THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE AMENDMENT (CROSS-BOUNDARY GREENHOUSE GAS TITLES AND OTHER MEASURES) BILL 2019

OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE (REGULATORY LEVIES) AMENDMENT (MISCELLANEOUS MEASURES) BILL 2019

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Resources and Northern Australia, Senator the Honourable Matthew Canavan)
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## GLOSSARY

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<tr>
<td>AA</td>
<td>Petroleum access authority</td>
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<tr>
<td>Commonwealth waters</td>
<td>The offshore area of each State and Northern Territory. Waters of the sea that are beyond the coastal waters of each State and Northern Territory, and within the outer limits of the continental shelf</td>
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<td>GHG</td>
<td>Greenhouse gas</td>
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<td>ICCPR</td>
<td>International Convention on Civil and Political Rights</td>
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<td>Levies Bill</td>
<td>Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment (Miscellaneous Measures) Bill 2019</td>
</tr>
<tr>
<td>NOPSEMA</td>
<td>National Offshore Petroleum Safety and Environmental Management Authority</td>
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<td>NT</td>
<td>Northern Territory</td>
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<tr>
<td>Responsible Commonwealth Minister</td>
<td>The Minister responsible for the administration of the OPGGS Act</td>
</tr>
<tr>
<td>Responsible NT Minister</td>
<td>The Northern Territory Minister responsible for administration of laws of the Northern Territory that correspond to the Offshore Petroleum and Greenhouse Gas Storage Act 2006</td>
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<tr>
<td>Responsible State Minister</td>
<td>The State Minister responsible for administration of laws of the State that correspond to the OPGGS Act</td>
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<tr>
<td>SPA</td>
<td>Petroleum special prospecting authority</td>
</tr>
<tr>
<td>State/NT coastal waters</td>
<td>Waters of the sea that extend to 3 nautical miles from the territorial sea baseline, and</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Definition</td>
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<tr>
<td>any waters that are on the landward side of the territorial sea baseline but not within the limits of the State or the NT</td>
<td></td>
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<tr>
<td>The Bill</td>
<td>Offshore Petroleum and Greenhouse Gas Storage Amendment (Cross-boundary Greenhouse Gas Titles and Other Measures) Bill 2019</td>
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<tr>
<td>Titles Administrator</td>
<td>National Offshore Petroleum Titles Administrator</td>
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OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE AMENDMENT (CROSS-BOUNDARY GREENHOUSE GAS TITLES AND OTHER MEASURES) BILL 2019

OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE (REGULATORY LEVIES) AMENDMENT (MISCELLANEOUS MEASURES) BILL 2019

OUTLINE

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

- Allow effective title administration and regulation of a GHG storage formation that straddles the boundary between State/NT coastal waters and Commonwealth waters;
- Enable unification of adjacent Commonwealth GHG titles;
- Strengthen and clarify the monitoring, inspection and enforcement powers of NOPSEMA within State/Territory jurisdiction during an oil pollution emergency originating in Commonwealth waters; 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.

The purpose of the Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment (Miscellaneous Measures) Bill 2019 (the Levies Bill) is to amend the Levies Act to:

- ensure that levies imposed by the Levies Act are effectively imposed on cross-boundary GHG titles;
- provide that the Levies Act binds, and is taken always to have bound, the Crown in right of each of the States and the NT; and

GHG cross-boundary storage

The current GHG storage legislative framework does not provide for the injection and storage of GHG in geological formations that straddle the boundary between State/NT coastal waters and Commonwealth waters. The Bill will amend the OPGGS Act to provide for the grant and administration of single GHG titles that are partly located in Commonwealth waters and partly located in State/NT coastal waters. Upon the grant of the title, the title area becomes Commonwealth waters for all purposes of the OPGGS Act.

Cross-boundary titles will be regulated under the OPGGS Act in the same way as other GHG titles located in Commonwealth waters. Decisions about the granting of cross-boundary GHG titles will be made by a newly established Cross-boundary Authority, consisting of the
responsible Commonwealth Minister and the relevant State or NT Resources Minister, similar to current Joint Authority arrangements for petroleum titles in Commonwealth waters.

Decisions about other matters that are now made by the responsible Commonwealth Minister will continue to be made by the Minister, as those decisions have a technical element that might affect the level of long-term risk. Titles administration will be undertaken by the Titles Administrator. NOPSEMA will have regulatory responsibility for environmental management, safety and well integrity.

Protections for pre-commencement petroleum titles and existing petroleum production licences, both in Commonwealth waters and State/NT coastal waters, will be maintained.

After site closing, the Commonwealth will assume long-term civil liability for the whole cross-boundary storage operation and any other operations wholly within the cross-boundary title area. This encourages governments to ensure GHG storage operations are carried out to the highest standards, thus limiting the assumed risk.

The Levies Bill makes consequential amendments to the Levies Act to ensure that there is no doubt that the levies imposed by that Act can be effectively applied to cross-boundary titles, including the part of the title that is in State/NT coastal waters.

**Unification of adjacent Commonwealth GHG titles**

The OPGGS Act currently requires GHG injection and storage activities to be conducted wholly within a single title area. This does not provide for injection and storage of GHG in geological formations that straddle adjacent Commonwealth title areas. The Bill will amend the OPGGS Act to enable the holder of two adjacent Commonwealth GHG titles to apply for a single title across the two areas, where the holder has reasonable grounds to suspect that there is a geological formation that straddles the two titles.

**Strengthen and clarify powers of NOPSEMA inspectors during oil pollution emergencies**

The current monitoring, inspection and enforcement powers of NOPSEMA are not sufficient to ensure compliance by a titleholder with its environmental management obligations in the event of an oil pollution emergency originating from operations in Commonwealth waters. Incident response operations are often coordinated or undertaken through premises that cannot be accessed without a warrant or the consent of the titleholder or other persons, such as a forward operating base or a vessel conducting clean-up operations. Other persons may include the master of such a vessel. In particular, NOPSEMA currently does not have power to inspect for or enforce compliance by the titleholder in areas of State/Territory jurisdiction, such as in coastal waters or onshore.

Obtaining a warrant or consent (which can subsequently be withdrawn) can significantly impede compliance monitoring in emergency situations. During an offshore incident, NOPSEMA inspectors will need regulatory intelligence in real time under dynamic situations, including monitoring and enforcing compliance across a number of locations within and outside an offshore area.

The Bill will amend the OPGGS Act to enable NOPSEMA inspectors to enter premises used for implementation of oil spill response obligations without a warrant (including an aircraft or
vessel), whether located in Commonwealth or State/Territory jurisdiction, in the event of an oil pollution emergency arising from operations in Commonwealth waters. The amendments will enable NOPSEMA to monitor whether a titleholder is in compliance with its oil spill response obligations, and take enforcement action if the titleholder is failing to meet its obligations. The Bill will also amend the OPGGS Act to extend the operation of polluter pays obligations and the application of significant incident directions that may be given by NOPSEMA to areas of State/Territory jurisdiction.

Heroes Act binds the Crown

The Bill amends the OPGGS Act to provide that the GHG-related provisions of the Act and regulations apply, and are taken to always have applied, to the States and the NT. The amendments are intended to remove any doubt about the validity of GHG assessment permits that have been granted to the Crown in right of Victoria. The Levies Bill makes consequential amendments to the Levies Act to also ensure that that Act binds, and is taken to always have bound, the Crown in right of the States and the NT. The amendments ensure that levies are imposed in relation to regulatory activities undertaken in respect of GHG titles held by a State or the NT. This will in turn ensure that NOPSEMA and the Titles Administrator continue to be fully cost-recovered for their regulatory operations.

The purpose of retrospective application is to validate past payments of annual titles administration levy by the Crown in right of Victoria under the Levies Act. No person will be disadvantaged as a result of retrospectivity.

FINANCIAL IMPACT STATEMENT

The Bills are expected to have nil financial impact.

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

The amendments to the Levies Act will ensure that NOPSEMA and the Titles Administrator are fully cost-recovered for their regulatory operations.

CONSULTATION

In developing the Bill and the Levies Bill, consultation was undertaken with relevant departments and agencies across the Commonwealth, including:

- NOPSEMA
- The Titles Administrator
- Attorney-General’s Department
- Department of Infrastructure, Transport, Cities and Regional Development
- Department of the Environment and Energy
The policy proposal to provide for the grant of cross-boundary titles to allow effective title administration and regulation of a GHG storage formation that straddles the boundary between State/NT coastal waters and Commonwealth waters was developed jointly with the Victorian Government Department of Jobs, Precincts and Regions (DJPR). DJPR, including CarbonNet, were also consulted during development of the legislative amendments. Other State and NT governments were informed of the measure through the Upstream Petroleum Resources Working Group (UPR) of the COAG Energy Council.

The State and NT governments were consulted on the amendments to strengthen and clarify the monitoring, inspection and enforcement powers of NOPSEMA within State/Territory jurisdiction during an oil pollution emergency originating in Commonwealth waters through UPR. The Australian Petroleum Production and Exploration Association were also consulted in relation to this measure.
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 (Cross-boundary Greenhouse Gas Titles and Other Measures) Bill 2019 (the Bill)

Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment (Miscellaneous Measures) Bill 2019 (the Levies Bill)

The Bill and the Levies Bill are 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 Bills

The purpose of the Bill is to amend the OPGGS Act to:

- Allow effective title administration and regulation of a GHG storage formation that straddles the boundary between State/NT coastal waters and Commonwealth waters;
- Enable unification of adjacent Commonwealth GHG titles;
- Strengthen and clarify the monitoring, inspection and enforcement powers of NOPSEMA within State/Territory jurisdiction during an oil pollution emergency originating in Commonwealth waters; and
- Make minor policy and technical amendments to improve the operation of the OPGGS Act.

The purpose of the Levies Bill is to amend the Levies Act to:

- ensure that levies imposed by the Levies Act are effectively imposed on cross-boundary GHG titles;
- provide that the Levies Act binds, and is taken always to have bound, the Crown in right of each of the States and the NT; and

Human rights implications

The Bill engages the following rights:

- Protection against arbitrary interference with privacy and reputation
- The right to minimum guarantees in criminal proceedings

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 4 to the Bill

Schedule 4 to the Bill extends the existing inspectorate functions and powers of NOPSEMA inspectors in Schedule 2A to the OPGGS Act (warrant-free environmental management inspections) in the event of an oil pollution emergency originating from petroleum operations in Commonwealth waters. This will enable NOPSEMA inspectors to access emergency response premises without a warrant to monitor compliance by a titleholder with emergency response obligations in the event of an offshore petroleum incident.

Emergency response premises are premises (including an aircraft or vessel) which are used or proposed to be used for, or in relation to, implementation of the oil pollution emergency response provisions of the titleholder's relevant environment plan, or for or in relation to compliance with a significant incident direction given by NOPSEMA. It is immaterial whether the premises are in Commonwealth waters, in or above the coastal waters of a State or the NT, or on or above land or waters within the limits of a State or Territory (including an external Territory).

Warrant-free oil pollution environmental inspection powers will be limited by purpose; that is, to determine whether the petroleum titleholder has complied or is complying with the oil pollution emergency provisions of an environment plan and/or a significant incident direction given by NOPSEMA. In the event of an oil pollution emergency, a requirement to obtain a warrant could significantly impede compliance monitoring. During an offshore incident, NOPSEMA inspectors will need regulatory intelligence in real time under dynamic situations, including monitoring and enforcing compliance across a number of locations.

Noting the significant environmental risks and impacts that may be caused as a result of oil pollution, it is particularly important that NOPSEMA has the ability to act quickly to determine whether a titleholder is compliant with their clean-up, remediation and monitoring obligations in relation to an oil spill.

Noting the limitation of warrant-free oil pollution environmental inspections by purpose, a NOPSEMA inspector would only be able to inquire into personal matters relating to an individual (if at all) to the extent that the inquiry related to compliance by a titleholder with its regulated obligations.

Further, the warrant-free oil pollution environmental inspection powers will only be exercisable during a declared oil pollution emergency. If the CEO of NOPSEMA is satisfied that there is an emergency that has resulted, or may result, in oil pollution, the CEO may declare that there is a declared oil pollution emergency. NOPSEMA must publish a copy of the declaration on its website as soon as practicable after the declaration is made, and must also give a copy of the declaration to the relevant titleholder.

When the CEO is satisfied that the emergency no longer exists, the CEO must revoke the declaration. NOPSEMA must publish a copy of the instrument of revocation on its website as soon as possible after the instrument is made, and must also give a copy of the instrument to the relevant titleholder. Warrant-free oil pollution environmental inspection powers may no longer be exercised once the declaration has been revoked.
Additional protections for the right to privacy include that 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 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.

Any limitation of the right to privacy in extending warrant-free inspection powers of NOPSEMA in the event of an oil pollution emergency is to meet a legitimate objective, and is reasonable, necessary and proportionate to meeting that objective.

**Schedule 1 to the Bill – information-sharing**

Schedule 1 to the Bill includes amendments to Part 6.1 of the OPGGS Act to ensure that a Cross-boundary Authority may receive and share information relating to offshore petroleum operations or offshore GHG storage operations with other parties responsible for administration of the OPGGS Act and associated regulations.

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. Further, the information-sharing provisions require parties to de-identify personal information wherever possible (where the sharing of specific personal information is not necessary).

The amendments will enable the Cross-boundary Authority to share and receive 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 1988, 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.

**Schedule 1 to the Bill – ability to retain possession of documents**

Schedule 1 to the Bill includes amendments to enable the responsible Commonwealth Minister to take possession of a document produced by a person under new section 733B, and retain it for as long as reasonably necessary.

Section 733B will enable the Minister to require a person to give to the Minister information or a document if the Minister believes on reasonable grounds that the person has information or a document that is relevant to the exercise of certain functions and powers by the Minister, or to the Minister attaining a state of satisfaction for the purposes of a provision of section 368B in relation to an application for a cross-boundary GHG injection licence. The purpose of the provision is to enable the Minister to obtain information about petroleum resources, titles and operations in State/NT coastal waters, for the purposes of exercising powers and
functions in relation to cross-boundary GHG titles. The Minister also requires information in relation to matters about which the Minister must be satisfied under section 368B in order for the Cross-boundary Authority to grant a cross-boundary licence, including information about the existence or non-existence of, or the terms of, a designated agreement between an applicant for a licence and the holder of a Commonwealth or State/Territory petroleum title. This information will be held by other parties, such as State/NT government agencies or State/NT petroleum titleholders, and the power to require information will enable the Minister to access information required to make informed decisions.

Once a document is produced, it may be necessary for the Minister to be able to retain the document in order to fully consider the information when exercising relevant powers and functions. The amendments provide for the document to only be held for as long as reasonably necessary. 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.

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 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 to the Bill

Schedule 1 to the Bill includes an amendment to insert a new section 733B, which will enable the responsible Commonwealth Minister to require a person to give to the Minister information or a document if the Minister believes on reasonable grounds that the person has information or a document that is relevant to the exercise of certain functions and powers by the Minister, or to the Minister attaining a state of satisfaction for the purposes of a provision of section 368B in relation to an application for a cross-boundary GHG injection licence.

Under subsection 733D(1), a person is not excused from giving information or producing a document under section 733B on the ground that the giving of the information or production of the document might tend to incriminate a person or expose the person to a penalty. However, the information given or document produced, the fact of giving the information or producing the document, or any information obtained as a direct or indirect consequence of giving the information or production of the document, 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, or for a contravention of section 733B (see paragraphs 733D(2)(d) and (e)).

This partial immunity from legal consequences has the benefit that it increases the likelihood of obtaining information. This is particularly important where the Minister may have no other avenue to obtain the information. The purpose of section 733B is to enable the Minister to
obtain information about petroleum resources, titles and operations in State/NT coastal waters, for the purposes of exercising powers and functions in relation to cross-boundary GHG titles. The Minister also requires information in relation to matters about which the Minister must be satisfied under section 368B in order for the Cross-boundary Authority to grant a cross-boundary licence, including information about the existence or non-existence of, or the terms of, a designated agreement between an applicant for a licence and the holder of a Commonwealth or State/Territory petroleum title. This information will be held by other parties, such as State/NT government agencies or State/NT petroleum titleholders, and the power to require information will enable the Minister to access information required to make informed decisions. To ensure effective administration of the OPGGS Act, it may be more important to establish the facts than to be able to use the facts in a prosecution or legal action. To shut off any line of inquiry would not be in the public interest.

The ‘use’ immunity is restricted only to individuals. This ensures continuing protection of the human rights of the individual, and is consistent with other Commonwealth legislation, such as the *Work Health and Safety Act 2011* and the *Telecommunications Act 1997*.

Section 733D abrogates the privilege against self-incrimination, but also provides an immunity against use of the information or document in civil or criminal proceedings other than for specified offences. The section ensures the Minister has sufficiently broad powers to establish facts, while protecting individuals from proceedings on the basis of providing the information. This safeguard ensures that the section is reasonable and proportionate to meeting this objective, and therefore the provision meets Australia’s human rights obligations to afford minimum guarantees in criminal proceedings.

**Schedule 4 to the Bill**

Clause 8 of Schedule 2A to the OPGGS Act allows 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 inspection.

As a result of the amendments made by Schedule 4 to the Bill, clause 8 of Schedule 2A will apply during oil pollution environmental inspections at emergency response premises. Under subclause 8(8), 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 subclause 8(9)).

Where matters relating to compliance with oil pollution emergency response obligations are concerned, it will often 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 compliance with
applicable requirements. This is particularly important during an oil pollution emergency, such as an oil spill, where a failure to adequately and appropriately respond may result in significant environmental damage.

NOPSEMA faces substantial difficulties in obtaining information about incident response activities. Offshore operations are technologically complex and take place far from land. In many cases, the NOPSEMA inspector’s best recourse is to ask questions of those carrying out the activities or to have them produce operational records. In an industry where incidents 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.

Subclause 8(8) of Schedule 2A abrogates the privilege against self-incrimination, but also provides an immunity against use or derivative use of the information or document in civil or criminal proceedings other than for specified offences. Clause 8 ensures 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 clause 8 is reasonable and proportionate to meeting this objective, and therefore the provisions meet Australia’s human rights obligations to afford minimum guarantees in criminal proceedings.

*Levies Bill*

The amendments in the Levies Bill are mechanical in nature and do not engage any of the applicable rights or freedoms.

**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.

The Levies Bill is compatible with human rights as it does not raise any human rights issues.

*Minister for Resources and Northern Australia,*

*Senator the Honourable Matthew Canavan*
 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 date for when the Bill’s provisions commence.
3. Sections 1 to 3 of the Bill will commence on the day the Bill receives Royal Assent.
4. Parts 1 and 2 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 support the amendments in Schedule 1. The amendments will commence by Proclamation so that the timing of commencement can be aligned with the commencement of the regulatory amendments. A delayed commencement will also provide time for the Victorian Government to make legislation to support cross-boundary GHG storage in waters off Victoria.
5. If Proclamation does not occur within 6 months of Royal Assent, then Parts 1 and 2 of Schedule 1 to the Bill will automatically commence the day after the 6 month period expires.
6. Part 3 of Schedule 1 will commence either immediately after the commencement of Parts 1 and 2 of Schedule 1 to the Bill or immediately after the commencement of Schedule 2 to the Timor Sea Maritime Boundaries Treaty Consequential Amendments Act 2019 (Maritime Boundaries Treaty Act) – whichever occurs later. In the former case, Schedule 2 to the Maritime Boundaries Treaty Act will have amended the OPGGS Act to replace references to the Principal Northern Territory offshore area with references to the offshore area of the NT prior to the time that Part 3 of Schedule 1 commences. That Part will ensure that provisions of the OPGGS Act that are amended or inserted by Part 1 of Schedule 1 to the Bill and that include references to the Principal Northern Territory offshore area are immediately amended to replace those references with references to the offshore area of the NT.
7. In the latter case, provisions of the OPGGS Act that are amended or inserted by Part 1 of Schedule 1 to the Bill will initially refer to the Principal Northern Territory offshore area. Then, once Schedule 2 to the Maritime Boundaries Treaty Act commences, Part 3 of Schedule 1 will amend the relevant provisions of the OPGGS Act to replace references to the Principal Northern Territory offshore area with references to the offshore area of the NT.
8. Part 3 of Schedule 1 will not commence at all unless Schedule 2 to the Maritime Boundaries Treaty Act commences.
9. Schedule 2 to the Bill will commence the day after the Bill receives Royal Assent.
10. Division 1 of Part 1 of Schedule 3 and Part 2 of Schedule 3 to the Bill will commence on the day after the Bill receives Royal Assent.

11. Division 2 of Part 1 of Schedule 3 to the Bill will commence on July 2018. Retrospective commencement will ensure that the provisions of the OPGGS Act apply effectively to work-bid GHG assessment permits that have been granted by way of renewal, reflecting the position that all relevant parties understood that they were in, particularly the Crown in right of Victoria as the holder of a work-bid GHG assessment permit that has been granted by way of renewal. There will be no detriment or negative effect on other parties as a result of retrospective application. Further, there are no new obligations that will be applied retrospectively.

12. Parts 1 and 3 of Schedule 4 to the Bill will commence at the start of the day after the Bill receives Royal Assent or on the commencement of Division 1 of Part 1 of Schedule 1 to the Offshore Petroleum and Greenhouse Gas Storage Amendment (Miscellaneous Amendments) Act 2019, whichever is later. That Act makes a number of amendments to Schedule 2A to the OPGGS Act, and Part 1 of Schedule 4 to the Bill has been drafted on the basis that those amendments have commenced.

13. Part 2 of Schedule 4 will commence on a day to be fixed by Proclamation. Amendments to regulations under the OPGGS Act will need to be implemented to support the amendments in this Part. The amendments will commence by Proclamation so that the timing of commencement can be aligned with the commencement of the regulatory amendments.

14. If Proclamation does not occur within 6 months of the commencement of Part 1 of Schedule 4 to the Bill, then Part 2 of Schedule 4 to the Bill will automatically commence the day after the 6 month period expires.

15. Part 4 of Schedule 4 will commence either immediately after the commencement of Part 1 of Schedule 4 to the Bill or immediately after the commencement of Schedule 2 to the Maritime Boundaries Treaty Act – whichever occurs later. In the former case, Schedule 2 to the Maritime Boundaries Treaty Act will have amended the OPGGS Act to replace references to the Principal Northern Territory offshore area with references to the offshore area of the NT prior to the time that Part 1 of Schedule 4 commences. That Part will ensure that provisions of the OPGGS Act that are amended or inserted by Part 1 of Schedule 4 to the Bill and that include references to the Principal Northern Territory offshore area are immediately amended to replace those references with references to the offshore area of the NT.

16. In the latter case, provisions of the OPGGS Act that are amended or inserted by Part 1 of Schedule 4 to the Bill will initially refer to the Principal Northern Territory offshore area. Then, once Schedule 2 to the Maritime Boundaries Treaty Act commences, Part 4 of Schedule 4 will amend the relevant provisions of the OPGGS Act to replace references to the Principal Northern Territory offshore area with references to the offshore area of the NT.
Clause 3: Schedules

17. This clause gives effect to the provisions in the Schedules to the Bill.
Schedule 1—Cross-boundary greenhouse gas storage etc.

Part 1—General amendments

Item 1: Section 7 (definition of approved)

18. This item amends the definition of approved to provide that, in all cases, “approved” means approved in writing by the Titles Administrator. Previously, where the term was used in Chapter 3 of the OPGGS Act, “approved” meant approved in writing by the responsible Commonwealth Minister.

19. The term “approved” refers to instances where an application, notice, etc., is required to be made in an “approved manner”. As the administrator of titles for the offshore petroleum and GHG storage regimes, it is appropriate and more efficient for the Titles Administrator to approve the form of title applications, etc.

Item 2: Section 7 (definition of block)

20. This item amends the definition of block to include references to new section 461A (inserted by item 180) and existing section 462.

21. New section 461A provides for a block located in State/Territory coastal waters that is included in a cross-boundary GHG title to constitute a block for the purposes of the OPGGS Act.

22. Section 462 provides for certain portions of blocks in relation to which a GHG title is in force to constitute a single block. It is equivalent to section 282, which relates to portions of blocks in relation to which a petroleum title is in force. The addition of section 462 in the definition corrects a drafting oversight.

Item 3: Section 7

23. This item inserts new definitions for the purposes of the OPGGS Act.

24. The new definitions include a definition of consolidated work-bid greenhouse gas assessment permit, which means a GHG assessment permit granted under Subdivision B of Division 2 of Part 3.2, or a GHG assessment permit granted by way of renewal under Division 4 of Part 3.2. There is also a new definition of cross-boundary greenhouse gas assessment permit, which means a GHG assessment permit granted under Division 3A of Part 3.2 or Subdivision B of Division 4 of Part 3.2.

25. The existing definition of greenhouse gas assessment permit means a GHG assessment permit granted under Part 3.2. The effect of this is that, except where otherwise expressly stated, any reference in the OPGGS Act to a GHG assessment permit includes a reference to a consolidated work-bid GHG assessment permit and a cross-boundary GHG assessment permit.
26. Similarly, the new definition of *cross-boundary greenhouse gas holding lease* means a GHG holding lease granted under Subdivision AA, BA or CA of Division 2 of Part 3.3, or Subdivision B of Division 3 of Part 3.3. The existing definition of *greenhouse gas holding lease* means a GHG holding lease granted under Part 3.3. The effect of this is that, except where otherwise expressly stated, any reference in the OPGGS Act to a GHG holding lease includes a reference to a cross-boundary GHG holding lease.

27. In addition, the new definition of *cross-boundary greenhouse gas injection licence* means a GHG injection licence granted under Subdivision AA of Division 2 of Part 3.4. The existing definition of *greenhouse gas injection licence* means a GHG injection licence granted under Part 3.4. The effect of this is that, except where otherwise expressly stated, any reference in the OPGGS Act to a GHG injection licence includes a reference to a cross-boundary GHG injection licence.

**Item 4: Section 7 (paragraph (b) of the definition of *fundamental suitability determinants*)**

28. This item amends the definition of *fundamental suitability determinants* to include a reference to new section 312A (inserted by item 5).

**Item 5: Section 7**

29. This item inserts a definition of *holder*, in relation to certain State/Territory titles, for the purposes of the OPGGS Act.

**Item 6: Section 7 (definition of *identified greenhouse gas storage formation*)**

30. This item amends the definition of *identified greenhouse gas storage formation* to include a reference to new section 312A (inserted by item 5).

**Item 7: Section 7 (at the end of the definition of *offshore area*)**

31. This item inserts notes at the end of the definition of *offshore area* to draw the reader’s attention to new sections 295B (inserted by item 46), 323B (inserted by item 85) and 360A (inserted by item 117). The new sections respectively provide for the title area of a cross-boundary GHG assessment permit, cross-boundary GHG holding lease and cross-boundary GHG injection licence, which include areas located in State/NT coastal waters, to be taken to be included in the offshore area for the purposes of the OPGGS Act.

**Item 8: Section 7**

32. This item inserts new definitions for the purposes of the OPGGS Act.
33. Differentiating between pre-commencement and post-commencement State/Territory petroleum titles ensures strengthened protections for pre-commencement titles, which include State/Territory petroleum titles initially granted before the commencement of the State/Territory GHG laws that correspond to the Commonwealth GHG regime under the OPGGS Act, and renewals of and successors to those titles.

**Items 9 and 10: Section 7 (definition of significant risk)**

34. These items amend the definition of significant risk to include references to new sections 27A (inserted by item 14) and 28A (inserted by item 16).

**Item 11: Section 7**

35. This item inserts new definitions for the purposes of the OPGGS Act.
36. With respect to the definition of State/Territory block, the requirement that no part of the block is within the limits of a State or Territory is to ensure that the cross-boundary provisions are supported under the external affairs power, even if a State or Territory amends its definition of “block” so as to include an area within the limits of a State or Territory.

**Item 12: After section 24**

37. This item inserts new section 24A, which enables the responsible Commonwealth Minister to declare, by legislative instrument, a law of a State or the NT to be a compatible cross-boundary law for the purposes of the OPGGS Act.
38. The provision will enable the Minister to ensure that a State or the NT has in place appropriate supporting legislation to support the cross-boundary title scheme, prior to the initial grant of a cross-boundary GHG assessment permit that includes part of the coastal waters of that State or the NT. The Minister will also have to take into account whether a declaration is still in force when deciding (as a member of the Cross-boundary Authority) whether to grant a renewal of, or successor title to, an initial cross-boundary GHG assessment permit. This will ensure that the State/NT maintains appropriate legislation.
39. If the Minister no longer considers that a State or NT has in place appropriate supporting legislation, the Minister can revoke the declaration.
40. Subsection 24A(3) is a reading down provision inserted to remove any future risk of the Commonwealth giving a preference to a State or part of a State contrary to section 99 of the Constitution when exercising the power to declare a compatible cross-boundary law.
Item 13: Section 27 (at the end of the heading)

41. This item amends the heading to section 27 to differentiate that section from new section 27A (inserted by item 14), which makes equivalent provision for determining whether there is a significant risk of a significant adverse impact on petroleum exploration or recovery operations, for the purpose of approval of key GHG operations under a cross-boundary title.

Item 14: After section 27

42. This item inserts new section 27A, which makes provision for determining whether there is a significant risk of a significant adverse impact on petroleum exploration or recovery operations, for the purpose of approval of key GHG operations under a cross-boundary title.
43. New section 27A is equivalent to section 27, which relates to operations under titles that are not cross-boundary titles. However, section 27A also takes into account impacts on petroleum exploration or recovery operations that are being or could be carried on under an existing or future State/Territory petroleum title, given that the jurisdictional coverage of a cross-boundary title extends into an area of the coastal waters of a State or the NT.

Item 15: Section 28 (at the end of the heading)

44. This item amends the heading to section 28 to differentiate that section from new section 28A (inserted by item 16), which makes equivalent provision for determining whether there is a significant risk of a significant adverse impact on petroleum exploration or recovery operations, for the purpose of approval of the grant of a cross-boundary GHG injection licence.

Item 16: After section 28

45. This item inserts new section 28A, which makes provision for determining whether there is a significant risk of a significant adverse impact on petroleum exploration or recovery operations, for the purpose of approval of the grant of a cross-boundary GHG injection licence.
46. New section 28A is equivalent to section 28, which relates to grant of a GHG injection licence that is not a cross-boundary licence. However, section 28A also takes into account impacts on petroleum exploration or recovery operations that are being or could be carried on under an existing or future State/Territory petroleum title, given that the jurisdictional coverage of a cross-boundary GHG injection licence extends into an area of the coastal waters of a State or the NT.
Item 17: After section 30

47. This item inserts a new definition of *State/Territory greenhouse gas storage administrator* for the purposes of the OPGGS Act. If there is a person who performs functions or exercises powers under provisions of a law of the State/NT that correspond to Chapter 5 of the OPGGS Act (essentially title administration functions, similar to those performed by the Titles Administrator), the responsible State Minister or responsible NT Minister may specify that person in a written notice to the Titles Administrator. If a notice is given, that person is the State/Territory GHG storage administrator. Otherwise, the State/Territory GHG administrator is the responsible State Minister or the responsible NT Minister (as applicable).

48. New subsection 30A(5) makes clear that a notice given to the Titles Administrator by the responsible State Minister or the responsible NT Minister is not a legislative instrument for the purposes of the *Legislation Act 2003*. This provision is merely declaratory of the law, rather than prescribing a substantive exemption from the requirements of that Act.

Item 18: After paragraph 32(m)

49. This item amends the definition of *designated agreement* to include references to relevant provisions of new section 292A (inserted by item 31).

Item 19: After paragraph 32(q)

50. This item amends the definition of *designated agreement* to include references to relevant provisions of new section 321A (inserted by item 68).

Item 20: After paragraph 32(v)

51. This item amends the definition of *designated agreement* to include references to relevant provisions of new section 368B (inserted by item 126).

Item 21: Subsection 33(3) (note)

52. This item makes the existing note to subsection 33(3) “Note 1”. This reflects the insertion of new Notes 2 and 3 by item 22.

Item 22: At the end of subsection 33(3)

53. This item adds two new notes at the end of subsection 33(3).
54. Note 2 draws the reader’s attention to new section 461A, which provides for a block located in State/Territory coastal waters that is included in a cross-boundary GHG title to constitute a block for the purposes of the OPGGS Act.

55. Note 3 draws the reader’s attention to section 462, which provides for certain portions of blocks in relation to which a GHG title is in force to constitute a single block. It is equivalent to section 282, which relates to portions of blocks in relation to which a petroleum title is in force, and is referenced in Note 1 at the end of subsection 33(3).

**Item 23: After Part 1.3**

56. This item inserts new Part 1.3A, which provides for the establishment of a Cross-boundary Authority for each offshore area of a State and the NT, for the purposes of the new cross-boundary title regime. The arrangements are similar to current Joint Authority arrangements for petroleum titles in Commonwealth waters.

57. The Cross-boundary Authority for an offshore area of a State is constituted by the responsible Commonwealth Minister and the responsible State Minister (new subsection 76A(2)). The Cross-boundary Authority for the offshore area of the NT is constituted by the responsible Commonwealth Minister and the responsible NT Minister (new subsection 76A(4)).

58. Subsections 76A(6) and (7) provide that a State or the NT must consent to being a member of the Cross-boundary Authority for the offshore area of the relevant State/NT. This ensures that functions are not conferred on a State or the NT without the consent of the State/NT. The mode of consent is a matter for each jurisdiction. While it would be sufficient to provide executive consent in writing (e.g. through an exchange of letters between the responsible State/NT Minister and the responsible Commonwealth Minister), some States or the NT may wish to deal with the matter legislatively.

59. The main function of a Cross-boundary Authority is the grant of cross-boundary GHG titles. A decision to grant a cross-boundary title or specify a condition in a cross-boundary title must be made by consensus (new subsection 76D(2)). This includes a decision to grant an initial cross-boundary GHG assessment permit, any renewals of that permit, decisions to grant a successor cross-boundary title (e.g. a cross-boundary GHG holding lease or a cross-boundary GHG injection licence), and any renewals of a successor title. A decision to extend the term of a title (i.e. under new subsection 439B(2) and new paragraph 439C(2)(b), inserted by item 173) will also require consensus between the members of the Authority. This will enable both the Commonwealth Minister and the State/NT Minister to consider the desirability as a matter of policy of granting or extending the term of the title, which effectively extends the operation of the OPGGS Act to an area of State/NT coastal waters.

60. A consensus decision also reduces the risk of an acquisition of property by the Commonwealth other than on just terms contrary to section 51(xxxi) of the Constitution. The States and the NT have title in seabed below, and space above, coastal waters under the *Coastal Waters (State Titles) Act 1980* and the *Coastal...*
Waters (Northern Territory Title) Act 1980. Requiring the agreement of the State/NT before granting or extending the term of any cross-boundary title, or imposing conditions on a cross-boundary title, will ensure that any diminution of the State/NT’s property in the affected area will only ever occur voluntarily.

61. Any other decisions will be made in the same way as petroleum Joint Authorities, with the responsible Commonwealth Minister having the casting vote in the event of disagreement between members of the Cross-boundary Authority, or in the event that the responsible State Minister or responsible NT Minister does not communicate his or her opinion to the responsible Commonwealth Minister (new subsections 76D(3) and (4)). This will provide for efficient decision-making and ensure that timely regulation and investor certainty is not impeded by a lack of consensus between members of the Cross-boundary Authority.

62. Discretionary decisions of a Cross-boundary Authority are not subject to merits review. Decisions of an Authority concerning the granting of titles and the imposition of title conditions are matters of high government policy, involving considerations of national economic policy as well as environmental and social policy. The decisions are also made on the basis of technical geological and geophysical data and advice provided by Geoscience Australia and the Titles Administrator. These are not decisions that an administrative tribunal is equipped to make, particularly as requests for review would arise rarely so that there was no opportunity for members to acquire any expertise or experience in relation to such matters.

63. Under new section 434A (inserted by item 165) the Cross-boundary Authority is required to consult with an affected person prior to making a decision to refuse to renew or grant certain titles, and to take into account any submissions made prior to making the decision. For adverse decisions not covered by section 434A, the Cross-boundary Authority would also give advance notice of the decision and provide the affected person an opportunity to respond, in accordance with procedural fairness requirements.

64. Decisions about other matters that are now made by the responsible Commonwealth Minister will continue to be made by the Minister, as those decisions have a technical element that might affect the level of long-term risk to the Commonwealth. The Commonwealth will assume long-term civil liability for the whole cross-boundary storage operation and other operations wholly within the cross-boundary title area after site closing.

65. New section 76C leaves open all possible ways for the Cross-boundary Authority to conduct its business, including telephone conferencing. Subsection 76C(2) makes clear that a written communication between the members of the Cross-boundary Authority is not a legislative instrument for the purposes of the Legislation Act 2003. This provision is merely declaratory of the law, rather than prescribing a substantive exemption from the requirements of that Act.

66. New section 76E refers to the fact that a number of provisions envisage the Cross-boundary Authority taking certain actions if the Cross-boundary Authority is satisfied that certain criteria are met. For such purposes, section 76E sets out how the opinion or state of mind of the Cross-boundary Authority is to be understood.
67. New section 76F is required because two parties are involved in the Cross-boundary Authority and it would not otherwise be clear which party would have responsibility for keeping records of Cross-boundary Authority decisions. Section 76F places this responsibility on the Titles Administrator, because the implementation of the decision is a responsibility of the Titles Administrator and the register of titles is kept by the Titles Administrator. Subsection 76F(2) provides that a record kept under section 76F is prima facie evidence that the decision was duly made as recorded, if it is signed by a person who was a member of the Cross-boundary Authority at the time the decision was made. This is similar to an evidentiary certificate which contains evidentiary matters of fact. It is not intended to provide prime facie evidence that the decision was duly made as a matter of law.

68. Subsection 76F(3) makes clear that a record of decision of the Cross-boundary Authority is not a legislative instrument for the purposes of the Legislation Act 2003. This provision is merely declaratory of the law, rather than prescribing a substantive exemption from the requirements of that Act.

69. New section 76G deals with executing Cross-boundary Authority documents (not necessarily only records of decision), and provides that the Titles Administrator’s signature on the document is effective in giving it standing, particularly for court proceedings or hearings before tribunals.

70. New section 76H makes it obligatory for all communications between industry members and the Cross-boundary Authority to be made through the Titles Administrator. This is for reasons of administrative efficiency.

71. New section 76J requires a court to take judicial notice of signatures and facts relating to membership or being a delegate of a Cross-boundary Authority. Judicial notice is a finding by a court of the existence of a fact which has not been established by evidence. Once judicial notice is taken of a matter, it is prima facie proved and evidence is not required to prove it. However, evidence may be led to rebut the fact noticed or consequences of it.

72. A court to which section 76J refers could be a Commonwealth, State or Territory court. Subsection 76J(2) extends the provisions of section 76J to persons authorised to receive evidence. This would include, for example, a tribunal or arbitrator who is authorised to receive evidence.

73. New section 76K provides that, despite the fact that actions such as the grant of a title are set down as actions of the Cross-boundary Authority, it is the Titles Administrator who is to execute the title instrument, or any other document, on behalf of the Cross-boundary Authority.

74. New section 76L provides for delegation of any or all of the functions or powers of a Cross-boundary Authority. Delegation is possible only if there is one delegate for the Commonwealth member and one delegate for the State or NT member. If there is no delegation, all business of the Cross-boundary Authority must involve both Ministers as decision-makers. Even where there is a delegation, if the delegates disagree, the matter must be referred to the Ministers for a decision (subsection 76L(6)). Likewise, if there is a disagreement, the opinion or state of mind of the delegates is not to be viewed as the opinion or state of mind of the Cross-boundary Authority (subsection
Subsection 76L(8) makes clear that a referral under subsection 76L(6) is not a legislative instrument for the purposes of the *Legislation Act 2003*. This provision is merely declaratory of the law, rather than prescribing a substantive exemption from the requirements of that Act.

75. The provisions of the *Acts Interpretation Act 1901* (the AI Act) apply to delegations of Cross-boundary Authority powers. These include section 34AA of the AI Act, which provides that the power of delegation shall not be construed as being limited to delegating the function or power to a specified person but shall be construed as including a power to delegate the function or power to any person from time to time holding, occupying, or performing the duties of a specified office or position. Section 34AB provides (among other things) that the powers that may be delegated do not include the power to delegate, and that a delegation by the authority does not prevent the performance or exercise of a function or power by the authority.

76. Subsection 76L(3) addresses the situation that occurs from time to time of the responsible Commonwealth Minister, responsible State Minister or the responsible NT Minister being replaced. It also addresses the less common situation of a Ministerial position in the Cross-boundary Authority falling vacant. For efficient administration, subsection 76L(3) ensures that, in either case, any existing delegation continues to have effect. Subsection 76L(4) clarifies that the continuation in effect of a delegation under subsection 76L(3) does not limit the Cross-boundary Authority’s power to revoke a delegation, for example when a new person has been appointed as the Commonwealth Minister.

77. Subsection 76L(1) complies with the Australian Government policy that, if a delegation of this type is to be given to an Australian Public Service officer, it must be given to an officer at the Senior Executive Service level (as defined in section 2B of the AI Act).

78. Since the rank profiles in State and NT public services may vary from one jurisdiction to the next, no attempt has been made to include any analogous requirement in relation to the delegation of powers and functions to a State or NT public servant. However, in practice, the State/NT delegate will be at least of an equivalent level to the Commonwealth delegate. This can be considered by Ministers when determining whether to sign an instrument of delegation, as the instrument must clearly specify the position description of both proposed delegates.

**Item 24: Section 288**

79. This item updates the simplified outline of Part 3.2 to reflect that cross-boundary GHG assessment permits will be able to be granted over blocks in Commonwealth waters and in the coastal waters of a State or the NT.
Item 25: Section 288

80. This item updates the simplified outline of Part 3.2 to reflect that there are three types of GHG assessment permits that may be granted, including a cross-boundary GHG assessment permit.

Items 26 and 27: Section 291 (at the end of the heading); Before subsection 291(1)

81. These items amend section 291 to reflect that that section does not apply to cross-boundary GHG assessment permits. An equivalent section 291A is inserted by item 28 to deal with conditions of cross-boundary GHG assessment permits.

Item 28: After section 291

82. This item inserts new section 291A, which provides for grant of a cross-boundary GHG assessment permit to be subject to whatever conditions the Cross-boundary Authority thinks appropriate. Conditions must be specified in the permit, except for those in subsections 291A(3) and (4), which are imposed by the section itself.

83. Subsection 291A(3) makes it a statutory condition of a cross-boundary GHG assessment permit that the permittee will not carry on key GHG operations (as defined by section 7 of the OPGGS Act) unless the responsible Commonwealth Minister has approved the operations under new section 292A (inserted by item 31). Conditions may be attached to the approval and compliance with those conditions is itself a condition of the permit.

84. Subsection 291A(4) makes it a statutory condition of a permit that if the Minister at any time under section 454 requires the permittee to provide security, or to top-up any security previously provided, the permittee will provide the security or additional security.

85. Subsection 291A(5) authorises the Cross-boundary Authority to impose conditions on a cross-boundary GHG assessment permit requiring the carrying out of work (which may be particular work) or the spending of particular amounts in carrying out such work. The permit may specify periods within which the work is to be carried out. The conditions imposed under subsection (5) may also require the permittee to comply with directions relating to the above matters.

86. Subsection 291A(7) provides that the matters with respect to which the Cross-boundary Authority can impose conditions are not limited by subsections 291A(3), (4) and (5).

Items 29 and 30: Section 292 (at the end of the heading); Before subsection 292(1)

87. These items amend section 292 to reflect that that section does not apply to cross-boundary GHG assessment permits. An equivalent section 292A is inserted by
item 31 to deal with approval of key GHG operations carried on under a cross-boundary GHG assessment permit.

**Item 31: After section 292**

88. This item inserts new section 292A, which provides for approval by the responsible Commonwealth Minister of key GHG operations (as defined in section 7 of the OPGGS Act) carried on under a cross-boundary GHG assessment permit. This relates to the statutory condition imposed by new subsection 291A(3) – see paragraph 83.

89. Key GHG operations are GHG activities that it is considered may have impacts of some kind on petroleum operations under a present or future petroleum title. In the case of a cross-boundary GHG assessment permit, the impacts that are taken into account include impacts on petroleum operations under a present or future State/Territory petroleum title, as well as present or future Commonwealth petroleum titles. The impacts that these GHG operations may have on petroleum operations include not only impacts at the level of geological formations but also physical interference on the surface, for example where vessels may be in close proximity.

90. Subsection 292A(1) and (2) provide for a cross-boundary GHG assessment permittee to apply to the Minister for approval of one or more key GHG operations. The Minister may give the approval, with or without conditions, or refuse to give the approval.

91. In deciding whether or not to give an approval, the Minister may have regard to any matters that the Minister considers relevant (see subsection 292A(10)). There are, however, some matters to which the Minister must have regard and there are some circumstances in which an approval must not be given.

92. Subsection 292A(4) provides that, in deciding whether to approve key GHG operations, the Minister must have regard to potential impacts on petroleum exploration or recovery operations under any existing or future Commonwealth petroleum exploration permit, retention lease or production licence and any existing or future State/Territory petroleum exploration title, retention title or production title. This applies both to pre-commencement and post-commencement petroleum titles. In the case of potential impacts on a future petroleum title, there need not be any petroleum title in existence over the relevant blocks.

93. Subsection 292A(5) applies if the Minister is satisfied that there is a significant risk that any of the key GHG operations will have a significant adverse impact on operations that are being, or could be, carried on under an existing (pre-commencement or post-commencement) petroleum exploration permit, retention lease or production licence, or an existing (pre-commencement or post-commencement) State/Territory petroleum exploration title, retention title or production title, held by a person other than the applicant. In that case, the subsection provides that the Minister must have regard to whether the holder of the petroleum title has agreed in writing to the carrying out of the key GHG operations and, if so, to the terms of that agreement. In relation to the risk of impacts on a post-commencement exploration
permit, retention lease, State/Territory exploration title or State/Territory retention title, there does not have to be an agreement in order for the Minister to give the approval. However, if there is an agreement, the Minister must have regard to it.

94. Subsection 292A(6) makes the same provision in relation to a future (pre-commencement or post-commencement) petroleum exploration permit, retention lease or production licence, or a future (pre-commencement or post-commencement) State/Territory petroleum exploration title, retention title or production title, except that the relevant agreement (if any) will be with the holder of the existing petroleum title (if any) over the block or blocks in question.

95. Subsection 292A(7) provides that, where the key GHG operations for which approval is sought is, or includes, injection or storage on an appraisal basis, the Minister must have regard to the composition of the substance.

96. Subsection 292A(8) requires the Minister to have regard to the public interest. For example, the Minister might consider that there was a public interest in enabling an onshore electricity generation plant to be constructed on a zero-GHG emissions basis. Or the Minister might consider that there was a public interest in ensuring that commerciality of a major new petroleum discovery was not compromised by drilling of GHG exploration wells.

97. The circumstances in which approval must not be given relate to impacts on either existing or future pre-commencement petroleum titles, existing post-commencement production licences, existing or future pre-commencement State/Territory petroleum titles and existing post-commencement State/Territory petroleum production titles. (An existing post-commencement production licence and an existing post-commencement State/Territory petroleum production title are given the same level of ‘impacts’ protection as a pre-commencement title. This is because of the level of investment required in order to develop a petroleum discovery to the production stage.)

98. Subsection 292A(11) applies if the Minister is satisfied that there is a significant risk that the key GHG (exploration) operations will have a significant adverse impact on petroleum exploration or recovery under an existing pre-commencement petroleum title, an existing post-commencement production licence, an existing pre-commencement State/Territory petroleum title or an existing post-commencement State/Territory petroleum production title held by a person other than the applicant. In that case, the Minister must not approve the GHG operations unless the existing petroleum titleholder has agreed to the GHG titleholder carrying on the operations.

99. Subsection 292A(12) makes the same provision in relation to a future pre-commencement petroleum exploration permit, retention lease or production licence, or a future pre-commencement State/Territory petroleum exploration title, retention title or production title, except that the relevant agreement must be with the holder of the existing pre-commencement petroleum title over the block or blocks in question.

100. Subsection 292A(13) makes clear that there is no entitlement to an approval under section 292A. The fact of having obtained an assessment permit does not 'guarantee' that the permittee will be able to carry out any particular exploration program, for example that an exploration well can be drilled in a particular place. A further
example of the operation of subsection 292A(13) is that, even if a pre-commencement petroleum titleholder has agreed to the carrying out of the GHG exploration operations that the permittee proposes, the Minister may refuse to give the approval if the agreement contains terms that the Minister considers are contrary to the public interest.

101. In addition, a decision of the Minister is not subject to merits review. The decision has a substantial public interest element, which involves matters of high government policy and the weighing of potentially competing policy considerations. For example, as noted above, the Minister might need to consider whether there is a public interest in ensuring that commerciality of a major new petroleum discovery is not compromised by drilling of GHG exploration wells. These are matters that are not suitable for consideration by an administrative tribunal.

102. Subsection 292A(14) provides that, for the purposes of section 292A, a petroleum title is taken to be in force notwithstanding that rights under the title have been suspended under section 266, or a law of a State or Territory that corresponds to section 266.

Item 32: Subsection 293(1) (table item 1, column headed “This kind of permit…”)

103. This item clarifies that table item 1 does not apply to an original cross-boundary GHG assessment permit or an original consolidated work-bid GHG assessment permit. The duration of these permits is provided for in new table items 1A to 1F (inserted by item 33).

Item 33: Subsection 293(1) (after table item 1)

104. This item adds additional items in the table in subsection 293(1) to provide for the duration of a cross-boundary GHG assessment permit and a consolidated work-bid GHG assessment permit.

105. The duration of an original cross-boundary GHG assessment permit (i.e. a permit granted otherwise than by way of renewal) will be the amount of time (if any) still to run on the more recently-granted of the existing Commonwealth and State/NT GHG assessment permits that are unified to create the cross-boundary permit (see new table item 1A).

106. As an example, an original Commonwealth permit was granted on 7 April 2018 (with a date of expiry of 7 April 2024) and an original State/NT permit was granted on 16 August 2016 (with a date of expiry of 16 August 2022). On 3 December 2020 (before the expiry date of the original permits), the Cross-boundary Authority makes a decision to grant a cross-boundary permit over the two existing permit areas. The original cross-boundary permit will expire on 7 April 2024 (i.e. the expiry date of the more recently-granted permit).

107. For another example, an original Commonwealth permit was granted on 7 April 2014 (with a date of expiry of 7 April 2020) and an original State/NT permit was
granted on 16 August 2016 (with a date of expiry of 16 August 2022). On 2 February 2020, the permittee applies for a cross-boundary permit. The Cross-boundary Authority makes a decision to grant the cross-boundary permit on 1 November 2020. The date of expiry of the original cross-boundary permit will be 16 August 2022. (Note that the duration of the Commonwealth permit is extended until the day the decision is made, as a result of the application of new subsection 307A(4) – see item 49.)

108. If both the existing Commonwealth and State/NT permits would otherwise have expired before a decision is made to grant the cross-boundary permit, the cross-boundary permit will remain in force for a period of up to 12 months, as specified by the Cross-boundary Authority (see new table item 1B). This will enable time for the permittee to apply for a renewal of the cross-boundary permit, or to apply for a successor title such as a cross-boundary GHG injection licence, prior to the expiry of the permit.

109. The duration of an original consolidated work-bid GHG assessment permit depends on the nature of the two existing Commonwealth permits that are combined to form the consolidated permit. If the existing permits were both original permits, both permits granted by way of first renewal, or both permits granted by way of second renewal, and the grant of the consolidated permit occurs before the date of expiry of either or both of the existing permits, the duration of the consolidated permit will be: (a) if the grant occurs before the date of expiry of both permits, the time remaining on the more recently granted of the two permits, or (b) if the grant occurs before the expiry date of only one of the permits, the time remaining on the permit that had not ceased to be in force – see new table item 1C.

110. As an example of scenario (a), Permit 1 was granted on 7 April 2018 (with an expiry date of 7 April 2024) and Permit 2 was granted on 16 August 2016 (with an expiry date of 16 August 2022). A consolidated permit is granted over the titles areas of Permit 1 and Permit 2 on 3 December 2020. The consolidated permit will expire on 7 April 2024 (i.e. the expiry date of the more recently-granted permit).

111. As an example of scenario (b), Permit 1 was granted on 7 April 2014 (with an expiry date of 7 April 2020) and Permit 2 was granted on 16 August 2016 (with an expiry date of 16 August 2022). On 2 February 2020, the permittee applies for a consolidated permit. A consolidated permit is granted over the title areas of Permit 1 and Permit 2 on 3 December 2020. The consolidated permit will expire on 16 August 2022. (Note that the duration of Permit 1 is extended until the day the decision is made, as a result of the application of new subsection 302A(4) – see item 48.)

112. If both permits would otherwise have expired, the consolidated permit will remain in force for a period of up to 12 months, as specified by the responsible Commonwealth Minister (see new table item 1F). This will enable time for the permittee to apply for a renewal of the consolidated permit, or to apply for a successor title such as a GHG injection licence, prior to the expiry of the permit.

113. If one of the existing permits was an original permit, and the other was either a permit granted by way of first renewal or second renewal, and the original permit would not otherwise have expired at the time the consolidated permit is granted, the
duration of the consolidated permit will be the time remaining on the original permit (new table item 1D). This essentially makes the consolidated permit equivalent to the original permit in all ways, i.e. it can be renewed twice, and has the same time left to run as the original permit. If the original permit would otherwise have expired, the consolidated permit will remain in force for a period of up to 12 months, as specified by the Minister (table item 1F).

114. If one of the existing permits was a permit granted by way of first renewal, and the other was a permit granted by way of second renewal, and the permit granted by way of first renewal would not otherwise have expired at the time the consolidated permit is granted, the duration of the consolidated permit will be the time remaining on the permit granted by way of first renewal (new table item 1E). This essentially makes the consolidated permit equivalent to the permit granted by way of first renewal in all ways, i.e. it can be renewed once, and has the same time left to run as the permit granted by way of first renewal. If the permit granted by way of first renewal would otherwise have expired, the consolidated permit will remain in force for a period of up to 12 months, as specified by the Minister (table item 1F).

115. As for an ordinary GHG assessment permit, the duration of a cross-boundary GHG assessment permit or a consolidated work-bid GHG assessment permit granted by way of renewal will be three years – see table item 2 of subsection 293(2)). As noted at paragraph 25, unless otherwise specified, a reference in the OPGGS Act to a GHG assessment permit includes a reference to a cross-boundary permit and a consolidated work-bid permit.

Items 34 to 43: Subsection 293(2) (after note 1); Subsection 293(2) (note 1A); Subsection 293(2) (note 2); Subsection 293(2) (after note 2); Subsection 293(2) (note 3); Subsection 293(2) (note 4); Subsection 293(2) (note 4A)

116. These items insert new notes and amend existing notes to section 293 to inform the reader of statutory processes under other sections that can affect the duration of a GHG assessment permit, including a cross-boundary GHG assessment permit and a consolidated work-bid GHG assessment permit.

Items 44 and 45: Section 295 (heading); Paragraph 295(1)(a)

117. These items amend section 295 to reflect that that section does not apply to cross-boundary GHG assessment permits. An equivalent section 295A is inserted by item 46 to deal with extension of a cross-boundary GHG assessment permit if the permittee applies for a cross-boundary GHG holding lease or a cross-boundary GHG injection licence.
Item 46: At the end of Division 1 of Part 3.2

118. This items inserts a new section 295A to provide for extension of a cross-boundary GHG assessment permit if the permittee applies, before the time when the permit would otherwise expire, for a cross-boundary GHG holding lease or a cross-boundary GHG injection licence.

119. The term of the permit is extended as set out in the table in subsection 295A(1). Under table item 2, if the application is for a cross-boundary GHG holding lease and the Cross-boundary Authority refuses to grant the lease, the permit continues in force for the period of 12 months after the day on which notice of the refusal is given to the permittee. This provides the permittee with the opportunity to apply for a cross-boundary GHG injection licence, rather than immediately losing tenure to the title area.

120. Under table item 3, if the application is for a cross-boundary GHG injection licence and the Cross-boundary Authority refuses to grant the licence for a reason relating to the risk of a significant adverse impact on petroleum operations under a Commonwealth and/or State/Territory petroleum title, the permit continues in force for the period of 90 days after the day on which notice of the refusal is given to the permittee. This provides the permittee with the opportunity to apply for a special cross-boundary GHG holding lease under section 342A (inserted by item 104). The application period for a special cross-boundary GHG holding lease is 90 days beginning on the day on which the permittee was notified of the refusal to grant the injection licence.

121. Subsection 295A(2) provides that this extension is subject to Chapter 3. This means that the permit could, for example, be surrendered or cancelled, meaning it could come to an end earlier than the table indicates.

122. Under existing section 294, a GHG assessment permit, including a cross-boundary GHG assessment, is extended if, before the time when the permit would otherwise expire, the permittee applies for a declaration of an identified GHG storage formation. A new section is not required to provide for this specifically in relation to cross-boundary permits as the responsible Commonwealth Minister is the decision-maker in relation to applications for a declaration of identified GHG storage formation, whether under an ordinary GHG assessment permit or a cross-boundary permit. Further, except where otherwise expressly stated, a reference in the OPGGS Act to a GHG assessment permit includes a reference to a cross-boundary GHG assessment permit – see discussion at paragraph 25.

123. This item also inserts a new section 295B to provide that the entirety of the permit area of a cross-boundary GHG assessment permit is taken to be in the offshore area of the relevant State or the NT, for all purposes of the OPGGS Act and regulations insofar as they relate to GHG exploration, injection and storage. This includes the part of the permit area that is in State/NT coastal waters. This enables the cross-boundary permit to be effectively regulated under the GHG-related provisions of the OPGGS Act and regulations. The Levies Act will also be amended to apply in the permit area.
for the purpose of GHG levies. No changes are being made to the petroleum-specific provisions of the OPGGS Act or to any other Commonwealth laws to extend their area of application.

Item 47: Before section 296

124. This item inserts a new subdivision heading in Division 2 of Part 3.2, to differentiate the provisions previously in that Division, which relate to obtaining an ordinary GHG assessment permit, from the provisions in new Subdivision B (inserted by item 48), which relate to obtaining a consolidated work-bid GHG assessment permit.

Item 48: At the end of Division 2 of Part 3.2

125. This item inserts a new Subdivision B, which relates to obtaining a consolidated work-bid GHG assessment permit. The provisions of Subdivision B enable a single holder of two adjacent work-bid GHG assessment permits, which are both in Commonwealth waters and which together are reasonably suspected to contain a GHG storage formation that crosses the title boundary, to apply to the responsible Commonwealth Minister for a replacement consolidated work-bid permit which covers the area of the two existing permits.

126. A number of prerequisites are required to be met before the holder of the permits can apply for a consolidated permit (subsection 302A(1)). These include that the two permits are in the same offshore area, and at least one block of the permit area of one of the permits has a side in common with at least one block of the permit area of the other permit. Neither of the permits may be a cross-boundary permit. There can also be no identified GHG storage formations that have been declared in either of the existing permit areas.

127. The titleholder of the existing permits must also have informed the Minister, under new section 451B (inserted by item 177), that part of a geological formation is wholly contained in the area that consists of the combination of the two permit areas, and the person has reasonable grounds to suspect that the part could be an eligible GHG storage formation.

128. Consistent with applications for other work-bid titles, the application must be accompanied by details of the applicant's proposals for work and expenditure in relation to the combined permit area (subsection 302A(3)).

129. Subsection 302A(4) provides for the extension of an existing work-bid permit if the titleholder applies for a consolidated permit, and one or both of the existing permits would otherwise expire before the Minister grants, or refuses to grant, a consolidated GHG assessment permit. Subsection 302A(5) provides that this extension is subject to Chapter 3. This means that an existing permit could, for example, be surrendered or cancelled, meaning it could come to an end earlier than provided by subsection 302A(4).
130. The Minister may grant a consolidated work-bid GHG assessment permit in response to the application, but is not obliged to do so. Unlike an application for a renewal of a permit, there is no requirement to take into account compliance with the conditions of the existing permits. This is because there are difficulties with establishing that there is non-compliance with a work program condition until the end of the relevant compliance period. If there is incomplete work at the time of granting a consolidated permit, that work can be added to the work program conditions of the consolidated permit.

131. There is also no requirement of compliance with the OPGGS Act and regulations as this requires a dual process which adds complexity. Where the grant of the consolidated permit is entirely discretionary, a previous instance of non-compliance (reported to the Minister by NOPSEMA or the Titles Administrator) would be a valid reason for refusing the grant. Steps could then be taken to pursue previous non-compliance under the relevant existing permit.

132. A decision of the Minister whether or not to grant a consolidated permit is not subject to merits review. Decisions concerning the granting of titles and the imposition of title conditions are matters of high government policy, involving considerations of national economic policy as well as environmental and social policy. The decisions are also made on the basis of technical geological and geophysical data and advice from Geoscience Australia and the Titles Administrator. These are not decisions that an administrative tribunal is equipped to make, particularly as requests for review would arise rarely so that there was no opportunity for members to acquire any expertise or experience in relation to such matters.

133. If a consolidated permit is granted by the Minister, the two existing permits cease to be in force when the consolidated permit comes into force (section 302C).

134. The consolidated permit granted by the Minister is a work-bid permit, given that it replaces two existing work-bid permits. Except where otherwise expressly stated, a reference in the OPGGS Act to a GHG assessment permit includes a reference to a consolidated work-bid GHG assessment permit – see discussion at paragraph 25. For example, section 291, which enables the Minister to impose conditions of title, plus provides statutory title conditions, applies to the grant of the consolidated permit.

135. The nature of the consolidated permit granted will depend on the nature of the two existing permits. If both existing permits were original permits (i.e. permits that have not been renewed), the consolidated permit is treated as an original permit and can be renewed twice. The term of the title is the amount of time (if any) still to run on the more recently-granted of the existing permits or, if both permits would otherwise have expired at the time the consolidated permit is granted, a period of up to 12 months as specified by the Minister – see table items 1C and 1F of subsection 293(1) (inserted by item 33).

136. If both existing permits were granted by way of first renewal, the consolidated permit is treated as a permit granted by way of first renewal and can be renewed once. The term of the title is the amount of time (if any) still to run on the more recently-granted of the existing permits or, if both permits would otherwise have expired at the time the consolidated permit is granted.
time the consolidated permit is granted, a period of up to 12 months as specified by the Minister – see table items 1C and 1F of subsection 293(1) (inserted by item 33).

137. If both existing permits were granted by way of second renewal, the consolidated permit is treated as a permit granted by way of second renewal and cannot be renewed. The term of the title is the amount of time (if any) still to run on the more recently-granted of the existing permits or, if both permits would otherwise have expired at the time the consolidated permit is granted, a period of up to 12 months as specified by the Minister – see table items 1C and 1F of subsection 293(1) (inserted by item 33).

138. If one existing permit was an original permit and the other was a permit granted by way of first or second renewal, the consolidated permit is treated as an original permit and can be renewed twice. The term of the title is the amount of time (if any) still to run on the original permit or, if the original permit would otherwise have expired at the time the consolidated permit is granted, a period of up to 12 months as specified by the Minister – see table items 1D and 1F of subsection 293(1) (inserted by item 33).

139. If one existing permit was granted by way of first renewal, and the other was granted by way of second renewal, the consolidated permit is treated as a permit granted by way of first renewal and can be renewed once. The term of the title is the amount of time (if any) still to run on the permit that was granted by way of first renewal or, if that permit would otherwise have expired at the time the consolidated permit is granted, a period of up to 12 months as specified by the Minister – see table items 1E and 1F of subsection 293(1) (inserted by item 33).

140. It will be possible for a permittee to consolidate three permit areas over two separate storage formations under new section 302A, by first combining two permit areas over the formation that straddles those two permits, and then combining the consolidated title with the third permit over the formation that straddles the consolidated permit and the third permit. To ensure the prerequisite in paragraph 302A(1)(g) is met, the combination of all three areas will need to occur before an identified storage formation is declared in any of the permit areas (whether the existing permit or the first consolidated permit).

Item 49: After Division 3 of Part 3.2

141. This item inserts a new Division 3A of Part 3.2, which relates to obtaining a cross-boundary GHG assessment permit. The provisions of Division 3A enable a single holder of a GHG assessment permit in Commonwealth waters and a State/Territory GHG assessment title in State/NT coastal waters, which have at least one block with a side in common, and which together are reasonably suspected to contain a GHG storage formation that crosses the coastal waters boundary, to apply to the Cross-boundary Authority for a cross-boundary permit which covers the area of the two existing permits.
142. A number of prerequisites are required to be met before the holder of the permits can apply for a cross-boundary permit (subsection 307A(1)). These include that at least one block of the Commonwealth permit has a side in common with at least one block of the State/Territory title area (paragraph 307A(1)(c)). Under paragraph 33(3)(b) of the OPGGS Act, if part only of a graticular section is within an offshore area, the area of that part constitutes a block. Similarly, under equivalent State/NT legislation, if part only of a graticular section is within State/NT waters, the area of that part constitutes a block. Therefore, even if the only title blocks on each side of the jurisdictional boundary are constituted by part only of a graticular section, the requirement in paragraph 307A(1)(c) will be met as long as at least one block of the Commonwealth permit has a side in common with a block of the State/Territory title.

143. Other prerequisites include that there can be no identified GHG storage formations that have been declared in the title area of either the Commonwealth permit or the State/Territory title. If an existing formation had been declared in either the State/Territory or Commonwealth title, the assessment and decision process for the declaration would have been undertaken exclusively under State/Territory or Commonwealth provisions that relate to non-cross-boundary formations. This could create risks for the Commonwealth in particular, as a formation declared under State/Territory legislation would subsequently come within the remit of Commonwealth regulation. We note that it is possible to declare another formation under the OPGGS Act within the cross-boundary title area after the cross-boundary formation has been declared.

144. The titles on each side of the boundary must be equivalent in nature, i.e. if the Commonwealth permit is an original permit, the State/Territory title must also be an original permit; if the Commonwealth permit was granted by way of first renewal, the State/Territory title must also have been granted by way of first renewal. The titleholder must also have informed the Minister, under new section 451A (inserted by item 177), that part of a geological formation is wholly contained in the area that consists of the combination of the two title areas, and the person has reasonable grounds to suspect that the part could be an eligible GHG storage formation.

145. Further, the State or Territory in whose coastal waters the State/Territory title is located must have a compatible cross-boundary law – see discussion at paragraphs 37 to 39.

146. Consistent with applications for other work-bid titles, the application must be accompanied by details of the applicant’s proposals for work and expenditure in relation to the combined permit area (subsection 307A(3)).

147. Subsection 307A(4) provides for the extension of the existing Commonwealth permit if the titleholder applies for a cross-boundary permit, and the existing Commonwealth permit would otherwise expire before the Cross-boundary Authority grants, or refuses to grant, a cross-boundary GHG assessment permit, or the application lapses. Subsection 307A(5) provides that this extension is subject to Chapter 3. This means that an existing permit could, for example, be surrendered or cancelled, meaning it could come to an end earlier than provided by subsection 307A(4).
148. Extension of the existing State/Territory title will be provided for by State/Territory legislation.

149. The Cross-boundary Authority may give the applicant an offer document telling the applicant that the Authority is prepared to grant a cross-boundary GHG assessment permit in response to the application, but is not obliged to do so (section 307B). This is in accordance with subsection 33(2A) of the Acts Interpretation Act 1901, which provides that where an Act provides that a person or body may do a particular act or thing, and the word “may” is used, the act or thing may be done at the discretion of the person or body. The decision to grant the permit must be made by consensus – see new subsection 76D(2) (inserted by item 23).

150. There is no requirement to take into account regulatory compliance by the applicant. Such a requirement would be complicated, as it would need to extend to compliance with State/NT requirements, which might be different from Commonwealth requirements. Also, State/NT monitoring and enforcement practices might differ from the Commonwealth’s. An express regulatory compliance requirement is only necessary in circumstances where the legislation gives an applicant a right to be granted a title in particular circumstances. This is not the case for grant of a cross-boundary permit. In the case of an applicant which was reliably believed to have a history of regulatory non-compliance, the Cross-boundary Authority could refuse to grant the cross-boundary permit. The Cross-boundary Authority can refuse to grant the title on any relevant ground that the Authority (or one of the members) thinks is sufficient. There are no statutory criteria as there are in the case of other GHG or petroleum titles.

151. A decision of the Authority whether or not to grant a cross-boundary permit is not subject to merits review – see discussion at paragraph 62.

152. If an applicant who receives an offer document has made a request under section 431A (inserted by item 161) to the Titles Administrator within 30 days for the Cross-boundary Authority to grant the permit, and has lodged any required security within that period, the Authority must grant the cross-boundary permit. Otherwise, the application lapses.

153. In accordance with section 291A (inserted by item 28), the Cross-boundary Authority may grant the cross-boundary permit subject to whatever conditions the Authority thinks appropriate. Section 291A also provides statutory title conditions.

154. If a cross-boundary permit is granted by the Cross-boundary Authority, the existing Commonwealth and State/Territory titles cease to be in force when the cross-boundary permit comes into force (section 307D).

155. The nature of the cross-boundary permit granted will depend on the nature of the existing titles. If the existing titles were original titles (i.e. titles that have not been renewed), the cross-boundary permit is treated as an original permit and can be renewed twice. If the existing titles were granted by way of first renewal, the cross-boundary permit is treated as a permit granted by way of first renewal and can be renewed once. If the existing titles were granted by way of second renewal, the cross-boundary permit is treated as a permit granted by way of second renewal and cannot be renewed.
156. In all cases, the term of the cross-boundary permit is the amount of time (if any) still to run on the more recently-granted of the existing titles or, if both existing titles would otherwise have expired at the time the cross-boundary permit is granted, a period of up to 12 months as specified by the Cross-boundary Authority – see table items 1A and 1B of subsection 293(1) (inserted by item 33).

Item 50: Before section 308

157. This item inserts a new subdivision heading in Division 4 of Part 3.2, to differentiate the provisions previously in that Division, which relate to renewal of an ordinary GHG assessment permit, from the provisions in new Subdivision B (inserted by item 56), which relate to renewal of a cross-boundary GHG assessment permit.

158. Subdivision A will apply to both ordinary GHG assessment permits and consolidated work-bid GHG assessment permits.

Items 51 and 52: Section 308 (at the end of the heading); Before subsection 308(1)

159. These items amend section 308 to reflect that that section does not apply to cross-boundary GHG assessment permits. An equivalent section 311A is inserted by item 56 to deal with renewal of a cross-boundary GHG assessment permit.

Item 53: After subsection 308(1)

160. This item inserts new subsection 308(1A) to provide that an application must not be made to renew a consolidated work-bid GHG assessment permit if each of the existing work-bid GHG assessments permits in relation to which the consolidated permit was granted, were granted by way of second renewal. As discussed at paragraph 137, where a consolidated permit is granted over the area of two permits granted by way of second renewal, the consolidated permit is also treated as a permit granted by way of second renewal. A GHG assessment permit cannot be renewed more than twice.

Item 54: Subsection 308(2)

161. This item amends subsection 308(2) to provide that a GHG assessment permit can be renewed twice. Previously, a permit could only be renewed once for a period of three years.

162. The OPGGS Act provides petroleum exploration permit holders the ability to apply for two permit renewal periods of five years each. Noting that petroleum and GHG projects undertake almost identical exploration activities (seismic surveys, geotechnical studies, and drilling of exploration and appraisal wells) with long lead times and equipment and infrastructure requirements, it is reasonable to provide for a second three year renewal period for GHG assessment permit holders.
163. The application and decision process for a second renewal of a permit will be the same as the process for a first renewal. Further, the duration of a permit granted by way of second renewal will be the same as the duration of a permit granted by way of first renewal, i.e. three years.

164. A permit cannot be renewed more than twice.

Item 55: After subsection 308(2)

165. This item inserts new subsection 308(2A) to provide that a consolidated work-bid GHG assessment permit cannot be renewed more than once if each of the existing work-bid GHG assessments permits in relation to which the consolidated permit was granted were granted by way of first renewal. As discussed at paragraph 136, where a consolidated permit is granted over the area of two permits granted by way of first renewal, the consolidated permit is also treated as a permit granted by way of first renewal. A GHG assessment permit granted by way of first renewal can only be renewed once more.

166. New subsection 308(2A) also provides that a consolidated work-bid GHG assessment permit cannot be renewed more than once if one of the existing work-bid permits in relation to which the consolidated permit was granted was itself granted by way of first renewal and the other was granted by way of second renewal. As discussed at paragraph 139, where a consolidated permit is granted over the area of two permits, one granted by way of first renewal and the other by way of second renewal, the consolidated permit is treated as a permit granted by way of first renewal.

Item 56: At the end of Division 4 of Part 3.2

167. This item inserts new Subdivision B of Division 4 of Part 3.2 to provide for renewal of cross-boundary GHG assessment permits.

168. Generally, the application and decision process for renewal of a cross-boundary permit is the same as the process for renewal of an ordinary GHG assessment permit. However, the decision-maker in the case of an application for renewal of a cross-boundary permit is the Cross-boundary Authority, and the application must be made to the Titles Administrator.

169. Further, an application to renew a cross-boundary permit must not be made unless the State or Territory in whose coastal waters part of the permit is located has a compatible cross-boundary law (subsection 311A(2)) – see discussion at paragraphs 37 to 39.

170. An application must not be made to renew a cross-boundary permit if the existing GHG assessment permit in relation to which the cross-boundary permit was granted was itself granted by way of second renewal (subsection 311A(3)). As discussed at paragraph 155, where a cross-boundary permit is granted over the area of a Commonwealth and State/NT permit granted by way of second renewal, the cross-
boundary permit is also treated as a permit granted by way of second renewal. A GHG assessment permit cannot be renewed more than twice.

171. Further a cross-boundary permit cannot be renewed more than once if the existing GHG assessment permit in relation to which the cross-boundary permit was granted was itself granted by way of first renewal (subsection 311A(5)). As discussed at paragraph 155, where a cross-boundary permit is granted over the area of a Commonwealth and State/NT permit granted by way of first renewal, the cross-boundary permit is also treated as a permit granted by way of first renewal.

172. The criteria for a decision of the Cross-boundary Authority in relation to whether to grant a renewal of a cross-boundary permit are the same as for an ordinary GHG assessment permit, with the exception that there is no reference to the permittee having given (or not given) a section 451 notice during the period the permit was in force. Section 451 does not apply to the holder of a cross-boundary permit. This is because the applicant for a renewal will have to have complied with new section 451A (inserted by item 177) when applying for the grant of the initial cross-boundary permit. Section 451A imposes substantially the same requirement as section 451.

173. In addition, the Cross-boundary Authority cannot offer to grant a renewal of a cross-boundary permit under subsection 311B(2) unless the relevant State or NT has consented to the giving of the document. Further, under subsection 76D(2) (inserted by item 23), the Cross-boundary Authority cannot offer to grant a renewal of a cross-boundary permit under subsection 311B(3) unless both the Commonwealth and the State or NT member of the Authority agree. A consensus decision reduces the risk of an acquisition of property by the Commonwealth other than on just terms contrary to section 51(xxxi) of the Constitution. The States and the NT have title in seabed below, and space above, coastal waters under the Coastal Waters (State Titles) Act 1980 and the Coastal Waters (Northern Territory Title) Act 1980. Requiring the agreement of the State/NT before offering to grant a renewal of a cross-boundary permit will ensure that any diminution of the State/NT’s property in the affected area will only ever occur voluntarily.

174. To ensure procedural fairness, consultation procedures apply under new section 434A (inserted by item 165) if the Cross-boundary Authority proposes to refuse to renew a cross-boundary permit.

175. A decision of the Authority whether or not to grant a renewal of a cross-boundary permit is not subject to merits review – see discussion at paragraph 62. In some cases, the Authority must grant a renewal if certain conditions are met.

**Item 57: Section 312 (at the end of the heading)**

176. This item amends the heading to section 312 to differentiate that section from new section 312A (inserted by item 58), which applies specifically to cross-boundary GHG assessment permits.
Item 58: After section 312

177. This item inserts a new section 312A to provide for declaration of an identified GHG storage formation under a cross-boundary GHG assessment permit. A cross-boundary permittee must obtain from the responsible Commonwealth Minister a declaration of a part of a geological formation as an identified GHG storage formation in order to advance to a cross-boundary GHG holding lease or a cross-boundary GHG injection licence. The identified GHG storage formation must be wholly situated within the cross-boundary permit area.

178. It is possible to have a second or subsequent identified GHG storage formation declared in a cross-boundary permit area, or in the title area of a cross-boundary GHG holding lease or a GHG cross-boundary injection licence under section 312, provided each of them is wholly situated within the title area. This is the case even if the formation would otherwise have been wholly situated only in Commonwealth waters or only in State/Territory coastal waters.

179. There is scope for the declaration to be varied by the Minister under section 313, either at the request of the titleholder or, if circumstances warrant, at the Minister’s own instigation. This allows, for example, for variation of one or more of the fundamental suitability determinants as new information about the storage formation becomes available.

180. Once there is a cross-boundary injection licence in force over the area where an identified GHG storage formation is located, the declaration and the licence must be kept consistent with each other. A variation to one may therefore require a variation to be made to the other.

181. Generally, the application and declaration process for an identified GHG storage formation under a cross-boundary permit is the same as the process under an ordinary GHG title. However, in addition to the requirement to have reasonable grounds to believe that a part of a geological formation is an eligible GHG storage formation that is wholly situated in the permit area, the permittee must also have reasonable grounds to believe that the relevant part of the geological formation extends to both the permit area of the precursor Commonwealth GHG assessment permit and the title area of the precursor State/Territory GHG assessment title (subparagraph 312A(1)(b)(iii)). “Precursor greenhouse gas assessment permit” and “precursor State/Territory greenhouse gas assessment title” are defined in new subsections 312A(16) and (17) respectively.

182. In addition, there can be no identified GHG storage formation previously declared within the permit area of the precursor Commonwealth GHG assessment permit and no State/Territory identified GHG storage formation previously declared within the title area of the precursor State/Territory GHG assessment title.

183. An eligible GHG storage formation is a part of a geological formation that is suitable, with or without engineering enhancements, for the permanent storage of a particular amount (at least 100,000 tonnes) of a particular GHG substance injected at
184. Subsection 312A(3) sets out the information that must be included in an application under section 312A. The ‘fundamental suitability determinants’ of the eligible GHG storage formation referred to in subparagraph 312A(3)(b)(i) include matters such as the amount of a GHG substance that is suitable to store, the chemical composition of the GHG substance that is suitable to store, the proposed injection point or points, the proposed injection period, proposed engineering enhancements, and the effective sealing feature that makes it suitable.

185. Subsection 312A(5) enables the Minister to require the applicant to provide further information or to carry out further analysis of information. Subsection 312A(6) provides that, if the applicant fails to provide the required information or analysis, the Minister may refuse to progress the application further. Subsections 312A(7) to (10) provide for the variation of the application with respect to the fundamental suitability determinants or the estimate of the spatial extent.

186. Subsection 312A(11) provides that, if the Minister is satisfied that the part of a geological formation that is the subject of the application is (provided any engineering enhancements nominated in the application are carried out) suitable for the permanent storage of the nominated amount of the nominated GHG substance, if injected at the nominated injection point or points over the nominated period, and the estimate of the spatial extent set out in the application is a reasonable estimate, then the Minister must declare that part of the geological formation to be an identified GHG storage formation.

187. If satisfied of those matters, the Minister must also declare that the spatial extent of the identified GHG storage formation is the spatial extent estimated in the application (paragraph 312A(11)(d)), and set out that estimate in the declaration (subsection 312A(12)). The Minister must also declare that the fundamental suitability determinants specified in the application are the fundamental suitability determinants of the identified GHG storage formation (paragraph 312A(11)(e)) and set them out in the declaration (subsection 312A(13)).

188. Subsection 312A(15) requires that, unless the Minister is satisfied of all of the matters in subparagraphs 312A(11)(b)(i) and (ii), the Minister must refuse to make the declaration.

**Item 59: Subsections 313(1) and (8)**

189. This item amends section 313 (variation of declaration of identified GHG storage formation), to include reference to a declaration in force under section 312A (inserted by item 58).
Item 60: Subsection 314(1)

190. This item amends section 314 (revocation of declaration of identified GHG storage formation), to include reference to a declaration in force under section 312A (inserted by item 58).

Item 61: Paragraph 315(1)(a)

191. This item amends section 315 (Register of Identified GHG Storage Formations), to include reference to a declaration made under section 312A (inserted by item 58).

Item 62: At the end of section 318

192. This item adds a note at the end of the simplified outline of Part 3.3 to draw the reader’s attention to new section 295B (inserted by item 46). Section 295B provides for the permit area of a cross-boundary GHG assessment permit, which includes an area located in State/NT coastal waters, to be taken to be included in the offshore area for the purposes of the OPGGS Act.

193. If the holder of a cross-boundary permit applies for and is granted a cross-boundary GHG holding lease, the lease area will also include an area located in State/NT coastal waters. This area is taken to be included in the offshore area through the operation of new section 323B (inserted by item 85).

Items 63 and 64: Section 320 (at the end of the heading); Before subsection 320(1)

194. These items amend section 320 to reflect that that section does not apply to cross-boundary GHG holding leases. An equivalent section 320A is inserted by item 65 to deal with conditions of cross-boundary GHG holding leases.

Item 65: After section 320

195. This item inserts new section 320A, which provides for grant of a cross-boundary GHG holding lease to be subject to whatever conditions the Cross-boundary Authority thinks appropriate. Conditions must be specified in the lease, except for those in subsections 320A(3) and (4), which are imposed by the section itself.

196. Subsection 320A(3) makes it a statutory condition of a cross-boundary GHG holding lease that the lessee will not carry on key GHG operations (as defined by section 7 of the OPGGS Act) unless the responsible Commonwealth Minister has approved the operations under new section 321A (inserted by item 68). Conditions may be attached to the approval and compliance with those conditions is itself a condition of the lease.

197. Subsection 320A(4) makes it a statutory condition of a lease that if the Minister at any time under section 454 requires the lessee to provide security, or to top-up any
security previously provided, the lessee will provide the security or additional 
security.
198. Subsection 320A(5) authorises the Cross-boundary Authority to impose conditions 
on a cross-boundary GHG holding lease requiring the carrying out of work (which 
may be particular work) or the spending of particular amounts in carrying out such 
work. The lease may specify periods within which the work is to be carried out. The 
conditions imposed under subsection (5) may also require the lessee to comply with 
directions relating to the above matters.
199. Subsection 320A(7) provides that the matters with respect to which the Cross-
boundary Authority can impose conditions are not limited by subsections 320A(3), (4) 
and (5).

Items 66 and 67: Section 321 (at the end of the heading); Before subsection 321(1)

200. These items amend section 321 to reflect that that section does not apply to cross-
boundary GHG holding leases. An equivalent section 321A is inserted by item 68 to 
deal with approval of key GHG operations carried on under a cross-boundary GHG 
holding lease.

Item 68: After section 321

201. This item inserts new section 321A, which provides for approval by the responsible 
Commonwealth Minister of key GHG operations (as defined in section 7 of the 
OPGGS Act) carried on under a cross-boundary GHG holding lease. This relates to 
the statutory condition imposed by new subsection 320A(3) – see paragraph 196.
202. Key GHG operations are GHG activities that it is considered may have impacts of 
some kind on petroleum operations under a present or future petroleum title. In the 
case of a cross-boundary GHG holding lease, the impacts that are taken into account 
include impacts on petroleum operations under a present or future State/Territory 
petroleum title, as well as present or future Commonwealth petroleum titles. The 
impacts that these GHG operations may have on petroleum operations include not 
only impacts at the level of geological formations but also physical interference on the 
surface, for example where vessels may be in close proximity.
203. Subsections 321A(1) and (2) provide for a cross-boundary GHG holding lessee to 
apply to the Minister for approval of one or more key GHG operations. The Minister 
may give the approval, with or without conditions, or refuse to give the approval.
204. In deciding whether or not to give an approval, the Minister may have regard to any 
matters that the Minister considers relevant (see subsection 321A(10)). There are, 
evertheless, some matters to which the Minister must have regard and there are some 
circumstances in which an approval must not be given.
205. Subsection 321A(4) provides that, in deciding whether to approve key GHG 
operations, the Minister must have regard to potential impacts on petroleum 
exploration or recovery operations under any existing or future Commonwealth
petroleum exploration permit, retention lease or production licence and any existing or future State/Territory petroleum exploration title, retention title or production title. This applies both to pre-commencement and post-commencement petroleum titles. In the case of potential impacts on a future petroleum title, there need not be any petroleum title in existence over the relevant blocks.

206. Subsection 321A(5) applies if the Minister is satisfied that there is a significant risk that any of the key GHG operations will have a significant adverse impact on operations that are being, or could be, carried on under an existing (pre-commencement or post-commencement) petroleum exploration permit, retention lease or production licence, or an existing (pre-commencement or post-commencement) State/Territory petroleum exploration title, retention title or production title, held by a person other than the applicant. In that case, the subsection provides that the Minister must have regard to whether the holder of the petroleum title has agreed in writing to the carrying out of the key GHG operations and, if so, to the terms of that agreement. In relation to the risk of impacts on a post-commencement exploration permit, retention lease, State/Territory exploration title or State/Territory retention title, there does not have to be an agreement in order for the Minister to give the approval. However, if there is an agreement, the Minister must have regard to it.

207. Subsection 321A(6) makes the same provision in relation to a future (pre-commencement or post-commencement) petroleum exploration permit, retention lease or production licence, or a future (pre-commencement or post-commencement) State/Territory petroleum exploration title, retention title or production title, except that the relevant agreement (if any) will be with the holder of the existing petroleum title (if any) over the block or blocks in question.

208. Subsection 321A(7) provides that, where the key GHG operations for which approval is sought is, or includes, injection or storage on an appraisal basis, the Minister must have regard to the composition of the substance.

209. Subsection 321A(8) requires the Minister to have regard to the public interest. For example, the Minister might consider that there was a public interest in enabling an onshore electricity generation plant to be constructed on a zero-GHG emissions basis. Or the Minister might consider that there was a public interest in ensuring that commerciality of a major new petroleum discovery was not compromised by drilling of GHG exploration wells.

210. The circumstances in which approval must not be given relate to impacts on either existing or future pre-commencement petroleum titles, existing post-commencement production licences, existing or future pre-commencement State/Territory petroleum titles and existing post-commencement State/Territory petroleum production titles. (An existing post-commencement production licence and an existing post-commencement State/Territory petroleum production title are given the same level of ‘impacts’ protection as a pre-commencement title. This is because of the level of investment required in order to develop a petroleum discovery to the production stage.)

211. Subsection 321A(11) applies if the Minister is satisfied that there is a significant risk that the key GHG operations will have a significant adverse impact on petroleum
exploration or recovery under an existing pre-commencement petroleum title, an existing post-commencement production licence, an existing pre-commencement State/Territory petroleum title or an existing post-commencement State/Territory petroleum production title held by a person other than the applicant. In that case, the Minister must not approve the GHG operations unless the existing petroleum titleholder has agreed to the GHG titleholder carrying on the operations.

212. Subsection 321A(12) makes the same provision in relation to a future pre-commencement petroleum exploration permit, retention lease or production licence, or a future pre-commencement State/Territory petroleum exploration title, retention title or production title, except that the relevant agreement must be with the holder of the existing pre-commencement petroleum title over the block or blocks in question.

213. Subsection 321A(13) makes clear that there is no entitlement to an approval under section 321A. The fact of having obtained a holding lease does not ‘guarantee’ that the lessee will be able to carry out any particular operations, for example that an exploration or appraisal well can be drilled in a particular place. A further example of the operation of subsection 321A(13) is that, even if a pre-commencement petroleum titleholder has agreed to the carrying out of the GHG operations that the lessee proposes, the Minister may refuse to give the approval if the agreement contains terms that the Minister considers are contrary to the public interest.

214. A decision of the Minister is not subject to merits review – see discussion at paragraph 101.

215. Subsection 321A(14) provides that, for the purposes of section 321A, a petroleum title is taken to be in force notwithstanding that rights under the title have been suspended under section 266, or a law of a State or Territory that corresponds to section 266.

Item 69: Subsections 322(1) and (2)

216. This item amends section 322 to provide for a special cross-boundary GHG holding lease to remain in force indefinitely. This is consistent with the duration of an “ordinary” special GHG holding lease.

Items 70 to 80: Subsection 322(3) (note 1); Subsection 322(3) (after note 2); Subsection 322(3) (note 3); Subsection 322(3) (note 4); Subsection 322(3) (note 5); Subsection 322(3) (note 5A); Subsection 322(3) (note 6)

217. These items insert new note 2AA and amends existing notes to section 322 to inform the reader of statutory processes under other sections that can affect the duration of a GHG holding lease, including a cross-boundary GHG holding lease.
Items 81 to 84: Section 323 (heading); Section 323 (at the end of the heading); Paragraph 323(1)(a)

218. These items amend section 323 to reflect that that section does not apply to cross-boundary GHG holding leases. An equivalent section 323A is inserted by item 85 to deal with extension of cross-boundary GHG holding leases if the lessee applies for a special cross-boundary GHG holding lease or a cross-boundary GHG injection licence.

Item 85: At the end of Division 1 of Part 3.3

219. This item inserts new section 323A to provide for extension of cross-boundary GHG holding leases if the lessee applies for a special cross-boundary GHG holding lease or a cross-boundary GHG injection licence.

220. The term of the lease is extended as set out in the table in subsection 323A(1). Under table item 3, if the application is for a cross-boundary GHG injection licence and the Cross-boundary Authority refuses to grant the licence for a reason relating to the risk of a significant adverse impact on petroleum operations under a Commonwealth and/or State/Territory petroleum title, the permit continues in force for the period of 90 days after the day on which notice of the refusal is given to the lessee. This provides the lessee with the opportunity to apply for a special cross-boundary GHG holding lease under section 342A (inserted by item 104). The application period for a special cross-boundary GHG holding lease is 90 days beginning on the day on which the lessee was notified of the refusal to grant the injection licence.

221. Subsection 323A(2) provides that this extension is subject to Chapter 3. This means that the lease could, for example, be surrendered or cancelled, in which case it could come to an end earlier than the table indicates.

222. This item also inserts new section 323B to provide that the entirety of the lease area of a cross-boundary GHG holding lease is taken to be in the offshore area of the relevant State or the NT, for all purposes of the OPGGS Act and regulations insofar as they relate to GHG exploration, injection and storage. This includes the part of the lease area that is in State/NT coastal waters. This enables the cross-boundary lease to be effectively regulated under the GHG-related provisions of the OPGGS Act and regulations. The Levies Act will also be amended to apply in the lease area for the purpose of GHG levies. No changes are being made to the petroleum-specific provisions of the OPGGS Act or to any other Commonwealth laws to extend their area of application.
223. These items amend the heading to Subdivision A of Division 2 of Part 3.3 and section 324 to reflect that Subdivision A does not apply to applications for a cross-boundary GHG holding lease. An equivalent Subdivision AA is inserted by item 91 to deal with applications for a cross-boundary GHG holding lease by the holder of a cross-boundary GHG assessment permit.

Item 91: After Subdivision A of Division 2 of Part 3.3

224. This item inserts new Subdivision AA of Division 2 of Part 3.3 to provide for application for a cross-boundary GHG holding lease by the holder of a cross-boundary GHG assessment permit.

225. Generally, the application and decision process for a cross-boundary permit holder to apply for a cross-boundary holding lease is the same as the process for the holder of an ordinary GHG assessment permit to apply for an ordinary GHG holding lease. However, the decision-maker in the case of an application for a cross-boundary lease is the Cross-boundary Authority, and the application must be made to the Titles Administrator.

226. Further, an application for a cross-boundary lease by the holder of a cross-boundary permit must not be made unless the State or Territory in whose coastal waters part of the permit is located has a compatible cross-boundary law (paragraph 329A(1)(c)) – see discussion at paragraphs 37 to 39.

227. For administrative efficiency it is the Titles Administrator that can allow a longer period, after the declaration of identified GHG storage formation by the responsible Commonwealth Minister, for a cross-boundary permittee to apply for a cross-boundary holding lease.

228. New section 329B sets out the criteria for the grant of a cross-boundary lease to the holder of a cross-boundary permit. The criteria is equivalent to that for grant of an ordinary GHG holding lease. The Cross-boundary Authority must be satisfied that the applicant is not, at the time of the application, in a position to inject a GHG substance into the identified GHG storage formation or, in the case of an application in respect of multiple GHG storage formations, into each of the storage formations, but is likely to be in such a position within 15 years. If the Cross-boundary Authority is satisfied of this, the Authority must give the applicant an offer document telling the applicant that the Authority is prepared to grant a GHG holding lease over the block or blocks specified in the application.

229. However, the Cross-boundary Authority cannot offer to grant a cross-boundary lease under section 329B unless the relevant State or NT has consented to the giving of the document. Requiring the consent of the State/NT reduces the risk of an acquisition of property by the Commonwealth other than on just terms contrary to section 51(xxxi)
of the Constitution. The States and the NT have title in seabed below, and space above, coastal waters under the *Coastal Waters (State Titles) Act 1980* and the *Coastal Waters (Northern Territory Title) Act 1980*. Requiring the agreement of the State/NT before offering to grant a cross-boundary lease will ensure that any diminution of the State/NT’s property in the affected area will only ever occur voluntarily.

230. If the Authority is not satisfied as required by section 329B, the Authority must refuse to grant a cross-boundary lease (new section 329C).

231. Under section 322, the duration of a cross-boundary lease granted under this Subdivision is five years (as for an ordinary GHG holding lease).

232. New section 329E provides that when a cross-boundary lease comes into force in relation to one or more blocks, a cross-boundary permit ceases to be in force in relation to that block or those blocks. (The permit will remain in force in relation to any other blocks in the permit area for the remainder of the term of the permit, unless it ceases to be in force for any reason under the OPGGS Act.)

Items 92 to 96: Subdivision B of Division 2 of Part 3.3 (heading); Subdivision B of Division 2 of Part 3.3 (at the end of the heading); Section 330 (heading); Section 330 (at the end of the heading); Paragraph 330(1)(a)

233. These items amend the heading to Subdivision B of Division 2 of Part 3.3 and section 330 to reflect that Subdivision B does not apply to applications for a cross-boundary GHG holding lease. An equivalent Subdivision BA is inserted by item 97 to deal with applications for a cross-boundary GHG holding lease by the holder of a cross-boundary GHG injection licence.

Item 97: After Subdivision B of Division 2 of Part 3.3

234. This item inserts new Subdivision BA of Division 2 of Part 3.3 to provide for application for a cross-boundary GHG holding lease by the holder of a cross-boundary GHG injection licence. The reason why an injection licensee might choose to revert to a GHG holding lease is that if an injection licensee fails to carry out any injection and storage operations in the injection licence area for a continuous period of 5 years, the responsible Commonwealth Minister may cancel the injection licence. Reverting to a holding lease will give the injection licensee more time to secure a supply of GHG substance for injection into the GHG storage formation or formations. The application must be made within five years of the grant of the injection licence.

235. Generally, the application and decision process for a cross-boundary licence holder to apply for a cross-boundary holding lease is the same as the process for the holder of an ordinary GHG injection licence to apply for an ordinary GHG holding lease. However, the decision-maker in the case of an application for a cross-boundary lease
is the Cross-boundary Authority, and the application must be made to the Titles Administrator.

236. Further, an application for a cross-boundary lease by the holder of a cross-boundary licence must not be made unless the State or Territory in whose coastal waters part of the licence is located has a compatible cross-boundary law (paragraph 335A(1)(c)) – see discussion at paragraphs 37 to 39.

237. New section 335B sets out the criteria for the grant of a cross-boundary lease to the holder of a cross-boundary licence. The criteria is equivalent to that for grant of an ordinary GHG holding lease. The Cross-boundary Authority must be satisfied that the applicant is not, at the time of the application, in a position to inject a GHG substance into the identified GHG storage formation, or in the case of an application in respect of multiple GHG storage formations, into each of the storage formations, but is likely to be in such a position within 15 years. If the Cross-boundary Authority is satisfied of this, the Authority must give the applicant an offer document telling the applicant that the Authority is prepared to grant a GHG holding lease over the block or blocks specified in the application.

238. However, the Cross-boundary Authority cannot offer to grant a cross-boundary lease under section 335B unless the relevant State or NT has consented to the giving of the document. Requiring the consent of the State/NT reduces the risk of an acquisition of property by the Commonwealth other than on just terms contrary to section 51(xxxi) of the Constitution. The States and the NT have title in seabed below, and space above, coastal waters under the Coastal Waters (State Titles) Act 1980 and the Coastal Waters (Northern Territory Title) Act 1980. Requiring the agreement of the State/NT before offering to grant a cross-boundary lease will ensure that any diminution of the State/NT’s property in the affected area will only ever occur voluntarily.

239. If the Authority is not satisfied that the applicant is not, at the time of the application, in a position to inject a GHG substance but is likely to be in such a position in 15 years, the Authority must refuse to grant a cross-boundary lease (new section 335C).

240. Under section 322, the duration of a cross-boundary lease granted under this Subdivision is five years (as for an ordinary GHG holding lease).

241. New section 335E provides that when a cross-boundary lease comes into force in relation to one or more blocks, a cross-boundary licence ceases to be in force in relation to that block or those blocks. (The licence will remain in force in relation to any other blocks in the licence area for the remainder of the term of the licence, unless it ceases to be in force for any reason under the OPGGS Act.)
Items 98 to 103: Subdivision C of Division 2 of Part 3.3 (heading); Subdivision C of Division 2 of Part 3.3 (at the end of the heading); Section 336 (heading); Section 336 (at the end of the heading); Subparagraph 336(1)(a)(i); Subparagraph 336(1)(a)(ii)

242. These items amend the heading to Subdivision C of Division 2 of Part 3.3 and section 336 to reflect that Subdivision C does not apply to applications for a special cross-boundary GHG holding lease. An equivalent Subdivision CA is inserted by item 104 to deal with applications for a special cross-boundary GHG holding lease by an unsuccessful applicant for a cross-boundary GHG injection licence.

Item 104: After Subdivision C of Division 2 of Part 3.3

243. This item inserts new Subdivision CA of Division 2 of Part 3.3 to provide for application for a special cross-boundary GHG holding lease by an unsuccessful applicant for a cross-boundary GHG injection licence.

244. Generally, the application and decision process for an unsuccessful applicant for a cross-boundary licence to apply for a special cross-boundary holding lease is the same as the process for an unsuccessful applicant for an ordinary GHG injection licence to apply for an ordinary special GHG holding lease. However, the decision-maker in the case of an application for a special cross-boundary lease is the Cross-boundary Authority, and the application must be made to the Titles Administrator.

245. Further, an application for a special cross-boundary lease, by a cross-boundary assessment permit holder or cross-boundary holding lease holder that is an unsuccessful applicant for a cross-boundary licence, must not be made unless the State or Territory in whose coastal waters part of the permit or lease is located has a compatible cross-boundary law (paragraph 342A(1)(c)) – see discussion at paragraphs 37 to 39.

246. As in the case of an application for an ordinary special GHG holding lease, if an application has been made for a special cross-boundary holding lease under section 342A, the Cross-boundary Authority must offer to grant the lease (new section 342B). However, the Authority cannot offer to grant the lease under section 342B unless the relevant State or NT has consented to the giving of the document. Requiring the consent of the State/NT reduces the risk of an acquisition of property by the Commonwealth other than on just terms contrary to section 51(xxxi) of the Constitution. The States and the NT have title in seabed below, and space above, coastal waters under the Coastal Waters (State Titles) Act 1980 and the Coastal Waters (Northern Territory Title) Act 1980. Requiring the agreement of the State/NT before offering to grant a special cross-boundary lease will ensure that any diminution of the State/NT’s property in the affected area will only ever occur voluntarily.

247. Under section 322, a special cross-boundary lease granted under this Subdivision remains in force indefinitely (as for an ordinary special GHG holding lease).

248. New sections 342D and 342E respectively provide that when a special cross-boundary lease comes into force in relation to one or more blocks, a cross-boundary
assessment permit or cross-boundary holding lease (as applicable) ceases to be in force in relation to that block or those blocks. (The permit or lease will remain in force in relation to any other blocks in the permit or lease area for the remainder of the term of the permit or lease, unless it ceases to be in force for any reason under the OPGGS Act.)

Item 105: Before section 347

249. This item inserts a new subdivision heading in Division 3 of Part 3.3, to differentiate the provisions previously in that Division, which relate to renewal of an ordinary GHG holding lease, from the provisions in new Subdivision B (inserted by item 108), which relate to renewal of a cross-boundary GHG holding lease.

Items 106 and 107: Section 347 (at the end of the heading); Before subsection 347(1)

250. These items amend section 347 to reflect that that section does not apply to cross-boundary GHG holding leases. An equivalent section 350A is inserted by item 108 to deal with renewal of cross-boundary GHG holding leases.

Item 108: At the end of Division 3 of Part 3.3

251. This item inserts new Subdivision B of Division 3 of Part 3.3 to provide for renewal of cross-boundary GHG holding leases.
252. Generally, the application and decision process for renewal of a cross-boundary lease is the same as the process for renewal of an ordinary GHG holding lease. However, the decision-maker in the case of an application for renewal of a cross-boundary lease is the Cross-boundary Authority, and the application must be made to the Titles Administrator.
253. Further, an application to renew a cross-boundary lease must not be made unless the State or Territory in whose coastal waters part of the lease is located has a compatible cross-boundary law (subsection 350A(2)) – see discussion at paragraphs 37 to 39.
254. The criteria for a decision of the Cross-boundary Authority in relation to whether to grant a renewal of a cross-boundary lease are the same as for renewal of an ordinary GHG holding lease. If the applicant has, during the term of the initial lease, complied with the conditions of the initial lease and the applicable provisions of the OPGGS Act and the regulations, and if the Cross-boundary Authority is satisfied that the applicant is not, at the time of the application, in a position to inject a GHG substance into the identified GHG storage formation or formations, but is likely to be in a position to do so within 10 years, the Authority must give the applicant an offer document (subsection 350B(2)).
255. If any of the conditions of the initial lease or the applicable provisions of the OPGGS Act and the regulations have not been complied with, but the Authority is satisfied that there are sufficient grounds to warrant the grant of the renewal of the
lease, and the Authority is also satisfied as set out above in relation to injection of 
GHG into the storage formation, the Authority may give the applicant an offer 
document (subsection 350B(3)).

256. However, the Cross-boundary Authority cannot offer to grant a renewal of a cross-
boundary lease under subsection 350B(2) unless the relevant State or NT has 
consented to the giving of the document. Further, under subsection 76D(2) (inserted 
by item 23), the Cross-boundary Authority cannot offer to grant a renewal of a cross-
boundary lease under subsection 350B(3) unless both the Commonwealth and the 
State or NT member of the Authority agree. A consensus decision reduces the risk of 
an acquisition of property by the Commonwealth other than on just terms contrary to 
section 51(xxxi) of the Constitution. The States and the NT have title in seabed below, 
and space above, coastal waters under the Coastal Waters (State Titles) Act 1980 and 
the Coastal Waters (Northern Territory Title) Act 1980. Requiring the agreement of 
the State/NT before offering to grant a renewal of a cross-boundary lease will ensure 
that any diminution of the State/NT’s property in the affected area will only ever 
occur voluntarily.

257. New section 350C sets out the circumstances in which the Authority must refuse 
to grant a renewal of a cross-boundary lease. Subsection 350C(2) provides that, if any of 
the conditions of the initial lease or the applicable provisions of the OPGGS Act or 
the regulations have not been complied with, and the Authority is not satisfied that 
there are sufficient grounds to warrant the grant of the renewal of the lease, the 
Authority must refuse to renew the lease. Subsection 350C(3) provides that, if the 
Authority is satisfied that the applicant is, at the time of the application, in a pos 
tition to inject and store a GHG substance into the identified GHG storage formation or 
formations, the Authority must refuse to renew the lease.

258. To ensure procedural fairness, consultation procedures apply under new section 
434A (inserted by item 165) before the Cross-boundary Authority refuses to renew a 
cross-boundary lease.

259. A decision of the Authority whether or not to grant a renewal of a cross-boundary 
lease is not subject to merits review – see discussion at paragraph 62. In some cases, 
the Authority must grant a renewal if certain conditions are met.

260. Under section 322, the duration of a renewed cross-boundary lease is five years (as 
for an ordinary GHG holding lease). A GHG holding lease, including a cross-
boundary lease, can only be renewed once.

Item 109: After Division 5 of Part 3.3

261. This item inserts new Division 5A of Part 3.3, to provide for the holder of a special 
cross-boundary GHG holding lease to be requested to apply for a cross-boundary 
GHG injection licence. The new Division is equivalent to Division 5 of Part 3.3, 
which provides for the holder of an ordinary special GHG holding lease to be 
requested to apply for an ordinary GHG injection licence. However, under Division 
5A it is the Cross-boundary Authority that has the ability to request the special cross-
boundary lessee to apply for the cross-boundary licence, and may cancel the lease if the lessee does not comply with the request.

Item 110: At the end of section 355

262. This item inserts notes at the end of the simplified outline of Part 3.4 to draw the reader’s attention to new sections 295B (inserted by item 46) and 323B (inserted by item 85). Section 295B provides for the permit area of a cross-boundary GHG assessment permit, which includes an area located in State/NT coastal waters, to be taken to be included in the offshore area for the purposes of the OPGGS Act. Section 323B provides for the lease area of a cross-boundary GHG holding lease, which includes an area located in State/NT coastal waters, to be taken to be included in the offshore area for the purposes of the OPGGS Act.

263. If the holder of a cross-boundary permit or a cross-boundary lease applies for and is granted a cross-boundary GHG injection licence, the licence area will also include an area located in State/NT coastal waters. This area is taken to be included in the offshore area through the operation of new section 360A (inserted by item 117).

Items 111 to 113: Section 358 (at the end of the heading); Before subsection 358(1); After subsection 358(13)

264. These items amend section 358 to reflect that that section does not apply to cross-boundary GHG injection licences. An equivalent section 358A is inserted by item 114 to deal with conditions of cross-boundary GHG injection licences.

Item 114: After section 358

265. This item inserts new section 358A, which provides for grant of a cross-boundary GHG injection licence to be subject to whatever conditions the Cross-boundary Authority thinks appropriate. Conditions must be specified in the licence, except for certain conditions imposed by the section itself, which do not have to be specified in the licence.

266. Subsection 358A(3) imposes the condition that gives effect to the fundamental suitability determinants and other matters specified in the declaration of identified GHG storage formation. The condition requires the licensee to carry out injection and storage operations under the licence consistently with the specifications in the declaration. Subsection 358A(4) is the provision that ‘staples’ the licence to the declaration of identified GHG storage formation. It requires that the matters specified in the licence not be inconsistent with the fundamental suitability determinants in the declaration.

267. Although the condition in subsection 358A(3) is imposed by that subsection, it is required to be set out in the licence (new subsection 358A(8)), including the particular specifications for each GHG storage formation. This means that the particular
specifications for each GHG storage formation in a licence area will be publicly available because they will appear in the Register of GHG titles.

268. A licensee who is unable to fully comply in relation to a storage formation in a licence area will be able to seek a variation of the declaration that was made in relation to the storage formation. If the responsible Commonwealth Minister is prepared to make the variation, the licence will also be varied so the two instruments are consistent.

269. Subsection 358A(9) makes it a statutory condition of a licence that if the Minister at any time under section 454 requires the licensee to provide security, or to top-up any security previously provided, the licensee will provide the security or additional security.

270. Part IIA of the *Competition and Consumer Act 2010* establishes a regime of compulsory third party access to services provided by means of infrastructure facilities. The question whether that regime is applicable to a particular identified GHG storage formation, or infrastructure used for injection and storage operations or related operations, would have to be answered in light of the particular circumstances of the injection and storage project. If, for any reason, Part IIA did not apply to injection and storage infrastructure, it might be considered desirable to establish a specialised third party access regime by regulations under the OPGGS Act. Subsections 358A(10) and (11) make it a statutory condition of a licence that the licensee will comply with such a regime. However, in the case of a cross-boundary licence, the regime established by regulations does not apply to an identified GHG storage formation unless the formation is wholly situated in the licence area (subsection 358A(12)).

271. Subsection 358A(13) enables the Authority to vary a licence by imposing one or more additional conditions.

272. Subsection 358A(19) provides that the matters with respect to which the Cross-boundary Authority can impose conditions are not limited by subsections 358A(3), (9) and (10).

Items 115 and 116: Subsection 359(2) (note 1)

273. These items amend note 1 to subsection 359(2) to include a reference to new section 335E (inserted by item 97).

Item 117: At the end of Division 1 of Part 3.4

274. This item inserts new section 360A to provide that the entirety of the licence area of a cross-boundary GHG injection licence is taken to be in the offshore area of the relevant State or the NT, for all purposes of the OPGGS Act and regulations insofar as they relate to GHG exploration, injection and storage. This includes the part of the licence area that is in State/NT coastal waters. This enables the cross-boundary licence to be effectively regulated under the GHG-related provisions of the OPGGS Act.
Act and regulations. The Levies Act will also be amended to apply in the licence area for the purpose of GHG levies. No changes are being made to the petroleum-specific provisions of the OPGGS Act or to any other Commonwealth laws to extend their area of application.

Items 118 to 125: Subdivision A of Division 2 of Part 3.4 (heading); Subdivision A of Division 2 of Part 3.4 (at the end of the heading); Section 361 (heading); Section 361 (at the end of the heading); Paragraph 361(1)(a)

275. These items amend the heading to Subdivision A of Division 2 of Part 3.4 and section 361 to reflect that Subdivision A does not apply to applications for a cross-boundary GHG injection licence. An equivalent Subdivision AA is inserted by item 126 to deal with applications for a cross-boundary GHG injection licence by the holder of a cross-boundary GHG assessment permit or a cross-boundary GHG holding lease.

Item 126: After Subdivision A of Division 2 of Part 3.4

276. This item inserts new Subdivision AA of Division 2 of Part 3.4 to provide for application for a cross-boundary GHG injection licence by the holder of a cross-boundary GHG assessment permit or a cross-boundary GHG holding lease.

277. Generally, the application and decision process for the holder of a cross-boundary permit or cross-boundary lease to apply for a cross-boundary injection licence is the same as the process for the holder of an ordinary GHG assessment permit or ordinary GHG holding lease to apply for an ordinary GHG injection licence. However, the decision-maker in the case of an application for a cross-boundary licence is the Cross-boundary Authority, and the application must be made to the Titles Administrator.

278. Further, an application for a cross-boundary licence by the holder of a cross-boundary permit or cross-boundary lease must not be made unless the State or Territory in whose coastal waters part of the permit or lease is located has a compatible cross-boundary law (paragraph 368A(1)(c)) – see discussion at paragraphs 37 to 39.

279. New subsections 368B(1) and (2) set out the criteria for the grant of a cross-boundary licence to the holder of a cross-boundary permit or a cross-boundary lease respectively. The criteria are, for the most part, equivalent to those for grant of an ordinary GHG injection licence. The criteria relate primarily to the responsible Commonwealth Minister’s satisfaction in relation to the potential for significant adverse impacts on existing and future petroleum operations. However, in the case of a cross-boundary title, the impacts that are taken into account include impacts on existing and future petroleum operations under State/Territory petroleum titles, as well as under Commonwealth petroleum titles.

280. Broadly, the same levels of protection are applied as is the case when the Minister approves key GHG operations. For existing post-commencement Commonwealth
petroleum exploration permits and retention leases, existing post-commencement State/Territory petroleum exploration titles and retention titles, future post-commencement Commonwealth petroleum production licences and future post-commencement State/Territory petroleum production titles, the public interest test is applied (paragraphs 368B(1)(c) and (2)(c)).

281. For pre-commencement Commonwealth titles, pre-commencement State/Territory petroleum titles, existing Commonwealth petroleum production licences and existing State/Territory petroleum production titles, the petroleum titleholder must have agreed in writing to the grant of the cross-boundary licence, and the agreement either have been approved as a dealing under Part 4.6 of the OPGGS Act or a law of a State/Territory that corresponds to Part 4.6 of the OPGGS Act, or is reasonably likely to be so approved (paragraphs 368B(1)(d), (e), (f) and (g) and (2)(d), (e), (f) and (g)). In the case of a State/Territory petroleum title, the provisions provide for the State/Territory GHG storage administrator to notify the Minister that a dealing is reasonably likely to be approved. Item 17 inserts a definition of “State/Territory greenhouse gas storage administrator” – see discussion at paragraph 47.

282. Under paragraph 368B(1)(h) or (2)(h), a special test is applied where the proposed injection licence area overlaps the title area of a pre-commencement Commonwealth petroleum exploration permit or retention lease, a pre-commencement State/Territory petroleum exploration title or retention title, a Commonwealth petroleum production licence or a State/Territory petroleum production title. If there is known to be petroleum in the area of the overlap for which recovery is currently commercially viable, or is likely to become commercially viable within 15 years, the Minister must be satisfied that there is no significant risk of a significant adverse impact on operations to recover the petroleum. The difference in this case is that the petroleum titleholder cannot agree to the grant of the injection licence where there is a risk to the petroleum. The public interest in the development of the petroleum resource is paramount.

283. Other criteria include that the Cross-boundary Authority must be satisfied the applicant will commence injection and storage operations within five years (paragraphs 368B(1)(b) and (2)(b)), the Minister must be satisfied that the applicant’s technical and financial resources are adequate (paragraphs 368B(1)(i) and (2)(i)), and the Minister must be satisfied that the draft site plan satisfies the criteria specified in the regulations (paragraphs 368B(1)(j) and (2)(j)). If the criteria are met, the Authority must give the applicant an offer document telling the applicant that the Authority is prepared to grant a GHG injection licence over the block or blocks specified in the application.

284. However, the Authority cannot offer to grant a cross-boundary licence under section 368B unless the relevant State or NT has consented to the giving of the document. Requiring the agreement of the State/NT reduces the risk of an acquisition of property by the Commonwealth other than on just terms contrary to section 51(xxxi) of the Constitution. The States and the NT have title in seabed below, and space above, coastal waters under the Coastal Waters (State Titles) Act 1980 and the Coastal Waters (Northern Territory Title) Act 1980. Requiring the agreement of the State/NT
before offering to grant a cross-boundary licence will ensure that any diminution of the State/NT’s property in the affected area will only ever occur voluntarily.

285. Under section 359, the cross-boundary licence will remain in force indefinitely (as for an ordinary GHG injection licence).

286. If the criteria in section 368B are not satisfied, the Authority must refuse to grant a cross-boundary licence (new section 368C).

287. Section 368E deals with the situation where an application is made for a cross-boundary licence and, at the time when the application is made, there is already an application for a post-commencement Commonwealth petroleum exploration permit being considered by the Joint Authority, or an application for a post-commencement State/Territory petroleum exploration title being considered by the responsible State Minister or responsible NT Minister. In such a case, the Cross-boundary Authority’s decision-making process may be different according to whether the petroleum exploration permit or State/Territory petroleum exploration title is, or is not, in existence at the time when the decision on the licence is made. The section provides that the Cross-boundary Authority may make a decision in the public interest to defer the decision on the grant of the licence until the decision on the petroleum exploration permit or State/Territory petroleum production title has been finalised by one means or another.

288. New section 368F provides that when a cross-boundary licence comes into force in relation to one or more blocks, a cross-boundary permit or cross-boundary lease ceases to be in force in relation to that block or those blocks. (The permit or lease will remain in force in relation to any other blocks in the permit area or lease for the remainder of the term of the permit or lease, unless it ceases to be in force for any reason under the OPGGS Act.)

Items 127 and 128: Section 374 (heading); Subsection 374(1)

289. These items amend section 374 to reflect that that section does not apply to cross-boundary GHG injection licences. An equivalent section 374A is inserted by item 129 to deal with variation of matters specified in cross-boundary GHG injection licences.

Item 129: After section 374

290. This item inserts new section 374A to provide for variation of matters specified in a cross-boundary GHG injection licence.

291. Generally, the variation process is the same as for variation of matters specified in an ordinary GHG injection licence, including that the decision-maker in both cases is the responsible Commonwealth Minister. The main difference between new section 374A and section 374 is that section 374A refers to the matters specified in paragraphs 358A(3)(c) to (k) (inserted by item 114 and relevant to cross-boundary licences), rather than paragraphs 358(3)(c) to (k). Further, subsection 374(4A) is not replicated.
in section 374A, as there is no provision for a cross-boundary licence to be granted to the holder of a petroleum production licence.

292. If the Minister varies the licence, the varied matter must not be inconsistent with the fundamental suitability determinants in the declaration of the identified GHG storage formation. The effect of this requirement is that if a licensee wishes to vary a matter in the licence in a way that would make the licence inconsistent with the fundamental suitability determinants in the declaration of the identified GHG storage formation, the licensee will have to seek a variation to the declaration.

293. A decision of the Minister whether or not to grant a variation of matters specified in a cross-boundary licence is not subject to merits review. Although the decision is made by the Minister, rather than the Cross-boundary Authority, similar considerations apply as discussed at paragraph 62.

Item 130: Paragraph 375(1)(a)

294. This item amends paragraph 375(1)(a) to include reference to new section 312A (inserted by item 58), which provides for declaration of an identified GHG storage formation under a cross-boundary GHG assessment permit.

Items 131 to 133: Paragraph 375(1)(c); Subsection 375(2); Paragraphs 376(4)(b) and (9)(b)

295. These items amend paragraphs 375(1)(c), 376(4)(b) and (9)(b) and subsection 375(2) to include reference to new paragraphs 358A(3)(c) to (k) (inserted by item 114), which provides for conditions of cross-boundary GHG injection licences.

Items 134 and 135: Section 377 (heading); Paragraph 377(1)(b)

296. These items amend section 377 to ensure that section applies if the responsible Commonwealth Minister proposes to give a direction under section 376 that requires a GHG injection licensee to do something, whether inside or outside the licence area. Previously, section 377 only applied where the Minister proposed to give a direction that required the licensee to do something outside the licence area. However, it is possible that a licence area may overlap a petroleum title area. In such a case, the relevant petroleum titleholder should also be required to be consulted before a direction is given.

Items 136 to 140: Subparagraph 377(1)(c)(viii); At the end of paragraph 377(1)(c); Paragraphs 377(1)(d) and (e); Paragraph 377(2)(a); Paragraph 377(5)(b)

297. These items amend section 377 to ensure that section also applies if the responsible Commonwealth Minister proposes to give a direction under section 376 that requires a GHG injection licensee to take an action in an area that is the subject of a State/Territory petroleum title, and the holder of that title is not the GHG licensee and
has not given consent to the giving of the direction. In the case of a cross-boundary GHG injection licence, a direction may be given that requires action in an area that overlaps a State/Territory petroleum title. In such a case, the relevant petroleum titleholder should be consulted before a direction is given.

**Item 141: Subsection 379(2) (note)**

298. This item amends the note to subsection 379(2) to include reference to new subsection 358A(3) (inserted by item 114), which provides for conditions of cross-boundary GHG injection licences.

**Item 142: Paragraphs 380(6)(b) and (11)(b)**

299. This item amends paragraphs 380(6)(b) and (11)(b) to include reference to new paragraphs 358A(3)(c) to (k) (inserted by item 114), which provides for conditions of cross-boundary GHG injection licences.

**Items 143 to 146: Subparagraph 383(1)(a)(iii); At the end of paragraph 383(1)(a); Paragraph 383(1)(e); After paragraph 383(1)(e)**

300. These items amend subsection 383(1) to enable the responsible Commonwealth Minister to protect petroleum discoveries in the title area of pre-commencement State/Territory petroleum titles. In the case of a cross-boundary GHG injection licence, the licence area may overlap, in whole or in part, the title area of a pre-commencement State/Territory petroleum title. If the Minister is satisfied that there is a significant risk that injection and storage operations under the injection licence will have a significant adverse impact on recovery of petroleum discovered in the area of overlap and is satisfied that it is practicable to eliminate the risk, and the petroleum titleholder has not agreed to the injection and storage operations going ahead, the Minister must give a direction to the injection licensee for the purpose of eliminating the risk, or suspend any or all of the rights under the injection licence or cancel the injection licence.

**Items 147 to 150: Subparagraph 383(3)(a)(iii); At the end of paragraph 383(3)(a); Paragraph 383(3)(e); After paragraph 383(3)(e)**

301. These items amend subsection 383(3) to enable the responsible Commonwealth Minister to protect petroleum discoveries in the title area of pre-commencement State/Territory petroleum titles. In the case of a cross-boundary GHG injection licence, the licence area may overlap, in whole or in part, the title area of a pre-commencement State/Territory petroleum title. If the Minister is satisfied that there is a significant risk that injection and storage operations under the injection licence will have a significant adverse impact on recovery of petroleum discovered in the area of
overlap and is satisfied that it is not practicable to eliminate the risk, and the petroleum titleholder has not agreed to the injection and storage operations going ahead, the Minister must give a direction to the injection licensee for the purpose of mitigating, managing or remediating the risk, or suspend any or all of the rights under the injection licence or cancel the injection licence.

Item 151: Paragraphs 383(6)(b) and (11)(b)

302. This item amends paragraphs 383(6)(b) and (11)(b) to include reference to new paragraphs 358A(3)(c) to (k) (inserted by item 114), which provides for conditions of cross-boundary GHG injection licences.

Items 152 to 156: Paragraph 429(1)(a); Paragraph 429(1)(b); Paragraph 429(1)(c); After paragraph 429(1)(c)

303. These items amend subsection 429(1) to clarify the applications in relation to which the responsible Commonwealth Minister may require further information.

304. The Minister will not have the ability to require further information in relation to an application for the grant or renewal of a cross-boundary GHG assessment permit, the grant or renewal of a GHG cross-boundary holding lease or the grant of a cross-boundary GHG injection licence, as decisions in relation to these applications are made by the Cross-boundary Authority. New section 429A (inserted by item 157) will enable the Titles Administrator to require further information in relation to these applications.

305. The Minister will have the ability to seek information in relation to the variation of a GHG injection licence, including a cross-boundary GHG injection licence. This is because it is the Minister that makes a decision in relation to variation of a licence, including a cross-boundary licence – see new section 374A (inserted by item 129).

Item 157: After section 429

306. This item inserts new section 429A, which provides the Titles Administrator with a power to require further information in relation to an application for the grant or renewal of a cross-boundary GHG assessment permit, the grant or renewal of a GHG cross-boundary holding lease or the grant of a cross-boundary GHG injection licence. This power could be used more than once in connection with any particular application.

307. If the person who is required to provide additional information does not do so, the Cross-boundary Authority may refuse to consider, or take any further action in relation to, the application.
Item 158: Paragraphs 430(2)(b) and (4)(b)

308. This item amends paragraphs 430(2)(b) and (4)(b) to include reference to new section 431A (inserted by item 161), which provides the procedure and timeframe for an applicant for a cross-boundary title to accept an offer relating to grant of the title.

Items 159 and 160: Section 431 (at the end of the heading); Before subsection 431(1)

309. These items amend section 431 to reflect that that section does not apply to cross-boundary GHG titles. An equivalent section 431A is inserted by item 161 to deal with the procedure and timeframe for an applicant for a cross-boundary title to accept an offer relating to grant of the title.

Item 161: After section 431

310. This item inserts new section 431A to deal with the procedure and timeframe for an applicant for a cross-boundary GHG title to accept an offer relating to grant of the title.

311. The procedure is generally the same as the procedure and timeframe for accepting an offer for an ordinary GHG title. However, the applicant for a cross-boundary title would give written notice to the Titles Administrator to request the Cross-boundary Authority to grant the title. Further, it is the Titles Administrator that may allow a longer period for the applicant for a cross-boundary GHG holding lease or a cross-boundary GHG injection licence to request the Authority to grant the title.

312. If the applicant does not accept the offer within the relevant timeframe, or pay a security if one is required, the application lapses (subsection 431A(4) and section 433).

Item 162: Paragraph 433(b)

313. This item amends paragraph 433(b) to include reference to new section 431A (inserted by item 161), which provides the procedure and timeframe for an applicant for a cross-boundary title to accept an offer relating to grant of the title.

Item 163: Section 434 (at the end of the heading)

314. This item amends the heading to section 434 to differentiate it from new section 434A (inserted by item 165), which provides for consultation prior to making certain adverse decisions in relation to cross-boundary GHG titles. Section 434 applies to decisions of the responsible Commonwealth Minister, whereas section 434A applies to decisions of the Cross-boundary Authority.
Item 164: Section 434 (at the end of the cell at table item 3, column 1)

315. This item amends table item 3 in subsection 434(1) to include reference to new section 374A (inserted by item 129), which provides for variation of matters specified in a cross-boundary GHG injection licence. As the responsible Commonwealth Minister is the decision-maker under this section, consultation in advance of making an adverse decision is covered by section 434.

Item 165: After section 434

316. This item inserts new section 434A, which provides for consultation prior to making certain adverse decisions in relation to cross-boundary GHG titles.
317. The consultation process is the same as the consultation process set out in section 434, however it is the Cross-boundary Authority that undertakes the consultation as it is the Authority that is the relevant decision-maker for the decisions listed in the table in subsection 434A(1). The consultation process requires the Authority to advise the applicant of the Authority’s reasons for the proposed refusal, and to take into account any submissions that the applicant makes to the Authority in relation to the proposed refusal. The section also provides for consultation with other relevant persons. This could include, for example, contractors of the titleholder who carry out operations in the title area.

Item 166: Paragraph 435(1)(a)

318. This item amends paragraph 435(1)(a) to include reference to new subsection 292A(1) (inserted by item 31), which provides for approval by the responsible Commonwealth Minister of key GHG operations carried on under a cross-boundary GHG assessment permit.

Item 167: Paragraph 435(1)(b)

319. This item amends paragraph 435(1)(b) to include reference to new subsection 321A(1) (inserted by item 68), which provides for approval by the responsible Commonwealth Minister of key GHG operations carried on under a cross-boundary GHG holding lease.

Item 168: After paragraph 435(1)(c)

320. This item inserts new paragraph 435(1)(ca) to ensure that section 435 applies to applications made under section 368A for the grant of a cross-boundary GHG injection licence.
Item 169: Before section 436

321. This item inserts a new subdivision heading in Division 1 of Part 3.9, to differentiate the provisions previously in that Division, which relate to variation, suspension and exemption decisions relating to ordinary GHG assessment permits, ordinary GHG holding leases and ordinary GHG injection licences, from the provisions in new Subdivision B (inserted by item 173), which relate to cross-boundary titles.

Item 170: Before subsection 436(1)

322. This item inserts a new subsection 436(1A) to clarify that section 436 does not apply to cross-boundary GHG titles.

Item 171: Subsection 436(1) (after table item 4)

323. This item inserts new table item 4AA in subsection 436(1) to provide that the conditions of a GHG assessment permit may be the subject of a variation, suspension or exemption when the permit is taken to continue in force until the responsible Commonwealth Minister grants, or refuses to grant, a consolidated work-bid GHG assessment permit.

Item 172: Before subsection 437A(1)

324. This item inserts new subsection 437A(1A) to clarify that section 437A does not apply to cross-boundary GHG titles.

Item 173: At the end of Division 1 of Part 3.9

325. This item inserts new Subdivision B of Division 1 of Part 3.9 to provide for variation, suspension and exemption in relation to the conditions of cross-boundary GHG titles.

326. The circumstances and process for variation, suspension and exemption in relation to conditions of cross-boundary titles are generally the same as for variation, suspension and exemption in relation to ordinary GHG assessment permits, ordinary GHG holding leases and ordinary GHG injections leases. However, under table item 1 of new subsection 439A(1), the cross-boundary permittee, lessee or licensee can apply to the Cross-boundary Authority (rather than the responsible Commonwealth Minister) for a variation or suspension of conditions, or exemption from compliance with conditions.

327. Further, it is the Authority that can vary, suspend or exempt the titleholder from compliance with any of the conditions to which the cross-boundary title is subject under new subsection 439A(3). If the Authority refuses an application made under
table item 1 of subsection 439A(1), the Authority must give written notice of the refusal under new subsection 439A(5).

328. Under new section 439B, the Authority may extend the term of a cross-boundary GHG assessment permit or a cross-boundary GHG holding lease if the Authority decides to suspend any of the conditions to which the permit or lease is subject.

329. A decision of the Authority to vary, suspend or exempt a titleholder from compliance with conditions, or to extend the term of a title, is not subject to merits review – see discussion at paragraph 62.

Item 174: After subsection 442(7)

330. This item inserts new subsection 442(7A) to require the responsible Commonwealth Minister to consult with the responsible State Minister or responsible NT Minister (as applicable) before making a decision to consent, or refuse to consent, to the surrender of a cross-boundary GHG title on the ground of non-compliance with a title condition, or on grounds that include non-compliance with a title condition. Conditions of cross-boundary titles are matters within the purview of the Cross-boundary Authority.

331. The other surrender criteria in section 442 relate to the satisfactoriness or otherwise of the state in which the title area is going to be left. These are regulatory matters and are concerns of the Commonwealth, noting that the Commonwealth will assume long-term civil liability for the whole cross-boundary storage operation and any other operations wholly within the cross-boundary title area.

Item 175: Subparagraphs 446(e)(i) and (ii) and (f)(i) and (ii)

332. This item amends subparagraphs 446(e)(i) and (ii) and (f)(i) and (ii) to include reference to a declaration of identified GHG storage formation in force under section 312A (inserted by item 58).

Item 176: At the end of section 447

333. This item inserts new subsection 447(4) to require the responsible Commonwealth Minister to consult with the responsible State Minister or responsible NT Minister (as applicable) before making a decision to cancel a cross-boundary GHG title on the ground of non-compliance with a title condition, or on grounds that include non-compliance with a title condition. Conditions of cross-boundary titles are matters within the purview of the Cross-boundary Authority.

334. The other grounds for cancellation of title in section 447 are regulatory matters and are concerns of the Commonwealth.
Item 177: After section 451

335. This item inserts new section 451A to provide for notification of an eligible GHG storage formation that is a cross-boundary formation. The term ‘eligible GHG storage formation’ has the meaning given by section 21 of the OPGGS Act.

336. The purpose of this section is to provide a mechanism for an intending applicant for a cross-boundary GHG assessment permit under section 307A to satisfy the requirement that, as the holder of the relevant Commonwealth and State/NT GHG titles, the applicant has informed the responsible Commonwealth Minister that a part of a geological formation is wholly situated within the areas of the Commonwealth assessment permit and the State/Territory assessment title, that the part extends into both title areas, and the titleholder has reasonable grounds to suspect that the part could be an eligible GHG storage formation. See new paragraph 307A(1)(d) (inserted by item 49).

337. Unlike notification of an eligible GHG storage formation under section 451, notification of an eligible GHG storage formation that is a cross-boundary formation is not mandatory. A notification is only needed if the titleholder wishes to apply for a cross-boundary permit over the formation. There is no mandatory requirement to apply for a cross-boundary permit, therefore there is no requirement to provide a notification of an eligible GHG storage formation that is a cross-boundary formation.

338. This item also inserts new section 451B to provide for notification of an eligible GHG storage formation that extends across two adjacent Commonwealth work-bid GHG assessment permits.

339. The purpose of this section is to provide a mechanism for an intending applicant for a consolidation of the two adjacent permits under section 302A to satisfy the requirement that the applicant has informed the Minister that a part of a geological formation is wholly situated within the permit areas of the two permits, that the part extends into both permit areas, and the permittee has reasonable grounds to suspect that the part could be an eligible GHG storage formation. See new paragraph 302A(1)(f) (inserted by item 48).

340. Unlike notification of an eligible GHG storage formation under section 451, notification of an eligible GHG storage formation that extends across two adjacent permits is not mandatory. A notification is only needed if the titleholder wishes to apply for a consolidated work-bid GHG assessment permit over the formation. There is no mandatory requirement to apply for a consolidated permit, therefore there is no requirement to provide a notification of an eligible storage formation that extends across two permit areas.

Item 178: At the end of section 458

341. This item inserts new subsections 458(3) and (4) to expressly clarify that a cross-boundary GHG title may be granted in respect of the whole or part of an area of a State/Territory petroleum title that is in force. Similarly, a State/Territory petroleum
title may be granted in respect of the whole or part of an area of a cross-boundary GHG title that is in force.

Item 179: Section 461

342. This item amends section 461 to ensure that there can be no condition in a GHG title requiring payment to the Cross-boundary Authority. The provision ensures that title conditions cannot be used to impose cost recovery or taxation on titleholders.

Item 180: After section 461

343. This item inserts new section 461A to provide that a State/Territory block (see definition inserted by item 11) that is included in the area of a cross-boundary GHG title is taken to be a block for the purposes of the OPGGS Act. Therefore, any reference to a “block” in provisions of the OPGGS Act will, where applicable, include a reference to the State/Territory block.

Items 181 and 182: Section 594 (heading); Paragraph 594(1)(b)

344. These items amend section 594 to ensure that section applies if the responsible Commonwealth Minister proposes to give a direction under section 593 that requires a GHG injection licensee to do something, whether inside or outside the licence area. Previously, section 594 only applied where the Minister proposed to give a direction that required the licensee to do something outside the licence area. However, it is possible that a licence area may overlap a petroleum title area. In such a case, the relevant petroleum titleholder should also be required to be consulted before a direction is given.

Items 183 to 187: Subparagraph 594(1)(c)(viii); At the end of paragraph 594(1)(c); Paragraphs 594(1)(d) and (e); Paragraph 594(2)(a); Paragraph 594(5)(b)

345. These items amend section 594 to ensure that section also applies if the responsible Commonwealth Minister proposes to give a direction under section 593 that requires a GHG injection licensee to take an action in an area that is the subject of a State/Territory petroleum title, and the holder of that title is not the GHG licensee and has not given consent to the giving of the direction. In the case of a cross-boundary GHG injection licence, a direction may be given that requires action in a part of the licence area that geographically overlaps State/NT waters and therefore a State/Territory petroleum title. In such a case, the relevant petroleum titleholder should be consulted before a direction is given.
Item 188: Subsection 661B(2) (table item 1, column headed “is an authorised applicant in relation to the following civil penalty provisions in this Act (to the extend indicated) …”, after paragraph (c))

346. This item provides that the responsible Commonwealth Minister is an authorised applicant, for the purposes of the Regulatory Powers (Standard Provisions) Act 2014, in relation to the new civil penalty provision in subsection 733B(5) (inserted by item 196). If the Minister considers that a person has contravened subsection 733B(5), the Minister will have the power to apply to a court for an order that the person pay a pecuniary penalty.

Item 189: Subsection 661J(2) (table item 1, column headed “is an authorised person in relation to the following provisions in this Act (to the extend indicated) …”, after paragraph (h))

347. This item makes new subsections 733B(4) and (5) (inserted by item 196) enforceable by injunction under Part 7 of the Regulatory Powers (Standard Provisions) Act 2014. It also provides that the responsible Commonwealth Minister is the authorised applicant who will be able to apply to a court for an injunction in relation to a contravention of those provisions.

Item 190: Section 643 (at the end of the definition of offshore greenhouse gas storage operations, after paragraph (c))

348. The note at the end of subsection 442(3) of the OPGGS Act applies equally to cross-boundary titles. The note refers to NOPSEMA’s advisory function in paragraph 646(gp) of the OPGGS Act. Paragraph 646(gp) enables the responsible Commonwealth Minister to obtain NOPSEMA’s assessments, analysis, reports, advice and recommendations in relation to the Minister’s functions and powers with respect to “offshore GHG storage operations”. That term is defined in section 643 in a manner that requires that the relevant operations take place “at a facility”. This is a hangover from the time when NOPSEMA’s predecessor, the National Offshore Petroleum Safety Authority, had only occupational health and safety functions. It is too restrictive for the kinds of well integrity and environmental assessments, analysis, reports, advice and recommendations that the Minister will need to call on in relation to consent to surrender criteria, as the “facility” requirement is irrelevant and will often not be met.

349. On the other hand, the “facility” requirement is still needed in relation to NOPSEMA’s occupational health and safety functions, which continue to be facility-based (except for diving).

350. This item amends the definition of offshore greenhouse gas storage operations in section 643 to ensure that the “facility” requirement in the definition does not limit the advisory function of NOPSEMA in paragraph 646(gp) in relation to the Minister’s
function of consenting to the surrender of GHG titles or the Minister’s other GHG functions.

**Item 191: After paragraph 695B(1)(b)**

351. This item inserts new paragraphs 695B(1)(ba) and (bb) to provide for new functions of the Titles Administrator. The functions are equivalent to the functions that the Titles Administrator performs in relation to the performance of the functions or exercise of the powers of a petroleum Joint Authority.

352. The Titles Administrator has the function of providing information, assessments, analysis, reports, advice and recommendations to the responsible Commonwealth Minister and the responsible State Minister or responsible NT Minister, as members of the Cross-boundary Authority, in relation to the performance of functions and exercise of powers of the Authority.

**Item 192: Paragraph 695B(1)(c)**

353. This item amends paragraph 695B(1)(c) to clarify that the Titles Administrator’s function set out in that paragraph does not apply in relation to the functions and powers of the responsible Commonwealth Minister in his or her capacity as a member of the Cross-boundary Authority. The Titles Administrator’s function to advise the Minister as a member of the Authority is set out in new paragraph 695B(1)(ba) (inserted by item 191).

**Item 193: Section 695S**

354. This item updates the simplified outline of Part 6.11 of the OPGGS Act (Using and sharing offshore information and things) to reflect that information, documents and things can be shared between the responsible Commonwealth Minister, the Secretary of the department administered by the Minister, NOPSEMA, the Titles Administrator, each member of a Joint Authority and each member of a Cross-boundary Authority (see the amendment made by item 194).

**Item 194: At the end of subsection 695W(1)**

355. This item amends subsection 695W(1) to ensure that each member of a Cross-boundary Authority, as an entity that performs regulatory functions and powers under the OPGGS Act and regulations, can share and receive offshore information or a thing from other entities that perform regulatory functions and powers under the OPGGS Act and regulations, such as NOPSEMA or the Titles Administrator. The recipient of the offshore information or thing may only use the information or thing in the course of the performance of the recipient’s functions or exercise of the recipient’s powers under the OPGGS Act or a legislative instrument under the OPGGS Act, or in the
course of the administration of the OPGGS Act or a legislative instrument under the OPGGS Act.

Item 195: Division 3 of Part 8.1 (at the end of the heading)

356. This item amends the heading of Division 3 of Part 8.1 to differentiate that Division from the information-gathering powers of the responsible Commonwealth Minister in relation to cross-boundary titles in new Division 4 of Part 8.1 (inserted by item 196). Division 3, which provides information-gathering powers for the Titles Administrator and NOPSEMA inspectors in relation to GHG operations, also applies to cross-boundary GHG titles.

Item 196: At the end of Part 8.1

357. This item inserts new Division 4 of Part 8.1 which provides information-gathering powers for the responsible Commonwealth Minister. A number of powers and functions of the Minister in relation to cross-boundary titles will require the Minister to have information about petroleum operations and titles in State or NT coastal waters in order to make a fully informed decision. Much of this information will be held by the State or NT, and other parties such as the holder of a State/Territory petroleum title.

358. For example, when deciding whether to approve a key GHG operation under a cross-boundary GHG assessment permit under new section 292A (inserted by item 31), the Minister will need to take into account potential impacts on existing and future State/Territory petroleum titles. When deciding whether to give a direction in relation to protecting geological formations containing petroleum pools under section 376, the Minister may need information concerning geological formations in State/NT coastal waters that contain, or are likely to contain, petroleum and that may be impacted by the injection or storage operations of a cross-boundary GHG licensee.

359. New section 733B enables the Minister to require information from a person if the Minister believes that person has information or a document that is relevant to the performance of the functions and exercise of the powers of the Minister under any of the provisions listed in subsection 733B(1). This ensures that the Minister can obtain factual information relevant for the proper administration of the legislation.

360. Failure to comply with a requirement from the Minister is an offence. The offence provision does not specify a fault element. Under section 5.6 of the Criminal Code Act 1995, if an offence provision does not specify a fault element, and if the physical element consists only of conduct, the fault element is intention. The maximum penalty for a failure to comply is 100 penalty units. This is equivalent to the penalty for existing provisions in the OPGGS Act that require a person to provide information or documents. While this penalty is high compared to the penalty for similar offences in other legislation, the information or documents that the Minister would require will be information or documents that the Minister may otherwise have no ability to obtain.
Without the information, the Minister will not have sufficient information to exercise the functions and powers specified in subsection 733B(1). This may mean, for example, that the Minister cannot approve a key GHG operation, as the Minister does not have sufficient information about the potential risks to State/NT petroleum resources or titles as a result of the operation. This in turn would prevent the GHG titleholder from undertaking the operation, potentially preventing them from enjoying the rights associated with their title and frustrating their ability to progress exploration, injection and storage of GHG. This may also affect the public interest in climate change mitigation through capture and storage of GHG.

361. Further, a person may be liable to a civil penalty if they do not comply with a requirement from the Minister to give information or provide a document. The Minister can also seek an injunction under section 611J – see item 189.

362. Under section 733J, Division 4 is expressed to bind the Crown in each of its capacities. Therefore, there is a clear power for the Minister to require information from the relevant State or the NT relating to petroleum titles and operations in State/NT coastal waters where relevant to the exercise of the Minister’s functions and powers. However, the Crown will not be liable to a pecuniary penalty or to be prosecuted for an offence under Division 4 (subsection 773J(2)).

363. Section 733C refers to costs involved in copying documents at the Minister’s direction and giving those documents to the Minister. Without this section, these costs could be deemed an acquisition of property otherwise than on just terms. Accordingly, section 733C inserts a safeguard provision to ensure that the requirement to produce copies would not be struck down as contrary to paragraph 51(xxxi) of the Constitution.

364. Section 733D sets out a provision that is commonly used to override the usual rule that a person is not bound to incriminate himself or herself. However, under subsection 733D(2), any information given or document produced, or any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the document, is not admissible in evidence against the person (a ‘use’ immunity).

365. This partial immunity from legal consequences has the benefit that it increases the likelihood of obtaining information. This is particularly important where the Minister may have no other avenue to obtain the information, as may be the case in relation to State/Territory petroleum operations and titles in State/NT coastal waters. To ensure effective administration of the OPGGS Act, it may be more important to establish the facts than to be able to use the facts in a prosecution or legal action. To shut off any line of inquiry would not be in the public interest.

366. The ‘use’ immunity is restricted only to individuals. This ensures continuing protection of the human rights of the individual, and is consistent with other Commonwealth legislation, such as the Work Health and Safety Act 2011 and the Telecommunications Act 1997.

367. As set out in paragraph 733D(2)(d), information given or a document produced under section 733B could be admissible in civil penalty proceedings if it provides evidence of less than full compliance with a requirement to give information or a
document under section 733B. In addition, under subparagraphs 733D(2)(e)(i) and (ii), information given or a document produced under section 733B could be admissible in criminal proceedings if it provides evidence of less than full compliance with a requirement to give information or a document under that section. Without these provisions, there would be an inconsistency with subsections 733B(4) and (5), sections 733G and 733H, and sections 137.1 and 137.2 of the Criminal Code, all of which assume it is possible to prosecute a person or seek a civil penalty for failure to properly comply with a requirement to give information or a document under section 733B. In such cases, the offending information or document would have to be an important item of evidence against the defendant.

368. Section 733F provides for the Minister to take possession of a document produced under Division 4 and retain it for as long as reasonably necessary. This will enable the Minister a greater opportunity to examine, consider and assess the document. To minimise inconvenience to the person who is otherwise entitled to possession of the document, section 733F ensures such a person is entitled to be supplied, as soon as practicable, with a copy certified by the Minister 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, the Minister must ensure the person is given reasonable access to the document.

369. Sections 733G and 733H respectively make it an offence for a person to knowingly give information or produce a document that is false or misleading in a material particular when subject to a requirement under section 733B. The maximum penalty is 100 penalty units. This is equivalent to the penalty for existing equivalent provisions in the OPGGS Act. While this penalty is high compared to the penalty for similar offences in other legislation, it is important that the Minister have accurate information when exercising the functions and powers specified in subsection 733B(1). In exercising those functions and powers, the Minister is required to take into account potential risks from GHG exploration, injection or storage operations to petroleum titles and operations, including operations in State/NT coastal waters. The Minister may have to weigh competing interests in determining whether to exercise powers and functions. If a person were to knowingly give false or misleading information, this could affect the Minister’s decision based on the information provided. This could severely diminish the rights of the petroleum or GHG titleholders, and frustrate the Minister’s ability to consider the public interest in either protecting petroleum resources or furthering potential GHG storage operations.

Item 197: Section 736 (paragraph (a) of the definition of applicable document)

370. This item amends the definition of applicable document, for the purposes of Part 8.3 (release of technical information relating to GHG), to include a reference to an application made to the Titles Administrator under Chapter 3. Applications for and in relation to cross-boundary titles under Chapter 3 will be made to the Titles
Administrator, rather than to the responsible Commonwealth Minister, given the Cross-boundary Authority arrangement for cross-boundary titles.

**Items 198 and 199: After paragraph 749(2)(b); After paragraph 749(2)(c)**

371. These items respectively insert new paragraphs 749(2)(ba) and (ca), which extend the functions of expert advisory committees to matters relating to cross-boundary GHG titles.

372. Paragraph 749(2)(ba) applies in relation to the question of whether there is a significant risk that a key GHG operation carried out under a cross-boundary title will have a significant adverse impact on petroleum exploration operations or petroleum recovery operations under existing and future Commonwealth and State/Territory petroleum titles. See the reference to paragraph 749(2)(ba) in new section 27A (inserted by item 14).

373. Paragraph 749(2)(ca) applies in relation to the question of whether there is a significant risk that any of the operations carried on under a cross-boundary GHG injection licence will have a significant adverse impact on operations that are being, or could be, carried on under an existing or future Commonwealth or State/Territory petroleum title. See the reference to paragraph 749(2)(ca) in new section 28A (inserted by item 16).

374. Paragraph 749(2)(a) has not been extended to key petroleum operations in State/NT coastal waters because the responsible Commonwealth Minister has not been given the power to declare State/Territory petroleum titles. State/Territory petroleum titles are outside Commonwealth jurisdiction, including in relation to petroleum titles within the area of a cross-boundary GHG title.

375. For the purposes of subparagraphs 749(2)(d)(i) and (ii), in the case of a cross-boundary injection licence the references to recovery or commercial viability of petroleum includes petroleum in State/NT coastal waters.

**Item 200: Subparagraphs 749(2)(f)(iii) and (iv)**

376. This item amends subparagraphs 749(2)(f)(iii) and (iv) to include reference to new section 312A (inserted by item 58), which provides for declaration of an identified GHG storage formation that is a cross-boundary formation.

**Item 201: Subparagraph 749(2)(f)(vii)**

377. This item amends subparagraph 749(2)(f)(vii) to include reference to new section 374A (inserted by item 129), which provides for variation of matters specified in a cross-boundary GHG injection licence.
Item 202: At the end of subsection 749(2)

378. This item inserts a note at the end of subsection 749(2) to inform the reader of the effect of new sections 295B (inserted by item 46), 323B (inserted by item 85) and 360A (inserted by item 117), which extend the meaning of “offshore area” to include the entirety of the area of a cross-boundary GHG assessment permit, cross-boundary GHG holding lease and cross-boundary GHG injection licence.

Item 203: Division 1 of Part 9.3 (at the end of the heading)

379. This item amends the heading of Division 1 of Part 9.3 to reflect that that Division provides for information-gathering powers of the responsible Commonwealth Minister in relation to designated agreements. New section 733B (inserted by item 196) also enables the Minister to obtain information in relation to designated agreements, to the extent that the information is relevant to the Minister attaining a state of satisfaction for the purposes of a provision of section 368B in relation to an application for grant of a cross-boundary GHG injection licence.

Item 204: Paragraph 759(1)(d)

380. This item amends paragraph 759(1)(d) to include reference to new subsection 292A(1) (inserted by item 31), which provides for approval by the responsible Commonwealth Minister of key GHG operations carried on under a cross-boundary GHG assessment permit.

Item 205: Paragraph 759(1)(e)

381. This item amends paragraph 759(1)(e) to include reference to new subsection 321A(1) (inserted by item 68), which provides for approval by the responsible Commonwealth Minister of key GHG operations carried on under a cross-boundary GHG holding lease.

Item 206: Division 2 of Part 9.3 (heading)

382. This item amends the heading of Division 2 of Part 9.3 to differentiate that Division from new Division 3 of Part 9.3 (inserted by item 207). Division 2 provides for the protection of information given to the responsible Commonwealth Minister under section 759. Division 3 provides for the protection of certain information given to the Cross-boundary Authority under section 733B.
Item 207: At the end of Part 9.3

383. This item inserts new Division 3 of Part 9.3 to provide for the protection of certain information given to the responsible Commonwealth Minister under new section 733B (inserted by item 196).

384. Under new section 767A, if a person who gave information or a document in compliance with section 733B that relates to the existence or non-existence of a designated agreement, or the terms of a designated agreement, claims that the information is commercial-in-confidence, the Minister and a delegate of the Minister are restricted in the extent to which they may disclose the information.

385. The Minister or a delegate of the Minister must not disclose the information to another person except for the purposes of the OPGGS Act or regulations, to a member of an expert advisory committee for a purpose relating to the committee’s function, or if the disclosure is required by the OPGGS Act, another law of the Commonwealth, or a prescribed law of a State or Territory.

386. New section 767B applies if a person who gave information or a document to the Minister in compliance with section 733B that relates to the existence or non-existence of a designated agreement, or the terms of a designated agreement, has not claimed that the information is commercial-in-confidence. The Minister may disclose the information to another person to enable that person to decide whether to enter into a designated agreement or consider the terms of the agreement.

Item 208: After paragraph 768(1)(c)

387. This item inserts new paragraphs 768(1)(ca) and (cb) to provide for section 768 to apply to the Cross-boundary Authority and each member of the Authority. Section 768 ensures a person or body is not liable for or in relation to an act or matter done or omitted to be done in good faith in the exercise of a power conferred by the OPGGS Act or regulations, or a direction given under the OPGGS Act.

Item 209: Paragraph 768(1)(j)

388. This item amends paragraph 768(1)(j) to provide for section 768 to apply to a person acting under the direction or authority of the Cross-boundary Authority. Section 768 ensures a person or body is not liable for or in relation to an act or matter done or omitted to be done in good faith in the exercise of a power conferred by the OPGGS Act or regulations, or a direction given under the OPGGS Act.

Item 210: Subsection 775A(1)

389. This item amends subsection 775A(1) to ensure that, for the purposes of Division 1 of Part 9.6A, an “eligible voluntary action” includes making an application, giving a
nominated, etc., to the Cross-boundary Authority, where that action is permitted but not required to be taken under the OPGGS Act.

**Item 211: After paragraph 775A(2)(h)**

390. This item inserts new paragraphs 775A(2)(ha) and (hb) to ensure that the definition of “eligible voluntary action” does not include a notice given under new subsection 775CA(2) (notice of nomination of one of the holders of a cross-boundary title to be the person who is authorised to take eligible voluntary actions), or subsection 775CA(6) (notice of revocation of a nomination under subsection 775CA(2)) (inserted by item 214).

**Items 212 and 213: Section 775C (at the end of the heading); Subsection 775C(1)**

391. These items amend section 775C to clarify that that section does not apply to a cross-boundary GHG title. New section 775CA is inserted by item 214 to provide for eligible voluntary actions by multiple holders of a cross-boundary GHG title.

**Item 214: At the end of Division 1 of Part 9.6A**

392. This item inserts new section 775CA to provide for eligible voluntary actions by multiple holders of a cross-boundary GHG title. Section 775CA is equivalent to section 775C, which provides for eligible voluntary actions by multiple holders of GHG titles that are not cross-boundary titles. However, section 775CA requires a nomination of a person who is authorised to take eligible voluntary actions on behalf of the other titleholders, and a revocation of such a nomination, to be given to the Titles Administrator, rather than the responsible Commonwealth Minister. This reflects the Cross-boundary Authority arrangement for cross-boundary titles. Providing for the notice to be given to the Titles Administrator, rather than the Authority, will provide greater administrative efficiency.

393. As is the case with section 775C, it is not mandatory for multiple holders of a cross-boundary title to nominate one of them to take eligible voluntary actions, or for all actions to be taken by the nominated titleholder. It is an alternative for the holders of the title to take the action jointly.

**Items 215 to 217: Subsection 785(1)**

394. These items amend subsection 785(1) to include reference to new sections 291A (conditions of cross-boundary GHG assessment permits, inserted by item 28), 320A (conditions of cross-boundary GHG holding leases, inserted by item 65) and 358A (conditions of cross-boundary GHG injection licences, inserted by item 114). Section 785 ensures that nothing in those sections limits the regulations that may be made under the OPGGS Act.
Part 2—Application and transitional provisions

Item 218: Application—approvals by the responsible Commonwealth Minister

395. This item relates to the amendment made by item 1 of Schedule 1 to the Bill, which amends the definition of approved in section 7 to provide that, in all cases, “approved” means approved in writing by the Titles Administrator. Previously, where the term was used in Chapter 3 of the OPGGS Act, “approved” meant approved in writing by the responsible Commonwealth Minister. 396. This item ensures that the amendment applies only in relation to an application or variation made after the commencement of the amendment. This ensures the validity of applications or variations made prior to the commencement of the amendment, in accordance with the manner approved by the Minister.

Item 219: Transitional—approvals by Titles Administrator

397. This item relates to the amendment made by item 1 of Schedule 1 to the Bill, which amends the definition of approved in section 7 to provide that, in all cases, “approved” means approved in writing by the Titles Administrator. This item ensures it is clear that the amendment does not affect the continuity of any approval of the Titles Administrator in force immediately prior to the commencement of the amendment.


398. This item ensures that the amendments of section 377 made by Schedule 1 to the Bill, so far as they concern the requirements of subsections 377(2), (3) and (4), only apply either to directions proposed to be given after commencement of the amendments, or proposed directions in relation to which a notice has been given under subsection 377(2) prior to commencement of the amendments. This removes any doubt as to the validity of consultation under section 377 in relation to any directions given prior to commencement of the amendments. 399. This item also ensures that the amendments of section 377 made by Schedule 1, so far as they concern the requirement in subsection 377(5), apply only to a direction given after commencement. When subsection 377(5) applies, there is no need for the Minister to give a notice under subsection 377(2).


400. This item ensures that the amendments of section 594 made by Schedule 1 to the Bill, so far as they concern the requirements of subsections 594(2), (3) and (4), only
apply either to directions proposed to be given after commencement of the amendments, or proposed directions in relation to which a notice has been given under subsection 594(2) prior to commencement of the amendments. This removes any doubt as to the validity of consultation under section 594 in relation to any directions given prior to commencement of the amendments.

401. This item also ensures that the amendments of section 594 made by Schedule 1, so far as they concern the requirement in subsection 594(5), apply only to a direction given after commencement. When subsection 594(5) applies, there is no need for the Minister to give a notice under subsection 594(2).
Part 3—Amendments contingent on the commencement of Schedule 2 to the Timor Sea Maritime Boundaries Treaty Consequential Amendments Act 2019


Items 222 to 233: Section 7 (definition of *State/Territory greenhouse gas assessment title*); Section 76; Paragraph 76A(1)(b); Subsection 76A(4); Subsection 76A(7); Subsection 76B(2); Subsection 295B(2) (heading); Subsection 295B(2); Subsection 323B(2) (heading); Subsection 323B(2); Subsection 360A(2) (heading); Subsection 360A(2)

402. These items commence either immediately after the commencement of Part 1 of Schedule 1 to the Bill, or immediately after the commencement of Schedule 2 to the Timor Sea Maritime Boundaries Treaty Consequential Amendments Act 2019 (Maritime Boundaries Treaty Act) – whichever is later.

403. In the former case, Schedule 2 to the Maritime Boundaries Treaty Act will have amended the OPGGS Act to replace references to the Principal Northern Territory offshore area with references to the offshore area of the NT prior to the time that these items commence. These items will ensure that provisions of the OPGGS Act that are amended or inserted by Part 1 of Schedule 1 to the Bill and that include references to the Principal Northern Territory offshore area are immediately amended to replace those references with references to the offshore area of the NT.

404. In the latter case, provisions of the OPGGS Act that are amended or inserted by Part 1 of Schedule 1 to the Bill will initially refer to the Principal Northern Territory offshore area. Then, once Schedule 2 to the Maritime Boundaries Treaty Act commences, these items will amend the relevant provisions of the OPGGS Act to replace references to the Principal Northern Territory offshore area with references to the offshore area of the NT.

405. If Schedule 2 to the Maritime Boundaries Treaty Act does not commence at all, references to the Principal Northern Territory offshore area will be retained.
Schedule 2—Application of greenhouse gas provisions to bodies politic


Item 1: At the end of Part 3.1

406. This item inserts new section 287A to ensure it is clear that the provisions of the OPGGS Act and regulations that relate to GHG injection and storage apply, and are taken to have always applied, to each of the States and the NT. The amendment is intended to remove any doubt about the validity of GHG assessment permits granted to the Crown in right of Victoria.

407. The retrospective application of section 287A will ensure there is no doubt that the Crown in right of Victoria is in the position it understood itself to be in as the holder of the GHG assessment permits. There will be no detriment or negative effect on other parties as a result of retrospective application. No other person applied for the GHG assessment permits that were granted to the Crown in right of Victoria. Further, there are no new obligations that will be applied retrospectively.

408. Subsection 287A(3) ensures that a State or the NT will not be liable to a pecuniary penalty or to be prosecuted for an offence.
Schedule 3—Technical amendments
Part 1—Amendments
Division 1—General amendments

Item 1: Section 7 (definition of *boundary-change petroleum exploration permit*)

409. This item inserts a revised definition of *boundary-change petroleum exploration permit* to ensure that the definition includes a petroleum exploration permit granted by way of renewal of an initial boundary-change petroleum exploration permit. This will ensure that references to a boundary-change petroleum exploration permit in the OPGGS Act apply to both an initial boundary-change permit and a permit granted by way of renewal of the initial permit.

Item 2: Section 7 (definition of *cash-bid greenhouse gas assessment permit*)

410. This item inserts a revised definition of *cash-bid greenhouse gas assessment permit* to ensure that the definition includes a GHG assessment permit granted by way of renewal of an initial cash-bid GHG assessment permit. This will ensure that references to a cash-bid GHG assessment permit in the OPGGS Act apply to both an initial cash-bid permit and a permit granted by way of renewal of the initial permit.

Item 3: Subsection 242(1) (at the end of the table)

411. This item inserts new item 4 in the table in subsection 242(1) to enable an applicant for a SPA to apply for an AA.

412. The combination of an SPA with an AA is often used by seismic companies seeking to acquire data over large areas for commercial scale or licensing. Currently, only the holder of an SPA may apply for an AA. The inability to accept an AA application until an SPA has been granted delays the timing of submission, assessment and decision for AA applications. This subsequently reduces the amount of time that both the SPA and AA can concurrently be in force, given that the duration of an SPA can be no longer than 180 days (subsection 232(3)).

413. Providing for an applicant for an SPA to submit an application for an AA will enable a concurrent assessment of both applications and the ability to coordinate the timing of the respective grant of the SPA and AA, which maximises the time that both authorities can be in force.

Item 4: Section 243

414. This item inserts a new subsection number so that previous section 243 is subsection 243(1), as a consequence of the amendment to insert a new subsection in section 243 – see item 6.
Item 5: Paragraph 243(a)

415. This item amends paragraph 243(a) to ensure it is clear that subsection 243(1) applies to applications for an AA made under items 1, 2 and 3 of the table in subsection 242(1). New subsection 243(2) is inserted by item 6 to deal with an application for an AA under table item 4.

Item 6: At the end of section 243

416. This item inserts new subsection 243(2) to provide for the Titles Administrator to grant or refuse to grant an AA to an applicant for an SPA. The matters specified to be taken into account in paragraph 243(2)(b) are the same as the matters to be taken into account under paragraph 243(1)(b), but have been re-worded to provide for the fact that the SPA has not yet been granted. The matters relate to whether grant of the AA would be necessary or desirable for the more effective exercise of the applicant’s rights or the proper performance of the applicant’s duties if the SPA were to be granted by the Titles Administrator.

417. Consultation procedures apply under section 244 if an application for an AA has been made in relation to an area that is, to any extent, the subject of a petroleum exploration permit, petroleum retention lease, petroleum production licence or SPA that is not held by the applicant for the AA.

Item 7: Paragraph 267A(7)(b)

418. This item amends paragraph 267A(7)(b) to correct a typographical error. Subsection 267A(7) provides for variation of a petroleum retention lease in certain circumstances following a change to the boundary of the coastal waters of a State or Territory. Paragraph 267A(7)(b) currently includes a reference to the term of the “permit”; this should be a reference to the term of the “lease”.

Items 8 and 9: Paragraph 586A(2)(a); Paragraph 587A(2)(a)

419. These items amend paragraphs 586A(2)(a) and 587A(2)(a) to clarify the reference to “those operations” in those paragraphs. The correct reference to “the operations authorised by the permit, lease or licence” was not previously included due to a transcription error.

Item 10: Section 735

420. This item amends paragraph (b) of the simplified outline in section 735 to correct a typographical error.
Items 11 to 20: Clause 2 of Schedule 3; Subparagraph 27(b)(ii) of Schedule 3; Subparagraph 34(1)(c)(i) of Schedule 3; Paragraph 35(4)(a) of Schedule 3; Paragraph 39(3)(b) of Schedule 3; Subclause 39(4) of Schedule 3; Paragraph 39(6)(a) of Schedule 3; Subclause 39(8) of Schedule 3; Subparagraph 45(1)(b)(ii) of Schedule 3; Subclause 89(1) of Schedule 3

421. These items amend various provisions of Schedule 3 to replace references to OHS inspectors with references to NOPSEMA inspectors.

422. The *Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures) Act 2013* (Compliance Measures Act) amended the OPGGS Act to abolish two categories of inspector (petroleum project inspectors and OHS inspectors), and instead provide for the Chief Executive Officer (CEO) of NOPSEMA to appoint NOPSEMA inspectors to conduct inspections to monitor and investigate compliance with the OPGGS Act and regulations. It was intended that all references to petroleum project inspectors and OHS inspectors in the OPGGS Act would be repealed by the Compliance Measures Act, and replaced with references to NOPSEMA inspectors. However, some references to OHS inspectors remained in the OPGGS Act as a result of a drafting oversight.

Division 2—Work-bid greenhouse gas assessment permits
*Offshore Petroleum and Greenhouse Gas Storage Act 2006*

Item 21: Section 7 (definition of *work-bid greenhouse gas assessment permit*)

423. This item inserts a revised definition of *work-bid greenhouse gas assessment permit* to ensure that the definition includes a GHG assessment permit granted by way of renewal of an initial work-bid GHG assessment permit. This will ensure that references to a work-bid GHG assessment permit in the OPGGS Act apply to both an initial work-bid permit and a permit granted by way of renewal of the initial permit.

424. This item will commence on 26 July 2018 (see section 2 of the Bill). Retrospective commencement ensures that the provisions of the OPGGS Act apply effectively to work-bid GHG assessment permits that have been granted by way of renewal, reflecting the position that all relevant parties understood that they were in, particularly the Crown in right of Victoria as the holder of a work-bid GHG assessment permit that has been granted by way of renewal. There will be no detriment or negative effect on other parties as a result of retrospective application. Further, there are no new obligations that will be applied retrospectively.
Part 2—Validation

Item 15: Validation—NOPSEMA inspectors

425. This item relates to the amendments made by items 11 to 20 to replace references to OHS inspectors with references to NOPSEMA inspectors. The item validates things done by a NOPSEMA inspector prior to the commencement of the amendments to the extent (if any) that those things would be invalid as a result of references to an OHS inspector.

426. Retrospective application will not cause detriment or negative effect on any party. The references to an OHS inspector in the OPGGS Act were a typographical error and, since the creation of NOPSEMA inspectors, it has been understood by all parties that powers are intended to be exercised by NOPSEMA inspectors. Retrospective application does not change the substantive rights or obligations of regulated entities, either before or after the commencement of the amendments.
Schedule 4—Oil pollution etc.
Part 1—General amendments

Item 1: Section 7

427. This item inserts a new definition of **designated external Territory**, which is defined as meaning Norfolk Island, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands, or the Territory of Heard Island and McDonald Islands. This term is created to refer to these particular external Territories in provisions inserted by Schedule 4 to the Bill, including extending the geographical application of petroleum titleholders’ polluter pays obligations and significant incident directions to land and waters within the jurisdiction of these external Territories.

428. The OPGGS Act also applies to the Territory of Ashmore and Cartier Islands. However, it is not necessary to extend the application of the provisions to that Territory as the ‘offshore area’ of that Territory includes land and waters within the Territory. This means that the existing provisions of the OPGGS Act already apply to the land and waters of that Territory. The Territory has therefore not been included in the definition of **designated external Territory**.

429. This item also inserts a new definition of **designated public official**, which has the meaning given by new section 33A (see item 2).

Item 2: After section 33

430. This item inserts new section 33A, which defines the **designated public official** of a State, the NT or a designated external Territory. NOPSEMA or the responsible Commonwealth Minister (as the case may be) is required to consult with the designated public official prior to taking any action in the jurisdiction of the relevant State or Territory where a titleholder has failed to comply with their polluter pays obligations (new subsections 572D(2A) and (2B) and 572E (2A) and (2B)). NOPSEMA must also consult the designated public official of the relevant State or Territory prior to giving a significant incident direction requiring action to be taken (or not to be taken) in the jurisdiction of that State or Territory (new subsection 576B(6)).

431. For a State or the NT, the **designated public official** is the person who holds or performs the duties of head (however described) of the department of the State or NT that is specified in a written notice given to NOPSEMA by the responsible State Minister or the responsible NT Minister. This enables that State or the NT to determine the department that is most appropriate to be consulted by NOPSEMA in the event of an oil pollution emergency, as the relevant department may be different in each case.

432. New subsections 33A(9) and (10) respectively require NOPSEMA to publish a copy of a notice on its website, and clarifies that such notices are not legislative instruments.
for the purposes of the *Legislation Act 2003*. This provision is merely declaratory of the law, rather than prescribing a substantive exemption from the requirements of that Act.

433. If the responsible State Minister or the responsible NT Minister has not given a notice to NOPSEMA, the **designated public official** is the head of the department administered by the responsible State Minister or the responsible NT Minister. This ensures that there is an official within the State or the NT who can be consulted in accordance with the requirements of new subsections 572D(2A) and (2B) and 572E (2A) and (2B), and new subsection 576B(6). The designated public official may consult with other State or NT officials if they wish to do so.

434. For the designated external Territories, the **designated public official** is the Secretary of the department administered by the Minister responsible for the administration of the relevant Territory. For example, the designated public official of Norfolk Island is the Secretary of the department administered by the Minister who administers the *Norfolk Island Act 1979*.

**Item 3: Section 572A**

435. This item updates the simplified outline of Part 6.1A to reflect the extended geographical application of the polluter pays obligations of a titleholder as a result of the amendments made by this Schedule.

**Item 4: After section 572A**

436. This item inserts new section 572AA, which defines **land or waters of a State or the Northern Territory** for the purposes of Part 6.1A (polluter pays). The definition incorporates land and waters of the State or NT that are outside the Commonwealth offshore area, and therefore within the jurisdiction of the State or the NT.

437. This item also inserts new section 572AB, which defines **land or waters of a designated external Territory** for the purposes of Part 6.1A. The definition incorporates land or waters within the limits of the designated external Territory, and therefore outside of the Commonwealth offshore area.

**Item 5: Subsection 572C(2)**

438. This item repeals subsection 572C(2) and substitutes it with a new subsection that extends the geographical application of the polluter pays obligations of a titleholder to land and waters of a State, the NT or a designated external Territory.

439. The existing polluter pays obligations of the titleholder with respect to the offshore area remain the same. That is, in the event of an escape of petroleum occurring as a result of or in connection with a petroleum activity, the titleholder is required, in an offshore area, to take all reasonably practicable steps to eliminate or control the
escaped petroleum, clean up the escaped petroleum, remediate any resulting environmental damage, and carry out environmental monitoring.

440. However, if any of the escaped petroleum has migrated to land or waters of a State, the NT or a designated external Territory, the titleholder is also required, on that land or in those waters, to clean up the escaped petroleum, remediate any resulting environmental damage, and carry out environmental monitoring.

441. All of the obligations, whether in an offshore area, or on or in the land or waters of a State, the NT or a designated external Territory, must be carried out in accordance with the titleholder’s environment plan for the petroleum activity.

442. It is appropriate that, in the event of an escape of petroleum, the polluter is responsible for ensuring that any damage as a result of the escape is minimised, and for paying the costs associated with cleaning up the spill and remediating the environment. When oil pollution has occurred as a result of an escape of petroleum in connection with operations in Commonwealth waters, polluter pays obligations should apply equally to escaped petroleum in Commonwealth waters, as well as petroleum that has migrated to land or waters within the jurisdiction of a State or Territory.

Items 6 and 7: After subsection 572D(2); After subsection 572E(2)

443. These items amend sections 572D and 572E to require NOPSEMA and the responsible Commonwealth Minister respectively to consult the designated public official of the relevant State or Territory prior to taking any action within the jurisdiction of the State or Territory where a titleholder has failed to comply with their polluter pays obligations.

444. If a titleholder fails to comply with their polluter pays obligations in section 572C, including the obligations in areas of State or Territory jurisdiction inserted by item 5, sections 572D and 572E empower NOPSEMA and the Minister respectively to do any or all of the things they consider that the titleholder has failed to do. The titleholder must then reimburse NOPSEMA or the Minister for the costs and expenses of taking any such action.

445. Under the previous legislative framework, NOPSEMA and the Minister could not pursue any enforcement options if a titleholder did not meet their commitments on or in land or waters of a State or Territory. As petroleum activities are regulated under Commonwealth approval documents, and given the current hazard management frameworks of the jurisdictions, State/Territory agencies are also unlikely to be able to enforce response commitments or direct the titleholder to take additional actions.

446. This was particularly problematic as State/Territory oil pollution response plans are predicated on titleholders providing particular resources, in some cases to be coordinated and distributed by the appropriate State/Territory control agency in the event of the spill. Stockpiles of oil spill response equipment and the capabilities of personnel are maintained on the basis that the State/Territory will work collaboratively with the titleholder. Should a titleholder fail to provide the mitigation
measures outlined in its environment plan, this could result in a significant increase in the level of environmental damage resulting from the spill and the financial burden to the governments that contribute spill response capabilities.

447. The deployment of resources such as qualified personnel, appropriate equipment, dispersants and oiled wildlife response capability are time sensitive. In the event a titleholder fails to comply with its commitments, the State or Territory control agency will be required to find these specialised resources elsewhere. This will inevitably result in a delay to the response action, result in more extensive damage, particularly to coastal shorelines and internal waterways, which tend to include the most sensitive receptors to oil such as intertidal reef systems, mangrove systems, mudflats, wetlands etc. While the OPGGS Act provides a State or Territory recourse to be reimbursed for reasonable expenses, this would do little to reduce the environmental and reputational damage caused by failing to meet commitments made by a titleholder under an oil pollution emergency plan.

448. By providing appropriate powers for the Commonwealth in the event of a significant incident, the States, Territories and Commonwealth will be better protected from potential liabilities as well as providing the capability to reduce environmental harm. Operationally, where a titleholder is failing to respond appropriately on land or in waters of a State or Territory, NOPSEMA or the Minister on behalf of the State/Territory will be in a position to undertake the required actions through deployment of government and other resources, and effectively cost recover from the titleholder. This provides a clear and unambiguous capacity for government to ensure a response is appropriately undertaken and that liabilities clearly fall to the polluter.

449. If NOPSEMA or the Minister proposes to take an action on or in land or waters of a State, the NT or a designated external Territory, NOPSEMA or the Minister (as the case may be) is required to consult with the designated public official of the State, the NT or the designated external Territory (as the case may be) before taking any such action. This will ensure that the relevant State or Territory is aware of the proposed action, and able to provide information and comments that NOPSEMA or the Minister is to take into account when deciding whether and how to proceed with taking action.

Items 8 to 13: Paragraph 572F(1)(b); Paragraph 572F(2)(a); Subsection 572F(3); Subsection 572F(4)

450. These items make minor technical amendments to section 572F as a consequence of the insertion of the new definition of land or waters of the State or the Northern Territory (see item 4). The amendments do not change the operation of the section.
Item 14: At the end of Part 6.1A

451. This item inserts new section 572G to clarify that Part 6.1A of the OPGGS Act (polluter pays) is not intended to exclude or limit the operation of a law of a State or Territory, where such a law is capable of operating concurrently with Part 6.1A. This ensures there is an express provision evidencing the policy position that the amendments to Part 6.1A made by the Bill to extend the geographical application of that Part are not intended to cover the field. States and Territories will therefore have the ability to exercise any relevant powers in their own legislation, utilising their own spill response capacity in their jurisdiction.

452. This item also inserts new sections 572H and 572J, which reference the constitutional powers which provide support for Part 6.1A.

453. Paragraph 51(xxix) of the Constitution empowers the Parliament to make laws with respect to ‘external affairs’. The external affairs power supports legislation with respect to matters or things outside the geographical limits of Australia. Paragraph 51(xxxix) of the Constitution empowers the Parliament to make laws with respect to matters incidental to the execution of any power vested in the Parliament by the Constitution.

454. Paragraph 51(xx) of the Constitution empowers the Parliament to make laws with respect to foreign corporations and trading or financial corporations formed within the limits of the Commonwealth. In the OPGGS Act, ‘constitutional corporation’ means a corporation to which paragraph 51(xx) of the Constitution applies (see section 7).

455. Section 122 of the Constitution empowers the Parliament to make laws for the government of any territory.

Item 15: Subsection 576A(4)

456. This item repeals subsection 576A(4) because it defines terms that are no longer used in Division 2A of Part 6.2. Provisions of the Division that require NOPSEMA to give a copy of a significant incident direction to another titleholder where action is required to be taken in that titleholder’s title area have been redrafted for greater clarity – see new subsections 576B(6A) and (6B), inserted by item 18.

Item 16: At the end of subsection 576B(1)

457. This item adds two notes at the end of subsection 576B(1). Note 1 refers the reader to section 576C, which provides for matters related to NOPSEMA’s power to give significant incident directions. Note 2 informs the reader that a breach of such a direction may attract a criminal or civil penalty under section 576D.
458. These items amend section 576B to enable the extended geographical application of significant incident directions to land and waters of a State, the NT or a designated external Territory during declared oil pollution emergencies.

459. If a significant offshore petroleum incident has occurred in a title area that has caused or might cause an escape of petroleum, section 576B empowers NOPSEMA to give a written direction to the titleholder to do any or all of the following, whether within or outside the title area:

a. to take any action stated in the direction for the purpose of preventing or eliminating the escape (or possible escape), or mitigating, managing or remediating its effects (or possible effects);

b. to take any other action stated in the direction in relation to the escape (or possible escape) and its effects (or possible effects);

c. not to take an action stated in the direction in relation to the escape (or possible escape) and its effects (or possible effects).

460. Previously, a significant incident direction could only require a titleholder to take an action, or not to take an action, in an offshore area (i.e. in Commonwealth waters). Item 17 amends subsection 576B(5) to clarify that, in the absence of a declared oil pollution emergency (as defined by new clause 2A of Schedule 2A, inserted by item 28), the current geographical limitation to Commonwealth waters will continue. That is, the direction may require the titleholder to take action (or not to take action) anywhere within or outside the title area, but only in an offshore area.

461. Item 18 repeals the previous subsection 576B(6) and inserts a new subsection 576B(6) to provide that, if there is a declared oil pollution emergency that relates to the title, the direction may require the titleholder to take an action (or not take an action) anywhere within or outside the title area. This includes anywhere on or in land or waters of a State, the NT or a designated external Territory.

462. Under the previous legislative framework, NOPSEMA could not pursue any enforcement options, including giving a direction, if a titleholder did not meet their commitments on or in land or waters of a State or Territory. As petroleum activities are regulated under Commonwealth approval documents, and given the current hazard management frameworks of the jurisdictions, State/Territory agencies are also unlikely to be able to enforce response commitments or direct the titleholder to take additional actions.

463. This was particularly problematic as State/Territory oil pollution response plans are predicated on titleholders providing particular resources, in some cases to be coordinated and distributed by the appropriate State/Territory control agency in the event of the spill. Stockpiles of oil spill response equipment and the capabilities of personnel are maintained on the basis that the State/Territory will work collaboratively with the titleholder. Should a titleholder fail to provide the mitigation measures outlined in its environment plan, this could result in a significant increase in
the level of environmental damage resulting from the spill and the financial burden to the governments that contribute spill response capabilities.

464. The deployment of resources such as qualified personnel, appropriate equipment, dispersants and oiled wildlife response capability are time sensitive. In the event a titleholder fails to comply with its commitments, the State or Territory control agency will be required to find these specialised resources elsewhere. This will inevitably result in a delay to the response action, result in more extensive damage, particularly to coastal shorelines and internal waterways, which tend to include the most sensitive receptors to oil such as intertidal reef systems, mangrove systems, mudflats, wetlands etc. While the OPGGS Act provides a State or Territory recourse to be reimbursed for reasonable expenses, this would do little to reduce the environmental and reputational damage caused by failing to meet commitments made by a titleholder under an oil pollution emergency plan.

465. By providing appropriate powers for NOPSEMA in the event of an oil pollution emergency, the States, Territories and Commonwealth will be better protected from potential liabilities as well as providing the capability to reduce environmental harm. Operationally, where a titleholder is failing to respond appropriately on land or in waters of a State or Territory, or where a State or Territory wishes for the titleholder to undertake additional actions, NOPSEMA will be able to direct the titleholder in this regard. If the titleholder fails to comply with the direction, NOPSEMA on behalf of the State/Territory and the Commonwealth will be in a position to undertake the actions specified in the direction through deployment of government and other resources, and effectively cost recover from the titleholder. This provides a clear and unambiguous capacity for government to ensure a response is appropriately undertaken and that liabilities clearly fall to the polluter.

466. Prior to giving a direction that requires a titleholder to take an action (or not take an action) in an area of State or Territory jurisdiction, NOPSEMA must consult the designated public official of the relevant State or Territory. This will ensure that the relevant State or Territory is aware of the proposed direction, and able to provide information and comments that NOPSEMA is to take into account when deciding whether to give the direction and the content of the direction.

467. Item 18 also inserts new subsections 576B(6A) and (6B), which apply if a direction requires the titleholder to take action in or in relation to the title area of a title held by another Commonwealth or State/Territory petroleum titleholder. NOPSEMA is required to give a copy of the direction to the other titleholder as soon as practicable after the direction is given to the titleholder that is subject to the direction. Given that significant incident directions are likely to be issued in the event of an emergency situation and may require action to be taken relatively quickly, there may not be sufficient time to consult with other titleholders prior to issuing a direction to prevent or remediate an escape of petroleum. However, it is important that the other titleholder is made aware that action is required to be taken in their title area under a direction issued by NOPSEMA.
Item 19: At the end of section 576B

468. This item inserts new subsection 576B(8) to clarify when a declared oil pollution emergency relates to a title for the purpose of section 576B. As discussed at paragraph 461, if there is a declared oil pollution emergency that relates to a title, a significant incident direction may require a titleholder to take an action (or not take an action) anywhere within or outside the title area, including in the offshore area, and anywhere on or in land or waters of a State, the NT or a designated external Territory.

469. This item also inserts new subsection 576B(9), which inserts new definitions for the purposes of section 576B.

Item 20: After subsection 576C(2)

470. This item inserts new subsection 576C(2A) to expressly clarify the relationship between a significant incident direction and the requirement under the OPGGS Act (including regulations made under the Act) to comply with an environment plan. If the oil pollution emergency provisions of an environment plan (as defined by clause 2 of Schedule 2A, see item 27) are inconsistent with the direction, the environment plan has no effect to the extent of the inconsistency. Given the potentially dynamic nature of an offshore petroleum incident, the oil pollution emergency provisions of an environment plan may turn out to be inadequate in a particular case, and it may be necessary for NOPSEMA to give a significant incident direction. This new subsection ensures that the requirement to comply with the direction will prevail.
Item 21: At the end of section 576C

471. This item inserts new subsection 576C(9), which sets out definitions for the purposes of new subsection 576C(2A) – see item 20.

Item 22: At the end of Division 2A of Part 6.2

472. This item inserts new section 576E to clarify that Division 2A of Part 6.2 of the OPGGS Act (direction for significant offshore petroleum incidents) is not intended to exclude or limit the operation of a law of a State or Territory, where such a law is capable of operating concurrently with that Division. This ensures there is an express provision evidencing the policy position that the amendments to Division 2A of Part 6.2 made by the Bill to extend the geographical application of that Division are not intended to cover the field. States and Territories will therefore have the ability to exercise any relevant powers in their own legislation, utilising their own spill response capacity in their jurisdiction.

473. This item also inserts new sections 576F and 576G, which reference the constitutional powers which provide support for Division 2A of Part 6.2.

474. Paragraph 51(xxix) of the Constitution empowers the Parliament to make laws with respect to ‘external affairs’. The external affairs power supports legislation with respect to matters or things outside the geographical limits of Australia. Paragraph 51(XXXix) of the Constitution empowers the Parliament to make laws with respect to matters incidental to the execution of any power vested in the Parliament by the Constitution.

475. Paragraph 51(xx) of the Constitution empowers the Parliament to make laws with respect to foreign corporations and trading or financial corporations formed within the limits of the Commonwealth. In the OPGGS Act, ‘constitutional corporation’ means a corporation to which paragraph 51(xx) of the Constitution applies (see section 7).

476. Section 122 of the Constitution empowers the Parliament to make laws for the government of any territory.

Item 23: At the end of Part 9.11

477. This item inserts new section 790B to clarify that, in determining whether a matter or thing is or was covered by the definition of environment under the Environment Regulations, it is immaterial (and is taken always to have been immaterial) whether the matter or thing is or was in an offshore area, the coastal waters of a State or the NT, or on land or in waters within the limits of a State or Territory.

478. This provision is inserted only for the avoidance of doubt, and does not change the meaning or interpretation of the definition of environment. The amendments made by this Bill may otherwise suggest that the definition of environment in the Environment Regulations has only ever covered matters or things in the offshore area. However, that definition covers, and has always covered, matters or things in the offshore area.
or on land or in waters of State/Territory jurisdiction. Although the relevant petroleum activity takes place in Commonwealth waters, the potential impacts are not limited to one jurisdiction. The risk of polluting State/Territory waters and coastal environments has always been required to be managed and provided for, whether in logistics in place, arrangements with service providers or materials required to be held in stock.

479. Section 790B would have retrospective application. There will be no disadvantage to any person as a result of retrospective application, as it does not change the position that any person has been, is or will be in. Section 790B is inserted only for the avoidance of doubt, and reflects the manner in which the definition has always been administered under the Environment Regulations.

480. This item also inserts new sections 790C and 790D, which reference the constitutional powers which provide support for the Environment Regulations.

481. Paragraph 51(xxix) of the Constitution empowers the Parliament to make laws with respect to ‘external affairs’. The external affairs power supports legislation with respect to matters or things outside the geographical limits of Australia. Paragraph 51(xxxix) of the Constitution empowers the Parliament to make laws with respect to matters incidental to the execution of any power vested in the Parliament by the Constitution.

482. Paragraph 51(xx) of the Constitution empowers the Parliament to make laws with respect to foreign corporations and trading or financial corporations formed within the limits of the Commonwealth. In the OPGGS Act, ‘constitutional corporation’ means a corporation to which paragraph 51(xx) of the Constitution applies (see section 7).

483. Section 122 of the Constitution empowers the Parliament to make laws for the government of any territory.

**Item 24: At the end of clause 1 of Schedule 2A**

484. This item updates the simplified outline of Schedule 2A to reflect the amendments to this Schedule to create a new power of NOPSEMA inspectors to conduct oil pollution environmental inspections during declared oil pollution emergencies (see items 28 and 29).

**Items 25 to 27: Clause 2 of Schedule 2A; Clause 2 of Schedule 2A (after paragraph (a) of the definition of environmental management law); Clause 2 of Schedule 2A**

485. These items insert new definitions and amend an existing definition for the purposes of Schedule 2A.

486. The definition of **environmental management law** is amended to include provisions of the OPGGS Act that relate to or empower NOPSEMA to take action in relation to the oil pollution emergency provisions of an environment plan, and provisions of an environment plan that relate to preparation for an emergency that may result in oil pollution. The inclusion of these matters within the definition of **environmental management law** is necessary so that they fall within the general environmental
inspection function of NOPSEMA inspectors in clause 3 of Schedule 2A. This function is not dependent on a declaration of an oil pollution emergency.

487. NOPSEMA requires the power to monitor and enforce compliance with the oil pollution emergency preparedness provisions of an accepted environment plan. The titleholder must be required to be prepared for an oil pollution emergency, including one where petroleum has migrated to State/Territory jurisdiction, at all times when an activity in Commonwealth waters that might result in pollution is taking place. This will be before any spill occurs and therefore before any oil pollution emergency is declared.

**Item 28: At the end of Part 1 of Schedule 2A**

488. This item adds new clause 2A into Part 1 of Schedule 2A, which empowers the CEO of NOPSEMA to declare an oil pollution emergency and is the trigger for the exercise of the new oil pollution environmental inspection powers. This clause also empowers the CEO to declare that an environment plan is a “declared environment plan”.

489. Before NOPSEMA inspectors can conduct oil pollution environmental inspections, the CEO of NOPSEMA must have declared in writing that there is a **declared oil pollution emergency**. This declaration places an important limitation on the activation and use of these new powers. The CEO may make a declaration if they are satisfied that there is an emergency that has resulted in or may result in oil pollution. For this purpose, it is immaterial whether the oil pollution is in an offshore area, within the coastal waters of a State or the NT, or on land or in waters within the limits of a State or Territory (subclause 2A(16)). The emergency must be attributable to one or more petroleum activities of a petroleum titleholder, and there must be one or more environment plans that are or may be relevant to the emergency. In practice this will always be the case, as a titleholder must have an environment plan in force prior to undertaking any petroleum activity.

490. The CEO may also declare in writing that the environment plan or environment plans mentioned above are a **declared environment plan** for the purpose of the provisions relating to oil pollution environmental inspection powers.

491. A declaration of a declared oil pollution emergency and a declared environment plan comes into force when it is made by the CEO.

492. New subclauses 2A(2) to (7) set out the requirements for ensuring that relevant parties are made aware that a declaration is in force. To ensure transparency, as soon as practicable after a declaration is made, NOPSEMA must publish a copy of the declaration on its website and give copies to the following persons:

a. the Secretary of the department that is administered by the Minister administering the OPGGS Act;

b. if the declaration relates to an emergency that is attributable to one or more petroleum activities carried on in the offshore area of a State, the designated public official of the State (see item 2);
c. if the declaration relates to an emergency that is attributable to one or more petroleum activities carried on in the Principal NT offshore area, the designated public official of the NT;

d. if the declaration relates to an emergency that is attributable to one or more petroleum activities carried on in the offshore area of a designated external Territory, the designated public official of the external Territory;

e. the petroleum titleholder in relation to whose petroleum activity or activities the declaration relates.

493. New subclauses 2A(8) to (14) set out the requirements for revoking a declaration. Under new subclause 2A(8), the CEO of NOPSEMA must revoke the declaration if they are satisfied that the emergency no longer exists. This ensures that the new oil pollution environmental inspection powers are only exercisable while an emergency is ongoing. To ensure transparency, as soon as practicable after an instrument of revocation is made, NOPSEMA must publish a copy of the instrument on its website and give copies to the persons listed above who were required to be notified of the making of the declaration.

494. New subclause 2A(15) clarifies that a declaration of a declared oil pollution emergency or a declared environment plan made under subclause 2A(1), and an instrument of revocation made under subclause 2A(8), are not legislative instruments for the purposes of the *Legislation Act 2003*. This provision is merely declaratory of the law, rather than prescribing a substantive exemption from the requirements of that Act.

495. This item also inserts new clause 2B, which defines *emergency response premises* for the purposes of the new oil pollution environmental inspection powers. The definition ensures that such inspections can be undertaken wherever response operations are located, whether in an offshore area, in or above the coastal waters of a State or the NT, or on, in or above the land or waters of a State or Territory (subclause 2B(3)). Response operations are typically managed at onshore coordination centres or forward operating bases, with operational response activities taking place wherever oil pollution has occurred or may occur.

496. For premises other than aircraft or vessels, the premises are *emergency response premises* if the premises are being (or proposed to be) used for:

a. the implementation of the oil pollution emergency provisions of a declared environment plan; or

b. planning, directing, coordinating, or providing logistical support for the implementation of the oil pollution emergency provisions of a declared environment plan; or

c. compliance with a significant incident direction; or

d. planning, directing, coordinating, or providing logistical support for compliance with a significant incident direction.

497. For aircraft or vessels, the premises are *emergency response premises* if the premises are being used, prepared for use, or positioned for use, for:

a. the implementation of the oil pollution emergency provisions of a declared environment plan; or
b. observing, planning, directing, coordinating, or providing logistical support for the implementation of the oil pollution emergency provisions of a declared environment plan; or

c. compliance with a significant incident direction; or

d. observing, planning, directing, coordinating, or providing logistical support for compliance with a significant incident direction.

498. This represents an extension of the kinds of places where NOPSEMA may conduct environmental inspections without a warrant; however it is limited to extremely extenuating circumstances where an oil pollution emergency has been declared and also limited even further to premises directly in connection with the response to the declared oil pollution emergency. See further discussion at paragraphs 507 to 513.

Item 29: After subclause 3(2) of Schedule 2A

499. This item inserts new subclauses to clause 3 of Schedule 2A to provide for oil pollution environmental inspections.

500. Under new subclause 3(2A), if there is a declared oil pollution emergency, a NOPSEMA inspector is empowered to conduct an oil pollution environmental inspection. The purpose of such an inspection is to determine either or both of the following:

a. whether the oil pollution emergency provisions of a declared environment plan have been or are being complied with;

b. whether a significant incident direction has been or is being complied with.

501. New subclause 3(2C) clarifies that an oil pollution environmental inspection may be conducted at the inspector’s own initiative or in compliance with a written direction from NOPSEMA under new subclause 3(5) (see item 31).

502. Oil pollution environmental inspections are separate to the existing general power of NOPSEMA inspectors to conduct environmental inspections under subclause 3(2). Subclause 3(2D) clarifies that the new oil pollution environmental inspection powers do not limit the general power to conduct an environmental inspection under subclause 3(2). New subclause 3(2E) also clarifies that an oil pollution environmental inspection may be conducted concurrently with an environmental inspection under subclause 3(2). An inspector may elect to do this, for example, if they wished to inspect for compliance with an environmental management law while also conducting an oil pollution environmental inspection, where the former matter is broader than the scope of a matter that may be inspected during an oil pollution environmental inspection.

503. New subclauses 3(2F) and (2G) clarify when an oil pollution environmental inspection is taken to relate to a title, for the purposes of references in provisions that are inserted into Schedule 2A by Schedule 4 to the Bill. See, for example, new subclause 7(2A) (inserted by item 35).
Item 30: Subclauses 3(3) and (4) of Schedule 2A

504. This item amends subclauses 3(3) and (4) to provide that these subclauses only relate to the general power of a NOPSEMA inspector to conduct an environmental inspection. Equivalent provisions in relation to an oil pollution environmental inspection are inserted by item 31.

Item 31: At the end of clause 3 of Schedule 2A

505. This item adds new subclauses to clause 3 of Schedule 2A. If there is a declared oil pollution emergency, new subclause 3(5) empowers NOPSEMA to give a written direction to a NOPSEMA inspector to conduct an oil pollution environmental inspection. New subclause 3(6) requires the NOPSEMA inspector to conduct the oil pollution environmental inspection as per the written direction.

Item 32: At the end of clause 4 of Schedule 2A

506. This item adds a new subclause 4(4) to empower NOPSEMA inspectors to exercise the powers specified in clause 4 at emergency response premises (as defined by new clause 2B of Schedule 2A) during declared oil pollution emergencies, i.e. during the conduct of an oil pollution environmental inspection. The powers in clause 4 are the powers that a NOPSEMA inspector can exercise at offshore premises (as defined by clause 2 of Schedule 2A) during an environmental inspection, and include the ability to enter and search premises without a warrant.

507. Under the Environment Regulations, petroleum titleholders are required to have in place an accepted environment plan prior to undertaking any petroleum activity in Commonwealth waters. The environment plan must outline the arrangements and control measures proposed by the titleholder to respond to an oil pollution emergency, such as an oil spill, including an oil pollution emergency response plan which must contain arrangements for managing response operations.

508. Response operations are typically managed through onshore coordination centres or forward operating bases, with operational response activities carried out wherever oil pollution has occurred or may occur. Under Schedule 2A, NOPSEMA inspectors may ordinarily enter offshore premises without a warrant, to inspect for titleholders’ compliance with environmental management laws, including the accepted environment plan. NOPSEMA routinely inspects these premises as part of its compliance monitoring activities. However, incident response operations are often coordinated and/or conducted at premises that are excluded from the premises NOPSEMA inspectors may enter without a warrant. For example, a forward operating base may not be occupied by a titleholder, while a vessel conducting clean-up operations will often be under the command of a master.

509. Further, while NOPSEMA inspectors may enter any premises under a warrant or with the consent of the occupier, in accordance with the Regulatory Powers (Standard...
Provisions) Act 2014 (Regulatory Powers Act) as it is applied by the OPGGS Act, obtaining a warrant can significantly impede compliance monitoring in the context of an emergency situation, such as an oil pollution emergency. This is because, during an offshore incident, NOPSEMA inspectors will need to gain regulatory intelligence in real time under dynamic situations. This may involve monitoring compliance across a number of locations while decisions on spill response approaches and deployment of equipment are taking place. A requirement to obtain a warrant (or consent) may reduce the ability of inspectors to effectively perform their functions in a timely manner and to provide up-to-date information to Government decision-makers. Noting the significant environmental risks and impacts that may be caused as a result of oil pollution, it is particularly important that NOPSEMA has the ability to act quickly to determine whether a titleholder is compliant with their clean-up, remediation and monitoring obligations in relation to an oil spill.

510. There is therefore a strong policy case that the capacity for NOPSEMA inspectors to monitor compliance with accepted arrangements under the environment plan during an oil pollution emergency should extend wherever those arrangements are being implemented, and that monitoring should be able to be undertaken in the most efficient manner possible, without the requirement to obtain a warrant.

511. Warrant-free oil pollution environmental inspection powers are limited by purpose; that is, to determine whether the petroleum titleholder has complied or is complying with the oil pollution emergency provisions of an environment plan and/or a significant incident direction given by NOPSEMA. A warrant will still be required under the Regulatory Powers Act if an inspector proposes to search for and gather evidential material.

512. Further, warrant-free oil pollution environmental inspection powers are only exercisable during a declared oil pollution emergency. Where the CEO of NOPSEMA is satisfied that the emergency no longer exists, the CEO must revoke the declaration. Warrant-free oil pollution environmental inspection powers may no longer be exercised once the declaration has been revoked.

513. In accordance with subclause 4(2), immediately on entering premises for the purposes of an oil pollution environmental 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 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.
Item 33: Subclause 5(1) of Schedule 2A

514. This item amends subclause 5(1) to provide that that subclause is only applicable to the general power of a NOPSEMA inspector to conduct an environmental inspection. Powers for NOPSEMA inspectors to enter and search regulated business premises for the purposes of an oil pollution environmental inspection are inserted by item 34.

Item 34: After subclause 5(1) of Schedule 2A

515. This item inserts new subclause 5(1A) to empower NOPSEMA inspectors to exercise the powers specified in that subclause at regulated business premises (defined by clause 2 of Schedule 2A) during declared oil pollution emergencies, i.e. during the conduct of an oil pollution environmental inspection. The powers in subclause 5(1A) are equivalent to the powers that a NOPSEMA inspector can exercise at regulated business premises during an environmental inspection. However, for the purposes of an oil pollution environmental inspection, the inspector must be satisfied that there are likely to be at those premises plant, substances, documents or things that relate to compliance or non-compliance with the oil pollution emergency provisions of a declared environment plan (as defined by clause 2A) or a significant incident direction given by NOPSEMA.

516. The powers include the ability to enter and search premises without a warrant. See justification in relation to warrant-free inspections at paragraphs 507 to 513.

Item 35: After subclause 7(2) of Schedule 2A

517. This item adds new subclauses to clause 7 to provide for NOPSEMA inspectors to require a titleholder to provide reasonable assistance and facilities for the purpose of conducting an oil pollution environmental inspection that relates to the titleholder’s petroleum title.

518. Such reasonable assistance includes appropriate transport to or from emergency response premises, reasonable accommodation and means of subsistence while the inspector is at the premises, and arranging for the inspector to be present on an aircraft or vessel that is being deployed or used for or in relation to implementing the oil pollution emergency response provisions of an environment plan or complying with a significant incident direction.

519. The requirement for the titleholder to take reasonably practicable steps to arrange for the inspector to be present on an aircraft or vessel ensures coercive powers are only included with respect to the titleholder, and not to other entities. This will be part of a titleholder’s spill preparedness and, when NOPSEMA is carrying out an environmental inspection under its general inspection powers in Schedule 2A in relation to the titleholder’s emergency response preparedness, the inspector could require production of documentary evidence that such arrangements are in place.
520. Non-compliance with a requirement under clause 7 is an offence under subclause 7(3), unless the person who is subject to the requirement has a reasonable excuse (subclause 7(4)).

Item 36: After subclause 8(4) of Schedule 2A

521. This item adds a new subclause to clause 8 to empower NOPSEMA inspectors to exercise the powers specified in that clause at emergency response premises (as defined by new clause 2B of Schedule 2A) during declared oil pollution emergencies, i.e. during the conduct of an oil pollution environmental inspection. Clause 8 enables a NOPSEMA inspector to require a person to answer a question, or to produce a document or thing, to the extent that it is reasonably necessary to do so in connection with the conduct of the oil pollution environmental inspection.

522. Non-compliance with a requirement under clause 8 is an offence under subclause 8(5), unless the person who is subject to the requirement has a reasonable excuse (subclause 8(6)).

523. Under existing subclause 8(8), 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 the production of the document or thing, 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).

524. Where matters relating to compliance with oil pollution emergency response obligations are concerned, it will often 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 compliance with applicable requirements. This is particularly important during an oil pollution emergency, such as an oil spill, where a failure to adequately and appropriately respond may result in significant environmental damage.

525. NOPSEMA faces substantial difficulties in obtaining information about incident response activities. Offshore operations are technologically complex and take place far from land. In many cases, the inspector’s best recourse is to ask questions of those carrying out the activities or to have them produce operational records. In an industry where incidents 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.

Item 37: At the end of clause 9 of Schedule 2A

526. This item adds a new subclause to clause 9 to empower NOPSEMA inspectors to exercise the powers specified in that clause at emergency response premises (as
defined by new clause 2B of Schedule 2A) during declared oil pollution emergencies, i.e. during the conduct of an oil pollution environmental inspection. Clause 9 enables a NOPSEMA inspector to take possession of any plant, substance or thing and remove it from the premises, or take a sample of the substance or thing and remove that sample from the premises, in connection with the conduct of the oil pollution environmental inspection, where it is reasonably necessary to do so for the purposes of inspecting, examining or measuring, or conducting tests concerning, the plant, substance or thing.

**Item 38: Subclause 10(2) of Schedule 2A**

527. This item amends subclause 10(2) to clarify that an environmental do not disturb notice can only be issued in connection with the conduct of an environmental inspection.

**Item 39: After subclause 10(6) of Schedule 2A**

528. This item adds new subclauses to clause 10 to empower NOPSEMA inspectors to exercise the powers specified in that clause at emergency response premises (as defined by new clause 2B of Schedule 2A) during declared oil pollution emergencies, i.e. during the conduct of an oil pollution environmental inspection. Clause 10 enables a NOPSEMA inspector to issue an environmental do not disturb notice to a titleholder 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, of the conducting of tests concerning, the premises or particular plant, or a particular substance or thing, at the premises.

529. Inspections can be conducted from a remote location and notices issued for emergency response premises other than the premises in which the inspector is located. For example, if an inspector is conducting an inspection from an aircraft, the inspector may issue a notice in relation to a vessel that is emergency response premises if the inspector considers it is necessary to do so, without the inspector having to be present on the vessel.

530. New subclause 10(6B) prevents a NOPSEMA inspector issuing a notice in relation to premises of a particular kind, unless the inspector considers that it is appropriate to issue such a notice to premises of that kind. The types of premises that may not be suitable include an open space such as a beach, where members of the public may be present and the titleholder will have little or no ability to control access. The decision whether particular premises are appropriate for the issue of a do not disturb notice is left to the inspector, who will be at the premises and able to see whether they are suitable for the giving of such a notice, rather than attempting to specify in the legislation the range of circumstances in which it may be inappropriate to issue a notice.
Item 40: After subclause 11A(5) of Schedule 2A

531. This item adds a new subclause to clause 11A to empower NOPSEMA inspectors to exercise the powers specified in that clause at emergency response premises (as defined by new clause 2B of Schedule 2A) during declared oil pollution emergencies, i.e. during the conduct of an oil pollution environmental inspection. Clause 11A enables a NOPSEMA inspector to issue an environmental prohibition notice to a titleholder if, in conducting the inspection, the inspector is satisfied on reasonable grounds that an activity is occurring (or may occur) at the premises that involves (or would involve) an immediate and significant threat to the environment, and/or the operation or use of the premises involves, or would involve if it occurred, an immediate and significant threat to the environment. It must be reasonably necessary to issue the notice in order to remove the threat.

532. In the case of an oil pollution environmental inspection, a threat to the environment is confined to a threat that is attributable to one or more petroleum activities of the titleholder. This is to ensure that the scope of the provision remains within constitutional power.

533. Inspection can be conducted from a remote location and notices issued for emergency response premises other than the premises in which the inspector is located. For example, if an inspector is conducting an inspection from an aircraft, the inspector may issue a notice in relation to a vessel that is emergency response premises if the inspector considers it is necessary to do so, without the inspector having to be present on the vessel.

Item 41: After subclause 11B(6) of Schedule 2A

534. This item adds a new subclause to clause 11B to provide for the requirements in that clause to apply in relation to an environmental prohibition notice issued during an oil pollution environmental inspection. Clause 11B provides for the inspector who issued the notice to give a copy of the notice to certain persons (subclause 11B(2)), and for the titleholder to cause a copy of the notice to be displayed in a prominent place at the premises (subclause 11B(3)). Clause 11B also provides for the inspector to inform the titleholder if the inspector is satisfied that actions taken to remove the threat are not adequate (subclauses 11B(4) and (5)), and for when a notice ceases to have effect (subclause 11B(6)).

535. In accordance with new paragraph 11B(6A)(b), in the case of an oil pollution environmental inspection, a threat to the environment is confined to a threat that is attributable to one or more petroleum activities of the titleholder. This is to ensure that the scope of the provision remains within constitutional power.
Item 42: At the end of clause 11C of Schedule 2A

536. This item adds a new subclause to clause 11C to empower NOPSEMA inspectors to exercise the powers specified in that clause at emergency response premises (as defined by new clause 2B of Schedule 2A) during declared oil pollution emergencies, i.e. during the conduct of an oil pollution environmental inspection. In the context of an oil pollution environmental inspection, clause 11C enables a NOPSEMA inspector to issue an environmental improvement notice to a titleholder if, in conducting the inspection, the inspector is satisfied on reasonable grounds that the titleholder is contravening or has contravened the oil pollution emergency provisions of a declared environment plan or a significant incident direction, and as a result there is or may be a significant threat to the environment.

537. In the case of an oil pollution environmental inspection, a threat to the environment is confined to a threat that is attributable to one or more petroleum activities of the titleholder. This is to ensure that the scope of the provision remains within constitutional power.

538. Inspection can be conducted from a remote location and notices issued for emergency response premises other than the premises in which the inspector is located. For example, if an inspector is conducting an inspection from an aircraft, the inspector may issue a notice in relation to a vessel that is emergency response premises if the inspector considers it is necessary to do so, without the inspector having to be present on the vessel.

Item 43: At the end of subclause 11D(6) of Schedule 2A

539. This item amends subclause 11D(6) to specify that that subclause does not apply to an oil pollution environmental inspection.

Item 44: At the end of clause 11D of Schedule 2A

540. This item adds a new subclause to clause 11D to provide for the requirements in that clause to apply in relation to an environmental improvement notice issued during an oil pollution environmental inspection. Clause 11D requires the titleholder to ensure that the notice is complied with (subclause 11D(2)), and sets out offence and civil penalty provisions in relation to non-compliance (subclauses 11D(3), (4), (7) and (8)). Clause 11D also provides for the inspector who issued the notice to give a copy of the notice to certain persons (subclause 11D(5)). Subclause 11D(6) does not apply in relation to an oil pollution environmental inspection – see item 43.
Item 45: At the end of Part 3 of Schedule 2A

541. This item inserts new clauses 19 and 20 of Schedule 2A, which reference the constitutional powers which provide support for that Schedule.
542. Paragraph 51(xxxix) of the Constitution empowers the Parliament to make laws with respect to ‘external affairs’. The external affairs power supports legislation with respect to matters or things outside the geographical limits of Australia. Paragraph 51(xxxix) of the Constitution empowers the Parliament to make laws with respect to matters incidental to the execution of any power vested in the Parliament by the Constitution.
543. Paragraph 51(xx) of the Constitution empowers the Parliament to make laws with respect to foreign corporations and trading or financial corporations formed within the limits of the Commonwealth. In the OPGGS Act, ‘constitutional corporation’ means a corporation to which paragraph 51(xx) of the Constitution applies (see section 7).
544. Section 122 of the Constitution empowers the Parliament to make laws for the government of any territory.
Part 2—Amendments relating to environment plans

Items 46 to 49: Subsection 576C(9) (definition of environment plan); Sections 790B and 790C; Subsections 790D(2) and (3); Clause 2 of Schedule 2A (definition of environment plan)

545. To future-proof references to regulations made under the OPGGS Act, these items remove specific references to the name of the Environment Regulations that are inserted by items 21, 23 and 27 of Schedule 4 to the Bill and instead provide for the name of the Regulations, or provisions of the Regulations, to be prescribed by regulation. This is consistent with amendments in Schedule 18 to the Offshore Petroleum and Greenhouse Gas Storage Amendment (Miscellaneous Amendments) Act 2019, and ensures that the OPGGS Act does not need to be amended each time the Environment Regulations are remade in accordance with Commonwealth sunsetting requirements under the Legislation Act 2003.

546. Providing for these amendments to be made in a separate Part, rather than immediately incorporating them into the definitions inserted by Part 1, will ensure time for supporting regulations to be made to prescribe the name of the Regulations.
Part 3—Application provision

Item 50: Application—section 572F of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*

547. This item clarifies that the amendments to section 572F in relation to reimbursement of costs and expenses incurred by a State or the NT in responding to an escape of petroleum apply after the commencement of the amendments. The provision ensures that the amendments do not have retrospective application.
Part 4—Amendments contingent on the commencement of Schedule 2 to the Timor Sea Maritime Boundaries Treaty Consequential Amendments Act 2019


Items 51 to 54: Subsection 576B(9) (definition of \textit{State/Territory petroleum infrastructure title}); Subsection 576B(9) (definition of \textit{State/Territory petroleum pipeline title}); Subclause 2A(5) of Schedule 2A; Paragraph 2A(12)(a) of Schedule 2A

548. These items commence either immediately after the commencement of Part 1 of Schedule 4 to the Bill, or immediately after the commencement of Schedule 2 to the \textit{Timor Sea Maritime Boundaries Treaty Consequential Amendments Act 2019} (Maritime Boundaries Treaty Act) – whichever occurs later.

549. In the former case, Schedule 2 to the Maritime Boundaries Treaty Act will have amended the OPGGS Act to replace references to the Principal Northern Territory offshore area with references to the offshore area of the NT prior to the time that these items commence. These items will ensure that provisions of the OPGGS Act that are amended or inserted by Part 1 of Schedule 4 to the Bill and that include references to the Principal Northern Territory offshore area are immediately amended to replace those references with references to the offshore area of the NT.

550. In the latter case, provisions of the OPGGS Act that are amended or inserted by Part 1 of Schedule 4 to the Bill will initially refer to the Principal Northern Territory offshore area. Then, once Schedule 2 to the Maritime Boundaries Treaty Act commences, these items will amend the relevant provisions of the OPGGS Act to replace references to the Principal Northern Territory offshore area with references to the offshore area of the NT.

551. If Schedule 2 to the Maritime Boundaries Treaty Act does not commence at all, references to the Principal Northern Territory offshore area will be retained.
Clause 1: Short title

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

Clause 2: Commencement

553. The table in this clause sets out the commencement date for when the Levies Bill’s provisions commence.
554. Sections 1 to 3 of the Levies Bill will commence on the day the Levies Bill receives Royal Assent.
555. Schedule 1 of the Levies Bill will commence at the same time as Part 1 of Schedule 1 to the Offshore Petroleum and Greenhouse Gas Storage Amendment (Cross-boundary Greenhouse Gas Titles and Other Measures) Act 2019 commences, but will not commence at all if that Part does not commence.
556. This will ensure that the amendments in Schedule 1 of the Levies Bill, which ensure that levies imposed by the Levies Act are effectively imposed on cross-boundary GHG titles, will commence at the same time as amendments to the OPGGS Act that provide for the grant and administration of cross-boundary titles.
557. Schedule 2 of the Levies Bill will commence at the same time as Schedule 2 to the Offshore Petroleum and Greenhouse Gas Storage Amendment (Cross-boundary Greenhouse Gas Titles and Other Measures) Act 2019 commences.
558. This will ensure that the amendments in Schedule 2 of the Levies Bill, which provide that the Levies Act binds, and is taken always to have bound, the Crown in right of each of the States and the NT, will commence at the same time as amendments to the OPGGS Act to remove doubt that the provisions of the OPGGS Act and regulations that relate to GHG injection and storage apply, and are taken to have always applied, to each of the States and the NT.
560. Schedule 3 makes a technical correction to section 2 of that Act.

Clause 3: Schedules

561. This clause gives effect to the provisions in the Schedules to the Levies Bill.
Schedule 1—Cross-boundary greenhouse gas titles

Item 1: Section 3 (at the end of the definition of Commonwealth waters)

562. This item adds a note at the end of the definition of Commonwealth waters to draw the reader’s attention to new section 3B (inserted by item 3). Section 3B provides that, for the purposes of the Levies Act, the title areas of cross-boundary GHG titles, which include areas geographically located in State/NT coastal waters, are taken to be in Commonwealth waters.

Item 2: Section 3

563. This item inserts new definitions for the purposes of the Levies Act.

Item 3: After section 3A

564. This item inserts new section 3B to clarify that, for the purposes of the Levies Act, the title areas of cross-boundary GHG titles are taken to be in Commonwealth waters. The title areas of cross-boundary titles include areas geographically located in State/NT coastal waters. Section 3B ensures that levies imposed by the Levies Act are effectively imposed on cross-boundary titles in the same way that they apply to “ordinary” GHG titles, so that NOPSEMA and the Titles Administrator will be fully cost-recovered for their regulatory functions in relation to those titles.

565. With respect to references to a “facility” in the Levies Act, facility is defined as having the same meaning as in Schedule 3 to the OPGGS Act. In Schedule 3, a facility is a vessel or structure that is located at a site “in Commonwealth waters”. The term Commonwealth waters is defined in the OPGGS Act as the waters of the sea that comprise the offshore areas of each State and of each Territory. Amendments to the OPGGS Act made by the Bill deem the offshore area of each State and the Principal NT offshore area to include the title areas of cross-boundary titles. Therefore, the Levies Act applies in relation a facility located in a cross-boundary title area, even if the facility is geographically located within the coastal waters of a State or the NT.

Item 4: Subsection 10E(7) (after paragraph (g) of the definition of eligible title)

566. This item inserts new paragraph (ga) in the definition of eligible title in subsection 10E(7) to provide that annual titles administration levy is imposed on a cross-boundary GHG assessment permit.

567. With the exception of its geographical extension into State/NT coastal waters, a cross-boundary permit is equivalent to a work-bid GHG assessment permit, in relation to which levies are already imposed. However, the definition of work-bid greenhouse
gas assessment permit in subsection 10E(7) does not include a cross-boundary permit. It is therefore necessary to separately list a cross-boundary permit in the definition of eligible title.

568. The definitions of greenhouse gas holding lease and greenhouse gas injection licence in section 3 have the same meaning as in the OPGGS Act. The definitions of those titles in section 7 of the OPGGS Act include a cross-boundary GHG holding lease and a cross-boundary GHG injection licence respectively. These cross-boundary titles are therefore included in the definition of eligible title (paragraphs (h) and (i)), and annual titles administration levy is imposed on the titles.
**Schedule 2—Crown to be bound etc.**
*Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003*

**Item 1: Before section 4**

569. This item inserts new section 3C to provide that the Levies Act binds, and is taken always to have bound, the Crown in right of each of the States and the NT.

570. Schedule 2 to the Bill amends the OPGGS Act to provide that the GHG-related provisions of the OPGGS Act and regulations apply, and are taken to always have applied, to the States and the NT. The amendments remove any doubt about the validity of GHG assessment permits that have been granted to the Crown in right of Victoria.

571. New section 3C further ensures that the Levies Act binds, and is taken to always have bound, the Crown in right of the States and the NT. This ensures that levies are imposed in relation to regulatory activities undertaken in respect of GHG titles held by a State or the NT. This will in turn ensure that NOPSEMA and the Titles Administrator continue to be fully cost-recovered for their regulatory operations.

572. Section 3C has retrospective application. The purpose of retrospective application is to validate past payments of annual titles administration levy by the Crown in right of Victoria under the Levies Act. No person will be disadvantaged as a result of retrospectivity.

573. Section 3C also clarifies that the Levies Act does not bind, and is taken never to have bound, the Crown in right of the Commonwealth. The Commonwealth cannot impose tax on itself.

574. This item also inserts section 3D, which is a reading down provision that ensures that the Levies Act has no effect to the extent (if any) to which it would impose a tax on property of any kind belonging to a State, contrary to section 114 of the Constitution.
Schedule 3—Technical correction

Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment Act 2019

Item 1: Subsection 2(1) (table item 4, column 2)

575. This item makes a technical amendment to table item 4 of subsection 2(1) of the Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment Act 2019 (the Levies Amendment Act) to correct an error in the provision for the timing of commencement of Schedule 2 to that Act. The amendment will ensure that Schedule 2 to the Levies Amendment Act will commence as intended.