPGGS Act provide that a direction under section 574A or 580 respectively has effect and must be complied with despite anything in the regulations, other than the Environment Regulations, Part 5 of the Resource Management Regulations and the Safety Regulations.

600. These items omit the references to the specific titles of the regulations under the OPGGS Act, and instead provide for the names of the relevant regulations, or provisions of regulations, to be prescribed by regulation.

Items 11 to 15: Subsection 601(1) (cell at table item 15, column headed “Provisions”); Subsection 601(1) (cell at table item 16, column headed “Provisions”); Subsection 601(1) (cell at table item 16A, column headed “Provisions”); Subsection 601(1) (cell at table item 17, column headed “Provisions”); Subsection 601(1) (cell at table item 18, column headed “Provisions”)

601. The table in subsection 601(1) sets out the \textit{listed NOPSEMA laws}. The OPGGS Act provides for the listed NOPSEMA laws to be subject to monitoring and investigation under the \textit{Regulatory Powers (Standard Provisions) Act 2014}.

602. The listed NOPSEMA laws include the Safety Regulations (table item 15), the Environment Regulations (table item 16), the \textit{Offshore Petroleum and Greenhouse Gas Storage (Greenhouse Gas Injection and Storage) Regulations 2011} (table item 16A) and provisions of the Resource Management Regulations (table items 17 and 18).

603. These items omit the references to the specific titles of the regulations under the OPGGS Act, and instead provide for the names of the relevant regulations, or provisions of regulations, to be prescribed by regulation.

Item 16: Subsection 602K(8) (subparagraph (c)(ii) of the definition of \textit{titleholder’s obligations})

604. The definition of \textit{titleholder’s obligations} includes a specific reference to Part 5 of the Resource Management Regulations. This item omits the reference to the specific Part and title, and instead provides for the name of the regulations, or provision of the regulations, to be prescribed by regulation.
Items 17 and 18: Paragraphs 638(1)(d), (e) and (h); Subsection 638(2)

605. Section 638 sets out the listed OHS laws for the purposes of the OPGGS Act. Among other things, the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) has powers to conduct warrant-free inspections in relation to compliance with listed OHS laws.

606. The listed OHS laws include the Safety Regulations (paragraph 638(1)(d)), Part 5 of the Resource Management Regulations to the extent to which that Part relates to occupational health and safety matters (paragraph 638(1)(e)), and any other regulations relating to occupational health and safety matters that are prescribed for the purposes of paragraph 638(1)(h).

607. Item 17 omits the references to the specific titles and Part of the regulations under the OPGGS Act, and instead provides for the names of the relevant regulations, or provisions of regulations, to be prescribed by regulation. Paragraph 638(1)(h) is repealed as it is no longer required.

608. Item 18 repeals subsection 638(2). The subsection is no longer required given the amendments made by item 17.

Item 19: Paragraphs 646A(1)(e), (f) and (g)

609. Subsection 646A(1) sets out limits on petroleum functions that may be conferred on NOPSEMA under State or Territory legislation. The limits include that there must be regulations under the State or Territory legislation that substantially correspond to the Commonwealth Safety Regulations and Part 5 of the Resource Management Regulations, and, if environmental management regulatory functions are being conferred, the Environment Regulations, as in force at the commencement of section 646A or at any later time.

610. This item inserts new subparagraphs under paragraphs 646A(1)(e), (f) and (g) that also provide for the names of the relevant Commonwealth regulations, or provisions of Commonwealth regulations, to instead be prescribed by regulation.

611. The item retains references to the Safety Regulations, Part 5 of the Resource Management Regulations, and the Environment Regulations, as those regulations were in force on 1 January 2012 or at any later time. These references are necessary to maintain the validity of current conferrals of functions made on the basis that regulations under State or Territory legislation substantially correspond to those regulations as in force at any time between 1 January 2012 and the time that they sunset/are repealed, but do not correspond to the remade regulations that replace the sunsetting regulations.
Item 20: Paragraphs 646A(5)(f), (g) and (h)

612. Subsection 646A(5) sets out limits on greenhouse gas functions that may be conferred on NOPSEMA under State or Territory legislation. The limits include that there must be regulations under the State or Territory legislation that substantially correspond to the Commonwealth Safety Regulations and Part 5 of the Resource Management Regulations, and, if environmental management regulatory functions are being conferred, the Environment Regulations, as in force at the commencement of subsection 646A(5) or at any later time.

613. This item omits the references to the specific titles and Part of the regulations under the OPGGS Act, and instead provides for the names of the relevant regulations, or provisions of regulations, to be prescribed by regulation.

Items 21 and 22: Clause 2 of Schedule 2B (paragraphs (a) and (c) of the definition of well integrity law)

614. Paragraphs (a) and (c) of the definition of well integrity law include specific reference to Part 5 of the Resource Management Regulations. These items omit the reference to the specific Part and title, and instead provide for the name of the regulations, or provision of the regulations, to be prescribed by regulation.

Items 23 to 25: Clause 3 of Schedule 3 (subparagraphs (c)(iii), (d)(ii) and (e)(ii) of the definition of regulated business premises)

615. Subparagraphs (c)(iii), (d)(ii) and (e)(ii) of the definition of regulated business premises include specific reference to the Safety Regulations. These items omit the reference to the specific title of the regulations, and instead provide for the name of the regulations, or a provision of regulations, to be prescribed by regulation.

Item 26: Clause 3 of Schedule 3 (paragraph (b) of the definition of titleholder’s well-related obligations)

616. The definition of titleholder’s well-related obligations includes a specific reference to Part 5 of the Resource Management Regulations. This item omits the reference to the specific Part and title, and instead provides for the name of the regulations, or provision of the regulations, to be prescribed by regulation.

617. This item also removes the limitation in the definition that refers to obligations in well-related regulations to the extent that those regulations apply in relation to petroleum titles. This limitation was necessary when NOPSEMA was the regulator of petroleum wells and the responsible Commonwealth Minister was the regulator of greenhouse gas wells. Amendments to the OPGGS Act made by Schedule 1 to this Bill make NOPSEMA the regulator of greenhouse gas wells, in addition to its existing regulatory functions in relation to petroleum wells.
Item 27: Saving provisions

618. This item provides saving provisions in relation to the amendments of sections 601, 602K and 638, and clauses 2 of Schedule 2B and 3 of Schedule 3.

619. The saving provisions ensure that the inspection provisions in Part 6.5, Schedule 2B and Schedule 3 to the OPGGS Act continue to apply in relation to conduct that occurred prior to commencement of the Bill, by continuing the amended provisions in force, as they were in force immediately prior to commencement of the Bill.

620. The savings provisions do not create new retrospective obligations. They ensure that NOPSEMA continues to be able, after commencement of the Bill, to inspect for compliance with obligations as they were in force prior to commencement of the Bill.