

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Resources

*Offshore Petroleum and Greenhouse Gas Storage Act 2006*

*Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2024*

### **Purpose and Operation**

The *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act) provides the legal framework for the exploration for and recovery of petroleum, and for the injection and storage of greenhouse gas substances, in offshore areas (i.e., Commonwealth waters). Section 781 of the OPGGS Act provides that the Governor-General may make regulations prescribing matters required or permitted by the OPGGS Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the OPGGS Act.

The *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2024* (the Regulations) provide for the regulation of the safety of petroleum and greenhouse gas storage activities in offshore areas. The main purpose of the Regulations is to ensure that offshore petroleum and greenhouse gas storage activities are undertaken in a way that reduces the risks to the health and safety of persons at or near facilities, including persons undertaking diving operations, to a level that is as low as reasonably practicable. The Regulations remake the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* (2009 Safety Regulations), which are due to sunset on 1 April 2026, and include technical amendments and recommendations from the 2021 Offshore Oil and Gas Safety Review (the Safety Review). Changes will also reflect amendments made by the *(Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Safety and Other Measures) Act 2024)* (the Safety and Other Measures Act).

Further details of the Regulations are outlined in Attachment A.

### **Background**

The Department of Industry, Science and Resources (the department), in consultation with the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) and the National Offshore Petroleum Titles Administrator (NOPTA) reviewed the effectiveness and efficiency of the operation of the 2009 Safety Regulations (the Review). The Review was conducted in accordance with the Attorney-General's Department's *Guide to Managing Sunsetting of Legislative Instruments*. The Review found that the 2009 Safety Regulations, including technical amendments and recommendations from the Safety Review, are fit-for-purpose and remain consistent with the whole of government policy for safety.

The purpose of the Regulations is to remake the 2009 Safety Regulations in substantially the same form with amendments to ensure consistency with current drafting practices and to simplify language. The section numbers in the instrument largely mirror the numbering in the 2009 Safety Regulations, merging provisions

where practical and logical to do so. Providing for the continuity of numbering where possible alleviates cost and impost to NOPSEMA and NOPTA in updating their systems and maintains continuity for industry. A table setting out the equivalent provision for each provision is at [Attachment C](#).

Under section 15AC of the *Acts Interpretation Act 1901* (the AIA), where an Act has expressed an idea in a particular form of words, and a later Act appears to have expressed the same idea in a different form of words for the purpose of using a clearer style, the ideas shall not be taken to be different merely because different forms of words were used. The AIA applies to the Safety instrument as if they were an Act due to the operation of paragraph 13(1)(a) of the *Legislation Act 2003* (the Legislation Act). Where the language used in a provision of the instrument has been revised to improve clarity compared to the previous provision in the 2009 Safety Regulations, this should not be seen as reflecting an intention to change the policy position.

### **Sunsetting**

The 2009 Safety Regulations were initially scheduled to sunset on 1 April 2020, in accordance with section 50 of the Legislation Act. The sunset date has been extended to 1 April 2026 (Legislation (Deferral of Sunsetting—Offshore Petroleum and Greenhouse Gas Storage Instruments) Certificate 2022).

The remake of the Regulations will make a number of amendments, including:

- Introducing a Design Notification Scheme to support early engagement with NOPSEMA on design safety matters.
- Clarifying the circumstances that require a safety case revision by relating this requirement to the loss or removal of a technical or other control measure identified in the safety case as being critical to safety.
- Clarifying that a safety case must be revised at the end of every 5-year period starting from the day the safety case is first accepted, even if it has been revised during the 5-year period.
- Strengthening the requirements for operator registration, including ensuring that potential operators must demonstrate that they are able to undertake the functions of an offshore facility operator.
- Streamlining the transfer of operators in relation to the same facility where an operator is replaced.
- Inserting provisions enabling the use of civil penalties, infringement notices, injunctions, enforceable undertakings and other alternative enforcement mechanisms in accordance with the *Regulatory Powers (Standard Provisions) Act 2014* (the Regulatory Powers Act), as part of implementing a graduated enforcement regime with respect to safety matters for the offshore petroleum and greenhouse gas storage sectors.
- Making enhancements to the diving safety management system (DSMS), diving project plan, start-up notices and reporting obligations for diving supervisors.

- Replacing references to ‘OHS inspectors’ with references to ‘NOPSEMA inspectors’ to reflect amendments to the OPGGS Act (previously there were two categories of inspectors: petroleum project inspectors and OHS inspectors).
- Implement changes to reflect amendments to the OPGGS Act including enhancing psychosocial health and discrimination provisions, operator notification and reporting requirements to NOPSEMA, and the introduction of a vessel activity notification scheme.

### **Authority**

Section 781 of the OPGGS Act provides that the Governor-General may make regulations prescribing matters required or permitted by the OPGGS Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the OPGGS Act. Relevantly:

- Section 639 provides that regulations may make provision in relation to the health and safety of persons at or near a regulated operations site who are under the control of a person who is carrying on a regulated operation.
- Section 685 provides that the regulations may provide for the payment to NOPSEMA of fees in respect of matters in relation to which expenses are incurred by NOPSEMA under the OPGGS Act or the regulations.
- Section 783 provides that regulations can make provisions for applying, adopting or incorporating a relevant code of practice or standard contained in an instrument.
- Section 790 provides for the regulations to provide for offences against the regulations, with the caveat that applicable penalties must not exceed a fine of 100 penalty units, or 100 penalty units for each day on which the offence occurs.
- Section 790A provides for the creation of civil penalties, infringement notices and other enforcement measures in regulations, and for the administration of such measures in accordance with the Regulatory Powers Act.
- Clause 17 of Schedule 3 provides that the regulations may make provision relating to any matter affecting, or likely to affect, the occupational health and safety of persons at a facility.
- Clause 93 of Schedule 3 provides that the regulations may prescribe procedures for the selection of persons as members of health and safety committees; procedures to be followed at meetings of health and safety committees; and forms for the purposes of Schedule 3 to the OPGGS Act, and for the purposes of the regulations.

### **Commencement**

The Regulations commence on 12 June 2025. Commencement is intended to coincide with the commencement of the amendments to the OPGGS Act made by the Safety and Other Measures Act. The delayed commencement will allow time for the department, NOPSEMA and NOPTA to update processes and guidance material in line with the remade instrument, prior to commencement.

## **Consultation**

The department undertook extensive consultation with key stakeholders as part of the Safety Review. Stakeholders included NOPSEMA, industry members, peak bodies, unions, the offshore workforce, Federal Government departments and agencies, and State and Territory Governments. The department established a safety stakeholder group (SSG) with representatives from each of these stakeholders and consulted the SSG throughout the Safety Review. The consultation process involved:

- development of a discussion paper informed by input from stakeholder workshops conducted in 2018 and in close consultation with the SSG;
- public comment on the discussion paper from June to August 2019;
- a survey of the oil and gas workforce, conducted from November 2019 to January 2020;
- publication of a draft policy framework informed by stakeholder feedback—on the department’s Consultation Hub in from August to October 2020. The public was invited to respond to this framework to assist the department to revise and finalise the policy framework;
- publication of a final policy framework in July 2021; and
- release of an exposure draft of the Regulations for public consultation in September 2024.

The draft Regulations were published on the department’s online portal and written submissions were invited from the public and stakeholders. Stakeholders were made aware of the consultation opportunity through the Australian Petroleum News, as well as targeted notifications via mailing lists, and to peak body organisations such as the Australian Energy Producers, who represent the majority of industry stakeholders in Australia.

Three information sessions were held to discuss the exposure draft and provide additional information. Fourteen submissions were received, which were generally supportive, and provided recommendations where additional information and guidance could be provided by the department and regulator (NOPSEMA).

## **Regulatory Impact**

The department consulted with the Office of Impact Analysis (OIA) on the remake of the Regulations. The OIA determined that a detailed impact analysis was not required under the Australian Government’s Policy Impact Analysis Framework. (OIA24-08115).

## **Statement of Compatibility with Human Rights**

Subsection 9(1) of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker of a legislative instrument to which section 42 (disallowance) of the Legislation Act applies to cause a statement of compatibility to be prepared in respect of that legislative instrument. A Statement of Compatibility with Human Rights has been prepared to meet that requirement and is set out at [Attachment B](#).

## GLOSSARY

<b>Abbreviation</b>	<b>Definition</b>
2009 Environment Regulations	<i>Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009</i>
2023 Environment Regulations	<i>Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023</i>
AIA	<i>Acts Interpretation Act 1901</i>
ALARP	as low as reasonably practicable
AMSA	Australian Maritime Safety Authority
ASIC	Australian Securities and Investment Commission
Corporations Act	<i>Corporations Act 2001</i>
Criminal Code	<i>Criminal Code Act 1995</i>
DNS	Design Notification Scheme
GHG facility	new Greenhouse Gas facility
Guide	<i>A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers</i> , September 2011
HSR	Health and Safety Representative
Legislation Act	<i>Legislation Act 2003</i>
NOPSEMA	National Offshore Petroleum Safety and Environmental Management Authority
NOPTA	National Offshore Petroleum Titles Administrator
OHS	Occupational Health and Safety
OPGGS Act	<i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i>
Privacy Act	<i>Privacy Act 1988</i>
Regulatory Powers Act	<i>Regulatory Powers (Standard Provisions) Act 2014</i>
2009 Safety Regulations	<i>Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009</i>
Safety and Other Measures Act	<i>Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Safety and Other Measures) Act 2024</i>
Safety Review	Offshore Oil and Gas Safety Review – April 2021
the department	Department of Industry, Science and Resources

**Details of the Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2024**

**CHAPTER 1—PRELIMINARY**

**Section 1.1 – Name**

This section provides for the title of the Regulations to be the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2024*.

**Section 1.2 – Commencement**

Section 1.2 provides for the commencement date of 12 June 2025. The commencement aligns with the commencement of the amendments made by the *Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Safety and Other Measures) Act 2024*.

**Section 1.3 – Authority**

This section provides that the instrument is made under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

**Section 1.4 – Objects**

Section 1.4 specifies the objects of the instrument including that:

- offshore petroleum and greenhouse gas storage facilities (which includes offshore pipelines according to the definition of “facility”) are designed, constructed installed, operated, modified and decommissioned in Commonwealth waters only in accordance with an accepted safety case;
- safety cases for facilities make provision for the matters in subsection 1.4(2) in relation to the health and safety of persons at or near the facilities including the identification of hazards, the assessment of risks, the elimination of hazards and risks where possible and a system that manages risks and hazards which provides for continuous improvement;
- the risks to the health and safety of persons at offshore petroleum and greenhouse gas storage facilities, are reduced to a level that is ALARP;
- diving activities under the OPGGS Act and instrument are carried out in accordance with an accepted DSMS and diving project plans that have been approved by operators of facilities or accepted by NOPSEMA;
- that DSMS make provision for certain matters in relation to the health and safety of persons set out in subsection 1.4(5); and

- the risks to the health and safety of persons undertaking diving activities to which the Act applies are reduced to a level that is ALARP.

## Section 1.5 – Definitions

Section 1.5 defines expressions used in the instrument. A number of expressions that were in the 2009 Safety Regulations are now included in the OPGGS Act so are not remade in the instrument. These include:

- diving;
- diving operations;
- health;
- NOPSEMA;
- NOPSEMA inspector.

The following changes to definitions that are in the 2009 Safety Regulations have been made as part of this remake:

- *foreign company* - inserts a definition of ‘foreign company’ which has the meaning given by section 9 of the Corporations Act.
- *identity card* – deleted as no longer required due to amendments.
- *new GHG facility* - inserts a signpost definition of new GHG facility. This signpost definition points to the meaning of ‘new GHG facility’ in section 2.4FB.
- *new production facility* - inserts a signpost definition of ‘new production facility’. This signpost definition points to the meaning of ‘new production facility’ in section 2.4FA.
- *NOPSEMA waters* - inserts a definition of ‘NOPSEMA waters’. This is a signpost definition providing that ‘NOPSEMA waters’ has the meaning given by section 643 of the OPGGS Act. The reason for the insertion of this definition into the instrument is to support the amendment to paragraph 2.24(5)(a) to replace the words ‘Safety Authority waters’ with ‘NOPSEMA waters’. This reference was unintentionally left unchanged when the 2009 Safety Regulations were amended at the beginning of 2012 to reflect the change in name of the regulator from the National Offshore Petroleum Safety Authority to the NOPSEMA.
- *OHS Inspector* – deleted as an ‘OHS Inspector’ is no longer a category of inspector under the OPGGS Act. All references to ‘OHS Inspector’ are replaced with references to ‘NOPSEMA Inspector’.
- *proposed operator* – inserts a signpost definition of ‘proposed operator’. This signpost definition provides that ‘proposed operator’ (in relation to a facility or proposed facility) has the meaning given by subsection 2.4A(1).
- *Sexually harass* – inserts a signpost definition of ‘sexually harass’, which has the meaning given by section 28A of the *Sex Discrimination Act 1984*. It is noted that other parts of speech and grammatical forms of “sexually harass” (for example, “sexual harassment”) have a corresponding meaning (see section 18A of the AIA, as that section applies because of paragraph 13(1)(a) of the Legislation Act).
- *significantly altered* – inserts a signpost definition pointing to the meaning of ‘significantly altered’ in subsections 2.4FA(2) and 2.4FB(2) for the DNS to apply to an existing vessel or structure that has been significantly altered such that it has a different purpose, with the intention of being installed and operated as a facility.

## **Section 1.6 – Vessels that are not facilities**

## **Section 1.7 – Vessels that are not associated offshore places**

Sections 1.6 and 1.7 ensure that vessels are not inadvertently excluded from being defined as a ‘facility’ or an ‘associated offshore place’. This is important because Schedule 3 to the OPGGS Act and the instrument apply in relation to facilities (including associated offshore places), so if vessels are not defined as facilities or associated offshore places when they should be, then the activities undertaken on those vessels and facilities will not be subject to the high-hazard petroleum and greenhouse gas storage safety regime.

The definition of *facility* in clause 3 of Schedule 3 to the OPGGS Act provides that ‘facility’ means a facility as defined by clause 4 of Schedule 3, and (except in the definition of *associated offshore place*) includes an associated offshore place in relation to a facility.

Paragraph 4(6)(d) of Schedule 3 to the OPGGS Act provides that a vessel is not a vessel for the purposes of Schedule 3 if it is used for any purpose such that it is declared by the regulations not to be a facility.

Section 1.6 provides that, for the purposes of paragraph 4(4)(d) of Schedule 3 to the OPGGS Act, if a vessel that is located at a site in Commonwealth waters is being used only for one or more of the purposes listed in the table in section 1.6 while located at that site, the vessel is declared not to be a facility.

The definition of *associated offshore place* in clause 3 of Schedule 3 to the OPGGS Act provides that an ‘associated offshore place’, in relation to a facility, is any offshore place near the facility where activities relating to the construction, installation, operation, maintenance or decommissioning of the facility take place, but does not include a vessel or structure that is declared by the regulations not to be an associated offshore place.

Section 1.7 provides that, for the purposes of paragraph (c) of the definition of *associated offshore place* in clause 3 of Schedule 3 to the Act, a vessel that is mentioned in column 1 of an item in the table in subsection 1.7(1) is declared not to be an associated offshore place if both the vessel is located at a site in Commonwealth waters and while located at that site, the vessel is used only for one or more of the purposes mentioned in column 2 of the item. When the vessel is being so used, a facility is not causing a risk to the vessel or to people on the vessel.

The reference, in paragraph 1.6(1)(b), to location “at a site” ensures it is clear that if, at any time while a vessel is located at a *particular* site, it will be used or prepared for use for one or more purposes that appropriately classify it as a facility under clause 4 of Schedule 3 to the OPGGS Act, the vessel is a facility (and a safety case is required), even if the vessel is also used for one or more of the purposes listed in the table in section 1.6 or 1.7 while located at that site.

## **Section 1.8 – Notices and reports**

The reference in this section to Schedule 3.1 has been omitted because the forms will, for ease of access, now be published on the NOPSEMA website.

This section requires that a notice or report must be produced clearly and legibly in handwriting or by means of a machine in such a manner as to enable clear and legible reproduction of the contents of the notice or report.

## **CHAPTER 2—OFFSHORE FACILITIES**

### **Part 1—Preliminary**

#### **Section 2.1AA – Simplified outline of this Chapter**

This section sets out a simplified outline Chapter 2 of the instrument. While simplified outlines are included to assist readers to understand the substantive provisions, the outlines are not intended to be comprehensive. It is intended that readers should rely on the substantive provisions of the instrument.

### **Part 2—Operators and proposed operators**

#### **Division 1—Operators**

#### **Section 2.1AB – Purpose of this Part**

This section provides that this Part is made for the purposes of clause 5 of Schedule 3 to the OPGGS Act.

#### **Section 2.1 – Nomination of operator – general**

Section 2.1 provides that a facility owner or a titleholder may nominate a person, through written notice to NOPSEMA, as the operator of a facility or a proposed facility. The section further prescribes the information that must be included in this notice and requires the person’s consent to the nomination.

#### **Section 2.3 – Acceptance or rejection of nomination of operator**

Section 2.3 provides that NOPSEMA must accept a nomination of a person (the *nominee*) as the operator of a facility if satisfied that the nominee has or will have day-to-day management and control of the facility or proposed facility and operations at the facility or proposed facility and, in the case of a foreign company, the nominee is registered under Division 2 of Part 5B.2 (foreign companies) of the Corporations Act.

The requirement that a nominee which is a foreign company must be registered with ASIC under the Corporations Act is necessary because if a foreign company is not registered with ASIC, there is potentially no legal mechanism to pursue the operator for any breaches of OHS requirements. Unless a foreign-owned operator has a registered office or place of business in Australia, or has appointed an Australian local

agent, or an officer of the corporation is resident in Australia, then a prosecution of the foreign company cannot be commenced, and NOPSEMA cannot ensure compliance through holding foreign-owned operators accountable for breaches of OHS requirements.

Subsection 2.3(3) sets out the criteria that NOPSEMA must take into account in deciding whether to accept or reject a nomination:

- the ability of the nominee to undertake the functions and responsibilities of an offshore facility operator;
- the physical and operational features of the facility; and
- if there is an existing operator of the facility or the proposed facility – the views (if applicable) of the operator.

## **Section 2.4 – Register of operators**

Section 2.4 requires NOPSEMA to maintain a register of operators of facilities and publish certain specified details of the registered operator on NOPSEMA’s webpage. The section also provides for the processes for removal of a person from the register.

Subsection 2.4(3) provides that, where a facility operator is a foreign company and the operator ceases to be registered with ASIC under Division 2 of Part 5B.2 of the Corporations Act, the facility operator must as soon as practicable give NOPSEMA written notice of ceasing to be so registered.

Subsection 2.4(4) provides that NOPSEMA must remove an operator’s name from the register of facility operators if given a notice under subsection 2.4(2) (operator ceases to have day-to-day management and control of the facility and operations at the facility) or subsection 2.4(3) (operator is a foreign company and ceases to be registered under Division 2 of Part 5.2B of the Corporations Act).

Subsections 2.4(5), 2.4(6) and 2.4(7) set out a process for removal of an operator from the register. Subsection 2.4(5) provides that if NOPSEMA believes on reasonable grounds that either:

- (a) the operator of a facility does not have, or will not have, day-to-day management and control of the facility and operations at the facility; or
- (b) if the operator of a facility or proposed facility is a foreign company - that the operator has ceased to be registered with ASIC under Division 2 of Part 5B.2 of the Corporations Act,

then subsection 2.4(6) applies. Subsection 2.4(6) provides that NOPSEMA may give notice of intention to remove the operator from the register to the operator and the owner or titleholder who first nominated the operator.

Subsection 2.4(7) provides that the operator or the owner or titleholder who first nominated the operator will have 30 days from when the notice is given to make any representations in relation to the notice. If, after considering any such representations

made by the owner, titleholder or operator, NOPSEMA still believes on reasonable grounds that the operator does not have, or will not have, day-to-day management and control of the facility and operations at the facility, or if the operator is a foreign company, has ceased to be registered under Division 2 of Part 5.2B of the Corporations Act. NOPSEMA must remove the name of the operator of the facility from the register.

## **Division 2—Proposed operators**

### **Section 2.4A – Nomination of proposed operator—general**

Section 2.4A provides that a facility owner or a titleholder may nominate a person (the *proposed operator*), by giving written notice to NOPSEMA, to replace the existing operator of the facility or proposed facility. Subsection 2.4A(2) specifies the information that must be included in the notice.

### **Section 2.4B – Acceptance or rejection of nomination of proposed operator**

Section 2.4B provides that NOPSEMA must accept a nomination of a proposed operator if satisfied that the proposed operator will have day- to- day management and control of the facility or proposed facility and the operations at the facility or proposed facility, and – in the case of a foreign company – the proposed operator is registered under the Corporations Act. That is, a foreign company must additionally be registered with ASIC under the Corporations Act for NOPSEMA to accept the nomination.

Subsection 2.4B(3) sets out the criteria that NOPSEMA must take into account in deciding whether to accept a nomination:

- the ability of the person to undertake the functions and responsibilities of an offshore facility operator;
- the physical and operational features of the facility; and
- the views of the current or existing operator of the facility (if applicable).

### **Section 2.4C – Submission and acceptance of safety cases by proposed operators**

This section provides that if NOPSEMA registers a person as the proposed operator of a facility or proposed facility the proposed operator may submit a safety case to NOPSEMA under section 2.24. If the proposed operator submits a safety case, NOPSEMA must make a decision on the submitted safety case in accordance with section 2.26 and advise the proposed operator of their decision in accordance with section 2.27. If NOPSEMA decides to accept the safety case, then the proposed operator must, in writing, notify NOPSEMA of the day the proposed operator intends to replace the existing operator of the facility or the proposed facility.

This process assists in a smooth transition between operators and avoids disruption of operations in that process, noting that a safety case must be in place for operations to continue.

## **Section 2.4D – Proposed operator to be registered as the operator and previous safety case ceases to be in force**

This section provides that NOPSEMA must:

- (a) register the proposed operator as the operator on the day specified in the subsection 2.4C(2) notice;
- (b) publish the name of the new operator in the register of operators;
- (c) remove the name of the new operator from the register of proposed operators;
- and
- (d) remove the name of the previous operator from the register of operators.

The previous safety case in relation to the facility or proposed facility ceases to be in force at the time the new operator is registered as the operator of the facility or proposed facility.

## **Section 2.4E – Register of proposed operators**

Section 2.4E requires NOPSEMA to maintain a register of proposed operators and publish information about the proposed operator on NOPSEMA's web page. The section also provides for the processes for removal of a person from the register.

Subsection 2.4E(1) provides for NOPSEMA to maintain the register, and also for it to publish details of the proposed operator and related facilities.

Subsection 2.4E(2) provides that a facility owner, titleholder or proposed operator of a facility will be under an obligation to notify NOPSEMA in the circumstance where that owner, titleholder or proposed operator would not, if registered as the operator of the facility or proposed facility, have day-to-day management and control of both the facility or proposed facility, and operations at the facility or proposed facility. Under subsection 2.4E(4), NOPSEMA must then remove their name from the register.

Subsection 2.4E(3) provides that, where a proposed facility operator is a foreign company and the proposed operator ceases to be registered with ASIC under Division 2 of Part 5B.2 of the Corporations Act, the proposed facility operator will be under an obligation to notify NOPSEMA.

Subsection 2.4E(4) provides that NOPSEMA must remove an operator's name from the register of proposed facility operators if given a notice under subsection 2.4E(2) (proposed operator will not, if registered as the operator of the facility or proposed facility, have day-to-day management and control of the facility and operations at the facility) or 2.4E(3). Under section 2.43 it is an offence to construct, install, operate, modify, carry out maintenance on, decommission or do other work at a facility or part of a facility unless there is a registered operator in respect of the facility.

Subsections 2.4E(5) to (7) (inclusive) provide for a process for removal of a proposed operator from the register, if NOPSEMA believes on reasonable grounds that either (a) the proposed operator will not, if registered as the operator of the facility or proposed facility, have day-to-day management and control of the facility and operations at the facility, or (b) if the proposed operator is a foreign company, that the

proposed operator has ceased to be registered with ASIC under Division 2 of Part 5B.2 of the Corporations Act.

NOPSEMA may give notice of intention to remove the proposed operator from the register to the proposed operator and the facility owner or titleholder who first nominated the proposed operator. They would then have 30 days (from when the notice was given) to make representations in relation to the notice. If, after considering any such representations made by the owner, titleholder or proposed operator, NOPSEMA still believes on reasonable grounds that the proposed operator will not have day-to-day management and control of the facility, or has ceased to be registered with ASIC, NOPSEMA must remove the proposed operator's name from the register.

### **Part 3—Design notification for new production facilities and new GHG facilities**

#### **Section 2.4F – Purpose of this Part**

Voluntary early engagement on the safety case for a facility is the key mechanism used by the offshore oil and gas industry to engage with NOPSEMA at the design phase of project development on the management of safety risks for offshore production facilities.

The DNS provides for:

- early engagement on proposed new production facilities and new GHG facilities; and
- regulatory boundaries within which to assess design concepts and demonstrate that the proposed design for a facility reduces safety risks to ALARP.

Part 3 applies to and in relation to a vessel or structure that is a new production facility or a new GHG facility (a vessel or structure is a new production facility or new GHG facility as the case may be if they are constructed after the commencement date of this Part).

#### **Section 2.4FA – New production facilities**

Section 2.4FA sets out the meaning of *new production facility*. A vessel or structure is a *new production facility* where the vessel or structure:

- (a) either
  - (i) is a new or an existing vessel or structure that is to be constructed on or after the commencement of this Part; or
  - (ii) for an existing vessel or structure that is (or is to be) significantly altered after the commencement of this Part; and
- (b) is, or is proposed to be, located at a site in Commonwealth waters; and
- (c) is, or is proposed to be, used at that site for:
  - (i) the recovery of petroleum; or
  - (ii) the processing of petroleum; or
  - (iii) the storage and offloading of petroleum; or
  - (iv) any combination of those activities.

A new production facility does not include the other associated vessels or structures listed in paragraph 2.4FA(1)(d).

The meaning of *significantly altered*, in relation to new production facilities, is set out in subsection 2.4FA(2) and in relation to new GHG facilities is set out in subsection 2.4FB(2).

### **Section 2.4FB – New GHG facilities**

Section 2.4FB sets out the meaning of *new GHG facility*. A vessel or structure is a *new GHG facility* where the vessel or structure:

- (a) either
  - (i) is a new or an existing vessel or structure that is to be constructed on or after the commencement of this Part; or
  - (ii) for an existing vessel or structure that is (or is to be) significantly altered after the commencement of this Part; and
- (b) is, or is proposed to be, located at a site in Commonwealth waters; and
- (c) is, or is proposed to be, used at that site for:
  - (i) the injection of a greenhouse gas substance into the seabed or subsoil; or
  - (ii) the storage of a greenhouse gas substance in the seabed or subsoil; or
  - (iii) the compression of a greenhouse gas substance; or
  - (iv) the processing of a greenhouse gas substance; or
  - (v) the pre injection storage of a greenhouse gas substance; or
  - (vi) the offloading of a greenhouse gas substance; or
  - (vii) the transportation of a greenhouse gas substance; or
  - (viii) the monitoring of a greenhouse gas substance stored in the seabed or subsoil; or
  - (ix) any combination of those activities.

A new production facility does not include the other associated vessels or structures listed in paragraph 2.4FB(1)(d).

The meaning of *significantly altered*, in relation to new GHG facilities, is set out in subsection 2.4FB(2) and in relation to new production facilities is set out in subsection 2.4FA(2).

### **Section 2.4G – Design notification for proposed new production facility or new GHG facility**

Section 2.4G requires that a person must submit to NOPSEMA a design notification for a new production facility or new GHG facility that complies with the requirements specified in section 2.4H.

The note to subsection 2.4G(1) highlights that paragraph 2.26(1)(e) requires a design notification to be submitted to NOPSEMA before NOPSEMA can accept a safety case for a new production facility or a new GHG facility.

A “person” in this context would usually be the titleholder, operator or an associate (e.g. a person from a business responsible for the design of the structure, authorised by the titleholder).

## **Section 2.4H – Requirements of design notification**

For the purposes of subsection 2.4G(2), section 2.4H sets out the requirements for the design notification for a new production facility or a new GHG facility to be submitted to NOPSEMA. It must be submitted in sufficient time to allow for any comments made by NOPSEMA to be taken into account in the final design and before any construction or alteration work commences. It must be in writing and include:

- The name, address and contact details of the person submitting the design notification (which is likely to be the operator of the proposed facility);
- A description of the design process, from the initial concept to the final design submitted to NOPSEMA, including the design philosophy and relevant standards used to guide the process;
- A description of:
  - the design concept, including suitable diagrams, and a summary of other design options that were considered;
  - the criteria used to select the design in the design notification and the process by which the selection was made;
  - how the design in the design notification is appropriately adapted to ensure that risks associated with hazards having the potential to cause a major accident event are reduced to a level that is ALARP;
  - information (where available) explaining how:
    - the facility can withstand such forces acting upon it as are reasonably foreseeable;
    - the layout and configuration of the facility, including the layout and configuration of its plant, will not adversely impact upon its integrity;
    - the fabrication, transportation, construction, commissioning, operation, modification, maintenance and repair of the facility will proceed without adversely impacting upon its integrity;
    - the facility can be decommissioned and – where appropriate – dismantled in such a way that, insofar as is reasonably practicable, it will have sufficient integrity to enable decommissioning to be carried out safely;
    - in the event of reasonably foreseeable damage to the facility, the facility will retain sufficient integrity to enable actions to be taken to safeguard the health and safety of persons at or near it; and
- A description of how the design in the design notification makes use of construction materials that are:
  - suitable, having regard to ensuring that at all times the facility possesses such structural integrity as is reasonably practicable;
  - so far as reasonably practicable, able to provide sufficient protection against anything liable to prejudice the structural integrity of the facility; and
- A description of:
  - the layout of the facility;

- the safety and environmental management system by which the intended major accident risk control measures are to be maintained;
- the process technology proposed to be used;
- the principal features of any pipeline proposed to be connected to or used in connection with the facility;
- any petroleum-bearing reservoir intended to be exploited using the proposed facility;
- the basis of design for any wells to be connected to the proposed facility; and
- An initial list of operations, procedures and equipment that are critical to safety; and
- A suitable plan for the intended location of the facility and anything which may be connected to it, including details about:
  - the meteorological and oceanographic conditions to which the facility may foreseeably be subject;
  - the properties of the seabed and subsoil at the facility’s proposed location;
  - an initial list of safety and environmental critical elements and their required performance; and
- A description of any environmental, meteorological and seabed limitations on safe operations of the facility, and the arrangements for identifying risks from seabed and marine hazards such as pipelines and the moorings of adjacent installations; and
- A description of the types of operation, and the activities in connection with an operation, that the facility may perform.

#### **Section 2.4J – NOPSEMA must assess and respond to a design notification**

Section 2.4J provides that if a person submits a design notification for a new production facility or GHG facility to NOPSEMA under section 2.4H then NOPSEMA must assess the submitted design notification and provide written comments to the person on the design within 90 days of receiving the design notification. NOPSEMA can request additional written information and this will stop the clock on the 90 days until the last of that information is received. If the person provides the additional information then that information will become part of the design notification.

NOPSEMA will publish guidelines on the requirements for the design notification including the process steps for submission, the criteria for requesting additional information and the final advice process. The more comprehensive the information provided to NOPSEMA the more complete the feedback on the safety aspects of the design will be.

The comments from NOPSEMA must include details of any matters that NOPSEMA considers may affect the safety of the new production facility or GHG facility that may otherwise impact on the reduction of safety risks to ALARP.

The design notification, and details of how it has been incorporated into the design of the facility, is required to be submitted as part of the safety case (see section 2.5).

## **Section 2.4K – Fee for assessing design notification**

This section requires payment of a fee to NOPSEMA for the expenses incurred by NOPSEMA in assessing a design notification.

NOPSEMA's functions under the OPGGS Act and instruments are fully cost-recovered through levies and fees payable by the offshore petroleum and greenhouse gas storage industries. Under subsection 685(1) of the OPGGS Act, the instrument may provide for the payment to NOPSEMA of fees in respect of matters in relation to which expenses are incurred by NOPSEMA under the OPGGS Act or instrument.

The amount of the fee is the total of the expenses incurred by NOPSEMA in assessing the design notification. Therefore, if a design notification is withdrawn before comments are provided by NOPSEMA in relation to the design notification, the fee will represent NOPSEMA's expenses in assessing the design notification to whatever point is reached up to and including the date of the withdrawal of the design notification. The fee is calculated by multiplying the hourly rate of each NOPSEMA staff member by the number of hours they worked on assessing the design notification. Hourly rates are reviewed annually and are inclusive of fixed corporate overheads, which are also reviewed annually.

The fee is due and payable in accordance with the terms of an invoice for the fee issued by NOPSEMA to the person who submitted the design notification. In practice, it is expected that NOPSEMA and the person would agree on the terms of payment of the fee.

## **Part 4—Safety cases**

### **Division 1A—Purpose of this Part**

#### **Section 2.4L – Purpose of this Part**

This section provides that this Part is made for the purposes of section 639 of the OPGGS Act.

### **Division 1—Contents of safety cases**

#### **Subdivision A—Contents of a safety case**

#### **Section 2.5 – Facility description, formal safety assessment and safety management system**

Subsections 2.5(1) to (4) (inclusive) provide that a safety case for a facility must comprise a description of the facility, a description of technical and other control measures that are critical to safety, a description of the formal safety assessment, and a detailed description of the safety management system. The safety management system should include a health risk assessment that would address such issues as harassment, intimidation, bullying and other specific psychosocial hazards.

The technical and other control measures identified in subsection 2.5(2) are parts of a facility (including hardware, systems and software), or any parts thereof, that have been identified in the formal safety assessment as necessary to reduce risk to a level that is as low as reasonably practicable and which have been identified as critical to safety.

Subsection 2.5(5) provides that a safety case for the construction or installation phase of a facility must address the matters in subsections 2.5(1) to (4) in relation to the stage in the life of the facility and also address (to the extent that it is practicable) the risks associated with operation of the facility.

Subsection 2.5(6) provides that where a design notification was required to be submitted to NOPSEMA the safety case for the facility must include the design notification provided to NOPSEMA and any matters NOPSEMA raised in its written comments and a description of how they have been incorporated into the facility design either by describing how the facility design has been adapted in response or providing reasons. Reasons why any comments made by NOPSEMA on the design notification have not been incorporated into the facility design (if this is the case) must be included.

## **Section 2.6 – Implementation and improvement of the safety management system**

Section 2.6 requires the safety case for a facility to demonstrate that there are effective ongoing measures in place to ensure adequate implementation and improvement of the safety management system.

### **Subdivision B - Safety measures**

## **Section 2.7 – Standards to be applied**

Section 2.7 requires the safety case for a facility to specify the Australian and international standards used in relation to activities conducted at or near the facility. These standards will only relate to the relevant stage or stages in the life of the facility for which the safety case is submitted.

The types of Australian and international standards that a safety case must specify would typically include a standard, code of practice or other equivalent expert guidance. For example, the standards that will be applied in the management of psychosocial health and safety, including harassment, intimidation and bullying, at the facility.

## **Section 2.8 – Command structure**

Subsection 2.8(1) requires the safety case for a facility to specify and describe the normal (safe operation) and emergency command structures for the facility. ‘Emergency’ is defined in section 1.5 to mean (in relation to a facility) an urgent situation that presents, or may present, a risk of death or serious injury to persons at the facility.

Subsection 2.8(2) requires the safety case for a facility to describe (in detail) how the operator of the facility will ensure (as far as reasonably practicable) that the offices or positions referred to in subsection 2.8(1) will be continuously occupied while the facility is in operation and how the operator will ensure that those filling the positions in subsection 2.8(1) will have the skills, training and ability to perform the functions of those positions.

The safety case must also describe how the operator will ensure (as far as reasonably practicable) that those persons occupying positions in paragraphs 2.8(1)(a) to (c) are readily identifiable by any person on the facility.

### **Section 2.9 – Members of the workforce must be competent**

Section 2.9 requires the safety case for a facility to describe how personnel competency will be assured. The safety case must describe how the operator will ensure that each member of the workforce has the necessary skills, training and ability to undertake their work under normal operating conditions and during an emergency or unusual circumstances.

### **Section 2.10 – Permit to work system for safe performance of various activities**

Section 2.10 requires a safety case to provide for the establishment and maintenance of a documented system of coordinating and controlling the safe performance of all work activities on the facility (the “permit to work” system). This should cover welding and other hot work, cold work (including physical isolation), electrical work (including electrical isolation), entry into and working in a confined space, working over water and diving operations, as applicable. This includes ensuring that the persons have the necessary qualifications to complete the work. This “permit to work” system must form part of the safety management system for the facility, identify persons responsible for authorising and supervising work and ensure these persons are competent in applying the “permit to work” system.

### **Section 2.11 – Involvement of members of the workforce**

Section 2.11 requires an operator of a facility to provide written material to NOPSEMA that demonstrates and documents to the reasonable satisfaction of NOPSEMA that there is effective ongoing consultation with, and participation of, relevant employees (including contractor personnel) in the development, preparation and revision of a safety case, thus enabling members of the facility’s workforce to assess the risk and hazards to which they may be exposed. Subsection 2.11(3) defines *members of the facility’s workforce* to include members of the facility’s workforce who are identifiable before the safety case is developed and those who will be working, or likely to be working, on the facility.

### **Section 2.12 – Design, construction, installation, maintenance and modification**

Section 2.12 provides that a safety case for a facility must describe how the operator is to ensure the adequacy of that facility’s design, construction, installation, maintenance and modification for the relevant stage or stages in the life of the facility. The section also specifies certain aspects that must be included in this description

such as, inventory isolation and pressure release in the event of an emergency (for example oil, gas and GHG substances), adequate means for accessing machinery and equipment for servicing and maintenance and control measures identified through the formal safety assessment.

### **Section 2.13 – Medical and pharmaceutical supplies and services**

Section 2.13 provides that the safety case for a facility must specify the medical and pharmaceutical supplies and services which must be maintained on, or in respect of, the facility. These supplies must be sufficient to cover an emergency situation.

### **Section 2.14 – Machinery and equipment**

Section 2.14 requires the safety case for a facility to specify the equipment required on the facility that relates to or may affect the safety of the facility. Equipment includes process equipment, machinery and electrical and instrumentation systems. The safety case must also demonstrate that the equipment is fit for purpose, including for emergency use.

### **Section 2.15 – Drugs and intoxicants**

Section 2.15 provides that the safety case for a facility must describe the means by which an operator of a facility will ensure the securing, supplying and monitoring the use of therapeutic drugs on a facility. The safety case must also describe the measures that an operator of a facility will have in place to prevent the use of other controlled substances and intoxicants on the facility.

### **2.15A – Sexual harassment, bullying and harassment**

Section 2.15A provides that the safety case for a facility must describe the measures that the operator has, or will, put in place to prevent sexual harassment, bullying and harassment and to comply with relevant legislation relating to sexual harassment, bullying and harassment, such as the Fair Work Act and other Federal and State/Territory legislation that is applicable and to provide reports of incidents of sexual harassment, bullying and harassment and to NOPSEMA.

## **Subdivision C—Emergencies**

### **Section 2.16 – Evacuation, escape and rescue analysis**

Section 2.16 provides that the safety case for a facility must contain a detailed description of an evacuation, escape and rescue analysis for the facility in the event of an emergency, as well as the essential elements for consideration in such an analysis. Such evaluations must identify the types of emergencies that could arise, evacuation and escape routes, alternative routes, procedures for managing evacuation an escape and rescue, amenities and communication for temporary refuge and life saving equipment, such as life rafts to accommodate the maximum number of persons on the facility, and launching equipment. The control measures developed as a result of these evaluations must reduce the risks associated with emergencies to ALARP.

The safety case must be made available to all persons on a facility. As such, the safety case will inform those on the facility of the evaluation of evacuation, escape and rescue options, and recommended procedures, with the aim of ensuring the safety of all personnel.

### **Section 2.17 – Fire and explosion risk analysis**

Section 2.17 provides that the safety case for a facility must describe a fire and explosion risk analysis for the facility in the event of a fire or explosion identifying likely fire and explosion hazards to the facility and means of detecting and eliminating or reducing these hazards, as well as the essential elements for consideration in this analysis. The analysis should also cover the means of isolating such hazards and the evacuation and escape procedures in relation to fire and explosion risk. Risks associated with fire and explosion must be reduced to ALARP.

As noted at section 2.16, the safety case must be made available to all persons on a facility. It will therefore inform those on the facility of options and procedures in the event of a fire or explosion at the facility, with the purpose of ensuring the safety of all personnel.

### **Section 2.18 – Emergency communications systems**

Section 2.18 provides that the safety case for the facility must specify emergency communications systems that must be adequate for emergency communication both within the facility and with other facilities (including on-shore installations), vessels, and aircraft.

Relevant facilities for the purposes of this section would include nearby facilities that could provide assistance in an emergency, onshore installations that monitor or manage the facility or are emergency contact bodies, vessels and aircraft which service the facility and emergency vessels and aircraft that may be deployed.

A particular requirement is that the safety case must provide for the communications systems of the facility to be sufficient to handle likely emergencies on or in relation to the facility, and the operational requirements of the facility. The safety case must also provide for the communications systems of the facility to be protected, such that the systems are capable of operating in an emergency to the extent specified in the relevant formal safety assessment.

There are likely to be various emergency communications systems in relation to a facility, including (but not limited to) warden intercom points (WIPs), mobile phones, handheld transceivers, very small aperture terminals (VSATs), automatic identification systems (AISs), rugged computers, satellite communication networks, fibre-optic and microwave networks, cellular services, etc.

## **Section 2.19 – Control systems**

Section 2.19 provides that the safety case for a facility must specify provision for adequate control systems in an emergency. The control systems must relate to backup power supply, lighting, alarms, ballast control and emergency shut-down systems.

The safety case therefore must not only refer to these systems in respect of an emergency but must make adequate provision for the facility in respect of these systems (for an emergency).

## **Section 2.20 – Emergency preparedness**

Section 2.20 provides that a safety case for a facility must describe an emergency response plan (including provision for its implementation) in line with the formal safety assessment for the facility to ensure the safety of all persons likely to be on the facility at the time of an emergency.

Subsections 2.20(3) to (6) provide that a safety case must make provision for:

- adequate escape and fire drill exercises by persons on the facility;
- training for persons on the facility to function adequately in the event of an emergency;
- assurance that escape and fire drill exercises are conducted in accordance with the safety case; and
- adequate systems for a mobile facility to enable shutdown or disconnection in an emergency, as well as audible and visible warnings when this occurs.

## **Section 2.21 – Pipes**

Subsection 2.21(1) only applies in respect of certain pipes connected to (or proposed to be connected to) a facility. The pipes must be pipes that convey (or will convey) petroleum or greenhouse gas substance to the facility.

Subsection 2.21(2) requires the safety case for a facility to describe the arrangements and procedures that are in place for shutting down or isolating pipes connected to the facility in order to stop the flow of petroleum or greenhouse gas substance into the facility through the pipe in the event of an emergency. Subsection 2.21(3) identifies essential elements of these procedures.

Subsection 2.21(4) also requires the safety case to specify adequate means of mitigating risks related to pipes in an emergency as well as periodic inspection and testing of pipe emergency shut-down valves to ensure they will work in an emergency.

Subsection 2.21(5) provides that references to *facility* in section 2.21 do not include any specified wells and associated plant and equipment or pipes or systems of pipes.

## **Section 2.22 – Vessel and aircraft control**

Section 2.22 requires the safety case for a facility to describe the vessel and aircraft control system in place, or that will be implemented, which, as far as is reasonably

practicable, enables the safe operation of vessels or aircraft related to the facility and outlines required criteria for such a system. The system must be able to meet the emergency response requirements and be described in the facilities safety management system.

#### **Subdivision D—Record keeping**

##### **Section 2.23 – Arrangements for records**

Section 2.23 applies in respect of specified documents relating to a safety case (including the safety case itself). These documents are: the safety case in force for a facility; a revision to that safety case; a written audit report for the safety case; and a copy of each notice and report given to NOPSEMA in accordance with section 2.42 (which deals with certain periods of incapacitation and notices/reports of accidents and dangerous occurrences.)

This section provides that the safety case must describe the arrangements by which the operator ensures that the abovementioned records of the safety case, including records of reported accidents and incidents, are kept for at least 5 years.

#### **Division 2—Submission and acceptance of safety cases**

##### **Section 2.24 – Safety case to be submitted to NOPSEMA**

Section 2.24 provides that an operator of a facility must submit a safety case for one or more facilities, or one or more stages in the life of a facility, to NOPSEMA for acceptance. Prior to submission of the safety case, however, NOPSEMA and the operator must have agreed on the scope of validation for a facility. For validation in relation to the safety case see section 2.40. The exception to this is under subsection 2.24(5), where an operator may submit the safety case before agreement on the scope of the validation for a facility that is being constructed, or proposed to be constructed, at a place outside NOPSEMA waters and is proposed to be installed and operated in Commonwealth or designated coastal waters. NOPSEMA may at any time advise the operator that it will not assess the safety case for that facility unless the scope of the validation is agreed.

##### **Section 2.25 – NOPSEMA may request more information**

Section 2.25 provides that, where an operator of a facility has submitted a safety case to NOPSEMA, NOPSEMA may ask the operator, in writing, to provide more written information. The request must set out each matter for which information is requested and specify a period of at least 30 days for the information to be provided. Where the operator provides all information satisfactorily, this additional information is taken to become part of the safety case, and NOPSEMA must have regard to the information as if it had been included with the safety case submitted to NOPSEMA.

##### **Section 2.26 – Acceptance or rejection of a safety case**

Section 2.26 contains provisions dealing with NOPSEMA's acceptance or rejection of a safety case for a facility, including acceptance or rejection of a safety case for one or

more stages in the life of a facility and limited and/or conditional acceptance of a safety case.

Amongst other things, subsection 2.26(1) provides that where a design notification was submitted to NOPSEMA, that NOPSEMA is satisfied that the comments provided in respect of that notification have been addressed.

The section further provides that where NOPSEMA proposes to reject a safety case because it does not meet the requirements of the instrument, it must give the operator a reasonable opportunity to change and resubmit the safety case.

NOPSEMA may impose limitations or conditions in respect of the facility or activities at the facility in accepting the safety case.

### **Section 2.27 – Notice of decision on safety case**

Section 2.27 provides that NOPSEMA must give the operator of the facility notice of its decision regarding a submitted safety case within 90 days of receipt of a safety case.

Decisions referred to in this section in respect of a submitted safety case are to: accept; reject; accept for one or more stages and reject the rest; or conditionally accept or accept with limitations, the safety case.

If NOPSEMA cannot make a decision within the 90 days then it must notify the operator that a decision will take longer than 90 days and provide a proposed timetable for the decision.

Notification of a decision of a kind under paragraph 2.27(1)(a) must include any terms of the decision and the reasoning for these terms.

For certainty, subsection 2.27(2) provides that a failure by NOPSEMA to make a notification within 90 days does not invalidate any decision by NOPSEMA to accept or reject the safety case.

### **Section 2.28 – Consent to conduct activity in a manner different from safety case**

Section 2.28 provides a mechanism whereby activities at a facility may differ in manner from those activities described in the accepted safety case for the facility, with the consent of NOPSEMA. NOPSEMA must be satisfied that there would be no significant new risk or increase to an existing risk through this change in activity.

Where NOPSEMA is not satisfied, then to conduct the activity in a manner different to the safety case the operator would be required to submit a revised safety case such that the activity can be assessed as part of the revised safety case.

### **Section 2.29 – Duties under Part 2 of Schedule 3 to the Act**

Section 2.29 clarifies that an operator of a facility or another person with an accepted safety case for a facility under the instrument is also subject to the OHS duties of the

operator or person under Part 2 of Schedule 3 to the OPGGS Act. That is, acceptance of a safety case by NOPSEMA does not exempt a person or operator from their duties under Part 2 of Schedule 3 to the OPGGS Act, nor does it dilute those duties.

### **Division 3—Revised safety cases**

#### **Section 2.30 – Revision of a safety case because of a change of circumstances or operations**

Section 2.30 specifies the changes of circumstances or operations which would require the revision of a safety case (or part of a safety case), including the loss or removal of a control measure that has been identified as being critical to safety (under subsection 2.5(2)).

Paragraph 2.30(3)(b) also provides that a revision to a safety case would be required where a series of smaller changes have occurred which together represent a significant or major change to the risks to health or safety at or near a facility.

The section also provides that the operator of a facility for which a safety case is in force and NOPSEMA must agree on the scope of the validation for a revision due to modification or decommissioning of a facility.

Where there are less significant changes these can be undertaken under the operator's Management of Change (MoC) system without formal submission and acceptance of a revised safety case. Using the MoC process is appropriate when the change is temporary and short-term, and when equivalent or better controls are put in place by the operator in the interim. However, MoC is not a substitute for formal revision and acceptance of a safety case, particularly where it is being used to facilitate long-term or permanent change or manage a significant increase in the level of risk.

Paragraph 2.30(2) provides an exception for the required revision of a safety case where a loss or removal of a safety critical technical or other control measure is only temporary, or where it is out of service for testing, or the operator of a facility is no longer carrying out the activity related to the measure or NOPSEMA has agreed in writing that a revision is not required.

A penalty provision has been included where a revised safety case has not been submitted by the operator of a facility to NOPSEMA as soon as practicable after changes in circumstances that impact health and safety. The maximum penalty for a failure to comply with subsection 2.30(1) or (3) is 100 penalty units, or 500 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act.

It is appropriate to apply strict liability to the offence to ensure that the section can be enforced more effectively. The intention of the application of strict liability is to improve compliance in the regulatory regime, particularly given the potentially severe health and safety consequences that may result if an operator were not to revise the safety case where there has been a change of circumstances or operations not otherwise appropriately addressed in the safety case. This is consistent with the principles outlined in the Guide, which includes that the punishment of offences not

involving fault may be appropriate where it is likely to significantly enhance the effectiveness of the enforcement regime in deterring certain conduct. Given the remote and complex nature of offshore operations and the prevalence of multiple titleholder arrangements, it is extremely difficult to prove intent, and requiring that proof may make it impractical to enforce the regime.

It is also appropriate to apply a maximum penalty of 100 penalty units, noting this is higher than the preference stated in the Guide for a maximum of 60 penalty units for offences of strict liability. The maximum penalty of 100 penalty units is authorised by section 790 of the OPGGS Act, which provides that regulations may provide for offences against the regulations punishable by penalties not exceeding a fine of 100 penalty units. Offshore resources activities, as a matter of course, require a very high level of expenditure. Therefore, by comparison a smaller penalty is an ineffective deterrent, especially considering the potential for severe risks or impact on health and safety if an operator fails to comply with subsection 2.30(1) or (3).

A person is also liable to a civil penalty of 1,000 penalty units if the person contravenes subsection 2.30(1) or (3). For a body corporate the court can impose a fine of up to 5 times the civil penalty amount under section 82 of the Regulatory Powers Act. It is appropriate to also have the option of imposing a civil sanction through a civil penalty of 1,000 penalty units or 5,000 penalty units for a body corporate. As noted above, offshore operations require a very high level of expenditure, and therefore operators are well-resourced, sophisticated entities. To be an effective deterrent, the penalty for breach of a fundamental obligation must therefore be sufficiently significant to avoid being perceived as a 'cost of doing business'. The size of the penalty also reflects the cost of court proceedings that may be necessary to enforce the penalty.

Imposing both a criminal and civil penalty will provide additional mechanisms to apply a graduated range of enforcement tools to encourage and support industry compliance. Previous reviews have considered strong evidence that regulators are best able to secure compliance when they have a range of graduated sanctions that can be imposed, depending upon the severity of the misconduct or breaches of regulatory requirements. Providing such alternative enforcement tools will enable an appropriate and proportionate response, depending on the nature and relative seriousness of the breach that has occurred.

In addition, the application of civil penalties (in the form of financial sanctions) as a supplement or alternative to criminal penalties, set at an appropriate level to reflect the OPGGS industry as a high-hazard industry, will encourage improved compliance with the instrument. This will further enhance the objectives of the OPGGS regime by supporting continuous improvement by industry, which is responsible under the regime to manage risks of operations.

### **Section 2.31 – Revision on request by NOPSEMA**

Section 2.31 provides that NOPSEMA may require an operator of a facility for which a safety case is in force to submit a revision for a safety case (or a revision to part of the safety case) and outlines the process for this to occur, including the required timeframe for submission of the revised safety case (or partial revision) and

provisions relating to NOPSEMA’s consideration of and decision relating to an operator’s submission.

A HSR who is not satisfied with a decision under clause 37A of Schedule 3 to the OPGGS Act may ask NOPSEMA to review the decision and NOPSEMA may request a revision of a safety case or part of a safety case under this provision.

The section also provides for the operator to make a submission to NOPSEMA stating why it believes a revision should not occur or should occur in a manner different to that requested by NOPSEMA.

An offence of strict liability has been included where an operator does not comply with the request. The maximum penalty for a failure to comply with subsection 2.31(7) is 100 penalty units, or 500 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the *Crimes Act 1914* (the Crimes Act). A person is also liable to a civil penalty of 1,000 penalty units if the person contravenes subsection 2.31(7). For a body corporate the court can impose a fine of up to 5 times the civil penalty amount under section 82 of the Regulatory Powers Act.

For an explanation of the strict liability penalty, penalty amount, civil penalty and the reasons for imposing both a criminal and civil penalty, as well as financial sanctions, see section 2.30 above.

### **Section 2.32 – Revision at the end of each 5 year period**

Section 2.32 provides that a revised safety case must be submitted to NOPSEMA at the end of the 5 year period beginning on the day the safety case was accepted by NOPSEMA under section 2.26, and within 14 days before the end of each subsequent 5 year period. Subsection 2.32(2) provides that the operator must submit a revised safety case under subsection 2.32(1) even if, within that period, the operator of a facility for which a safety case is in force has submitted a revised safety case to NOPSEMA under section 2.30 or 2.31.

Paragraph 2.32(1)(b) in the 2009 Regulations provided that a revised safety case must be submitted to NOPSEMA 5 years after the date of each acceptance of a revised safety case by NOPSEMA. As a result of this, safety case revisions submitted due to a change in circumstances or at NOPSEMA’s request, and accepted by NOPSEMA, effectively reset the ‘5 yearly revision clock’ as per paragraph 2.32(1)(b). Over time, this resulted in a large number of smaller-scale, targeted, and often technical revisions to safety cases coming up for unnecessary periodic reviews, posing a regulatory burden on industry.

This section corrects this by requiring a revision of a safety case to be submitted to NOPSEMA at the end of each 5 year period starting on the day the safety case was accepted by NOPSEMA under section 2.26. It further clarifies that a 5 yearly revision is required even if, within that period, the operator has submitted a revised safety case to NOPSEMA under section 2.30 or 2.31.

The operator is required to submit a revised safety case to NOPSEMA within 14 days before the end of the 5 year period. This requirement provides a clear period of time for submission of a revised safety case under section 2.32, while ensuring that a revised safety case is submitted close to the 5 year anniversary of the day the safety case was accepted. This requirement also makes it clear that a revision at the end of each 5 year period is distinct from a revision because of a change of circumstances or operations, or on request by NOPSEMA, which may arise at other times.

The section also requires that a revised safety case describe the means by which the operator will ensure ongoing integrity of measures identified by the formal safety assessment for the facility.

An offence of strict liability has been included where a revised safety case has not been submitted to NOPSEMA at the end of each 5 year period. The maximum penalty for a failure to comply with subsection 2.32(1) is 50 penalty units, or 250 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. A person is also liable to a civil penalty of 500 penalty units if the person contravenes subsection 2.30(1). For a body corporate the court can impose a fine of up to 5 times the civil penalty amount under section 82 of the Regulatory Powers Act.

Subsection 2.32(4) is a continuing offence under section 4K of the Crimes Act. Subsection 5.9(1) sets out the maximum daily penalty that may be imposed for a continuing offence as 10% of the maximum penalty that can be imposed in respect of the relevant offence. A daily penalty of 5 penalty units, or 25 penalty units for a body corporate, can be imposed for each day the revision is outstanding.

A contravention of subsection 2.32(5) carries a daily civil penalty of 50 penalty units, or 250 penalty units for a body corporate, for a continuing contravention under section 93 of the Regulatory Powers Act. Subsection 5.9(2) sets out the maximum daily penalty that may be imposed for contravention of a civil penalty provision as 10% of the maximum penalty that can be imposed in respect of the contravention.

For an explanation of the strict liability penalty, penalty amount, civil penalty and the reasons for imposing both a criminal and civil penalty, as well as financial sanctions, see section 2.30 above.

### **Section 2.33 – NOPSEMA may request more information**

Section 2.33 provides that, where an operator of a facility has submitted a revised safety case to NOPSEMA, NOPSEMA may require the operator to provide more information within 10 days and in writing. Provided the operator receives the written request and provides all information required by NOPSEMA within the specified period, the additional information is then taken to become part of the safety case, and NOPSEMA must have regard to the information.

### **Section 2.34 – Acceptance or rejection of a revised safety case**

Section 2.34 sets out provisions for NOPSEMA's acceptance or rejection of a revised safety case, including acceptance or rejection of a revised safety case for one or more

stages in the life of a facility and limited and/or conditional acceptance of a safety case.

For example, stages of a safety case relating to circumstances that may or will occur well into the future may be rejected, however the safety case may nonetheless be accepted because current and near-future stages (in the life of a facility) as set out in the safety case are appropriate.

The section further provides that where NOPSEMA proposes to reject a revised safety case because NOPSEMA is not satisfied of the matters mentioned in subsection 2.34(1), NOPSEMA must give the operator of the facility a reasonable opportunity to change the revised safety case and resubmit it and the operator may resubmit the revised safety case with such changes as the operator considers necessary.

### **Section 2.35 – Notice of decision on revised safety case**

Section 2.35 provides that NOPSEMA must give the operator of the facility written notice of its decision regarding a submitted safety case revision within 30 days of receipt of a revised safety case (or part of a revised safety case, or as described in paragraph 2.34(3)(b)), including any terms of the decision and the reasoning for these terms.

For certainty, subsection 2.53(2) provides that a failure by NOPSEMA to make a notification within 30 days does not invalidate any decision by NOPSEMA to accept or reject the revised safety case.

### **Section 2.36 – Effect of rejection of revised safety case**

Section 2.36 provides that, unless and until NOPSEMA accepts a revised safety case, the safety case that is currently in force for the facility remains in force.

## **Division 4 - Withdrawal of acceptance of a safety case**

### **Section 2.37 – Withdrawing acceptance of safety case for a facility**

Section 2.37 provides that NOPSEMA may give written notice to an operator of a facility withdrawing acceptance of a safety case for the facility and specifying grounds for such a withdrawal. The section also requires that such a notice must state the reasons for the decision and the day on which the withdrawal takes effect.

Notice can only be given to an operator of a facility where the operator has not complied with OHS provisions in Schedule 3 to the OPGGS Act, and a notice has been issued by NOPSEMA under that Schedule, or where NOPSEMA has rejected a revised safety case under section 2.34 of the instrument.

## **Section 2.38 – Steps to be taken before withdrawing acceptance**

Section 2.38 sets out the process to be followed before NOPSEMA may issue a notice under section 2.37 that acceptance of a safety case has been withdrawn.

NOPSEMA must: provide the operator of a facility at least 30 days' notice in writing of its intention to withdraw acceptance of the safety case; include reasons for the proposed withdrawal of acceptance of the safety case; specify a day by which the operator (or any other person to whom a copy of the notice has been given) can submit in writing any matters that NOPSEMA should take into account in deciding whether to withdraw acceptance of the safety case.

In deciding whether to withdraw acceptance of a safety case, NOPSEMA must take into account any action by the operator to remedy the ground for withdrawal of the acceptance or to prevent the recurrence of that ground and any matter submitted to NOPSEMA by the operator or any other person who was provided with the notice under subsection 2.38(3) (i.e., the notice within which NOPSEMA was required to provide reasons for proposing to withdraw acceptance of the safety case).

Withdrawal of acceptance of a safety case by NOPSEMA would mean that operations at the facility must cease or the operator would be committing an offence. Therefore, withdrawal of acceptance of a safety case would only be used in cases of serious and/or repeated non-compliance, or if the operations had departed significantly from what is allowed by the safety case that is in force.

A range of other compliance and enforcement provisions are also available to NOPSEMA, which would normally be used before commencing the processes under this section.

## **Division 5—Exemptions**

### **Section 2.39 – NOPSEMA may give an exemption**

Section 2.39 provides that NOPSEMA may grant an exemption to an operator of a facility from any of the provisions of this part (Part 2 - Safety cases) either on application in writing by the operator of a facility, or unilaterally.

Such an exemption should be rare, as the content requirements for a safety case are primarily linked to adequate measures to reduce risk to persons at or near a facility to ALARP. This notion of adequacy means that some accepted safety cases may have less content than others in respect of the requirements in Part 2, without the requirement for an exemption.

This section does not provide for NOPSEMA to exempt an operator of a facility from having a safety case. All operators must have a safety case in force for facilities that they operate under these sections.

## **Part 5—Validation**

### **Section 2.39A – Purpose of this Part**

This section provides that this Part is made for the purposes of section 639 of the OPGGS Act.

### **Section 2.40 – Validation of design, construction and installation of proposed facility or significant change to existing facility**

Section 2.40 provides that NOPSEMA may by notice in writing require an operator of an existing facility or proposed facility to provide a validation about specified matters relating to the proposed facility or to a proposed significant change to an existing facility. The section explains that a validation is a statement in writing by an independent validator, which establishes, to the level required by NOPSEMA, that the design, construction and installation of the facility, or the modification, will incorporate measures to protect the health and safety of persons at or near the facility.

## **Part 6—Notifying and reporting accidents and dangerous occurrences**

### **Section 2.41 – Interpretation**

Section 2.41 declares an occurrence at a facility specified in the column 1 of the table to be a dangerous occurrence for the purposes of the definition of *dangerous occurrence* in clause 3 of Schedule 3 to the OPGGS Act.

### **Section 2.42 – Periods of incapacitation and notices and reports of accidents and dangerous occurrences**

Section 2.42 establishes administrative procedures for notification and reporting of accidents and dangerous occurrences, including but not limited to diving, as required by Schedule 3 to the OPGGS Act. This includes an analysis of the cause of the issue, the emergency response, corrective action and action taken or proposed to be taken to prevent such accidents occurring in the future.

Subsection 2.42(1) provides that the prescribed incapacitation period for the purpose of reporting of injuries under Schedule 3 to the OPGGS Act is three or more days. The effect of this is that the accidents that cause a member of the workforce to be incapacitated from performing work for a period of 3 days or greater must be reported to NOPSEMA. This is consistent with the practice for incident reporting in the international offshore petroleum industry, and adopting this period under the OPGGS Act enables effective bench-marking against international performance.

Subsections 2.42(2) to (13) (inclusive) deal with notices and reports that must be given to NOPSEMA, how the notice or report is to be given, information that must be included in the notice or report, and when the notice or report must be given to NOPSEMA.

A strict liability penalty of 250 penalty units for failing to notify NOPSEMA of accidents and dangerous occurrences can be imposed under the OPGGS Act. The

OPGGS Act also provides for a strict liability penalty of 100 penalty units if the written report of the incident is not made within 3 days or the written report that includes a root cause analysis is not made within 30 days. NOPSEMA can agree to an extension of these timeframes. For a body corporate the penalty for an offence can be increased by 5 times due to the operation of subsection 4B(3) of the Crimes Act. The OPGGS Act also provides that these offences are continuing offences which provides that there is a separate offence for each day with a maximum penalty of 10% of the above penalties for each offence.

### **Section 2.42A – Monthly reporting of operational activities**

Section 83A of Schedule 3 to the OPGGS Act provides that the operator of a facility must give NOPSEMA a written report, for each calendar month in which activities are carried out at or near the facility, relating to matters that may affect the health and safety of persons at or near the facility. Subsection 83A(3) of Schedule 3 to the OPGGS Act provides that the regulations may prescribe the time within which a report must be submitted and the information to be included in the report.

Section 2.42A prescribes for the purposes of subclause 83A(3) of Schedule 3 to the OPGGS Act the time within which the report must be submitted and the information that must be included in the report. Subclause 83A(2) of Schedule 3 provides that the form of the report must be given in the approved form (if any) and in an approved manner (if any). Any approved form must be approved by the Chief Executive Officer of NOPSEMA and published on NOPSEMA's website. NOPSEMA will also publish guidelines to the information required in the report.

The report must provide contact details of those with executive oversight of the facility's operations in Australia, contact details of the person within the operator's organisation who has overall responsibility for the facility, including emergency contact numbers and email addresses, information on the number of workers, hours worked, details of breaches of performance standards, action taken to avoid or mitigate safety impacts, the number and types of injuries to persons at the facility, other than minor injuries not requiring treatment or requiring treatment only in the nature of first aid or injuries already reported under section 2.42 and the corrective action taken or proposed to be taken and action taken or proposed to be taken to prevent a similar injury occurring in the future.

The information provided in the report will be used by NOPSEMA to ensure that there is an up-to-date list of contacts when required for administrative purposes and a list of emergency contacts so that relevant persons will be able to be contacted urgently in the event of an incident. Information on workers, hours, injuries and mental health issues will provide data to identify systemic issues and will assist in compliance planning.

Monthly reports are not required where there has been no operational activity at the facility.

The OPGGS Act at subclause 83A(5) of Schedule 3 provides for a civil penalty of 60 penalty units, or 300 penalty units for a body corporate for not providing a report.

It also provides that this is a continuing contravention (subclause 83A(6)) with a daily penalty of 10% of the maximum civil penalty that can be imposed.

## **Part 7—Vessel activity notification scheme**

### **Section 2.42B – Duty to notify NOPSEMA when vessel becomes a facility or an associated offshore place**

Clause 83B of Schedule 3 to the OPGGS Act requires that if a vessel becomes a facility, or an associated offshore place in relation to a facility, at a particular time the person who is the operator of a facility must notify NOPSEMA that the vessel has become a facility, or an associated offshore place in relation to a facility, as the case may be. A notice must include the information prescribed by the regulations for the purposes of paragraph 83B(3(b)) of Schedule 3 to the OPGGS Act.

Section 2.42B provides that NOPSEMA be advised of the contact details of the nominated person who can be contacted in relation to the vessel activity, the name and the relevant title of the facility or associated offshore place, the name of the operator (if applicable), the purpose for the vessel becoming part of the facility or associated offshore place and the time and date of commencement.

If there is a change to the information in the vessel activity notification, such as a delay in the expected commencement date, or if the nominated person has changed, an updated notification must be submitted to NOPSEMA. NOPSEMA will be required to provide a copy of each vessel activity notification to AMSA as soon as practicable after receiving it.

A civil penalty of 100 penalty units for failing to notify NOPSEMA within the required timeframe can be imposed under the OPGGS Act. For a body corporate the court can impose a fine of up to 5 times the civil penalty amount under section 82 of the Regulatory Powers Act. Subclause 83B(5) of Schedule 3 to the OPGGS Act provides that it is a continuing contravention in respect of each day a notification is not provided punishable by a maximum of 10% of the civil penalty for each day.

### **Section 2.42C – Duty to notify NOPSEMA when vessel ceases to be a facility or an associated offshore place**

For the purposes of paragraph 83B(3)(b) of Schedule 3 to the OPGGS Act section 2.42C prescribes information in relation to when a vessel ceases to be part of a facility or associated offshore place.

As mentioned at section 2.42B, above, clause 83B of Schedule 3 to the OPGGS Act requires all vessels in Commonwealth waters that are intending to undertake work that would cause the vessel to be a facility or an associated offshore place under Schedule 3 to the OPGGS Act to notify NOPSEMA when they enter or exit the offshore regulatory framework (that is, when the vessel begins or ceases to be a facility as defined in clauses 3 and 4 of Schedule 3). Subclause 83B(2) of Schedule 3 to the OPGGS Act provides that NOPSEMA must be notified as soon as practicable after a vessel ceases being a facility or associated offshore place. Information that

must be included in the notice is prescribed in the instrument for the purposes of paragraph 83B(3)(b) of Schedule 3 to the OPGGS Act.

The information prescribed under section 2.42C is as follows: the contact details of the nominated person who can be contacted by NOPSEMA in relation to the vessel activity, the name and the relevant title of the facility or associated offshore place, the name of the operator (if applicable) and the time and date when the vessel ceased to be a facility or associated offshore place. A vessel activity notification must be submitted prior to, or as soon as possible after, the vessel ceases to be a facility or an associated offshore place.

In emergency situations, where a vessel is required to disconnect for safety reasons, it is important to ensure that immediate notification is made to ensure that NOPSEMA can provide adequate assurance that best practice safety standards are occurring. This is of particular concern in emergency situations, such as a cyclone, when the Commonwealth Government will need to establish situational awareness quickly.

A civil penalty of 100 penalty units for failing to notify NOPSEMA within the required timeframe can be imposed under the OPGGS Act. For a body corporate the court can impose a fine of up to 5 times the civil penalty amount under section 82 of the Regulatory Powers Act. Subclause 83B(5) of the OPGGS Act provides that it is a continuing contravention in respect of each day a notification is not provided punishable by a maximum of 10% of the civil penalty for each day.

## **Part 8—Penalty provisions**

### **Section 2.42D – Purpose of this Part**

This section provides that this Part is made for the purposes of sections 790 and 790A of the OPGGS Act and clause 17 of Schedule 3 to that Act.

### **Section 2.43 – Facility must have an operator**

Subsection 2.43(1) provides that a person must not carry out a facility activity on a facility in Commonwealth waters if there is no operator in respect of the facility. *Facility activity* is defined in section 1.5 of the instrument.

Subsection 2.43(2) provides that a contravention of subsection 2.43(1) is a strict liability offence. The maximum penalty for a failure to comply with subsection 2.43(1) is 100 penalty units, or 500 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. A person is also liable to a civil penalty of 1,000 penalty units if the person contravenes subsection 2.43(1), while a body corporate is liable to a civil penalty of 5,000 penalty units for contravening subsection 2.43(1), due to the operation of paragraph 82(5)(a) of the Regulatory Powers Act.

For an explanation of the strict liability penalty, penalty amount, civil penalty and the reasons for imposing both a criminal and civil penalty, as well as financial sanctions, see section 2.30 above.

## **Section 2.44 – Safety case required for the relevant stage in the life of a facility**

Subsection 2.44(1) provides that a person must not carry on a facility activity in Commonwealth waters if there is no safety case in force for the facility. **Facility activity** is defined in section 1.5 of the instrument.

Subsection 2.44(2) provides that a contravention of subsection 2.44(1) is a strict liability offence. The maximum penalty for a failure to comply with subsection 2.44(1) is 100 penalty units, or 500 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. A person is also liable to a civil penalty of 1,000 penalty units if the person contravenes subsection 2.44(1), while a body corporate is liable to a civil penalty of 5,000 penalty units for contravening subsection 2.44(1), due to the operation of paragraph 82(5)(a) of the Regulatory Powers Act.

For an explanation of the strict liability penalty, penalty amount, civil penalty and the reasons for imposing both a criminal and civil penalty, as well as financial sanctions, see section 2.30 above.

## **Section 2.45 – Work on a facility must comply with the safety case**

Subsection 2.45(1) provides that a person must not carry out a facility activity in Commonwealth waters if the activity is carried out in a manner that is contrary to a safety case in force for the facility, or contrary to a limitation or condition imposed by NOPSEMA when accepting a safety case or revised safety case, except if NOPSEMA has granted a consent to operate in the specific manner. **Facility activity** is defined in section 1.5 of the instrument.

Subsection 2.45(2) provides that a contravention of subsection 2.45(1) is a strict liability offence. The maximum penalty for a failure to comply with subsection 2.45(1) is 100 penalty units, or 500 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. A person is also liable to a civil penalty of 1,000 penalty units if the person contravenes subsection 2.45(1), while a body corporate is liable to a civil penalty of 5,000 penalty units for contravening subsection 2.45(1), due to the operation of paragraph 82(5)(a) of the Regulatory Powers Act.

For an explanation of the strict liability penalty, penalty amount, civil penalty and the reasons for imposing both a criminal and civil penalty, as well as financial sanctions, see section 2.30 above.

Subsection 2.45(4) provides that subsection 2.45(1) does not apply if NOPSEMA has given the person written consent under section 2.28 to engage in conduct in a manner contrary to the safety case or under a limitation or condition imposed under subsection 2.26(5) or 2.34(5).

A defendant bears the evidential burden in relation to the matter in this subsection. Under subsection 13.3 of the Criminal Code and section 96 of the Regulatory Powers Act, the defendant bears an evidential burden in relation to this matter. The burden of proof is reversed because the matter is likely to be exclusively

within the knowledge of the defendant. This is particularly the case given the remote nature of offshore operations. It is therefore reasonable to require the defendant to adduce evidence in relation to this defence. This is consistent with the Guide.

### **Section 2.46 – Significant new health and safety risk or significant increase in existing risk**

This section provides that a person must not carry out a facility activity in Commonwealth waters if there is an occurrence of a new risk to health and safety, or a significant increase in an existing risk to health and safety in relation to the activity and the new risk or increased risk is not provided for in the safety case in force for the facility or in a revised safety case submitted to NOPSEMA and not refused acceptance by NOPSEMA.

A titleholder must notify the operator and NOPSEMA about an occurrence of a significant new risk to health and safety or a significant increase in an existing risk to health and safety.

Subsection 2.46(3) imposes a strict liability offence where a person contravenes subsection 2.46(1) or (2). The maximum penalty for a failure to comply with subsection 2.46(1) or (2) is 100 penalty units, or 500 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. A person is also liable to a civil penalty of 1,000 penalty units if the person contravenes subsection 2.46(1) or (2), while a body corporate is liable to a civil penalty of 5,000 penalty units for contravening subsection 2.46(1) or (2), due to the operation of paragraph 82(5)(a) of the Regulatory Powers Act.

For an explanation of the strict liability penalty, penalty amount, civil penalty and the reasons for imposing both a criminal and civil penalty, as well as financial sanctions, see section 2.30 above.

### **Section 2.46A – Access to safety case**

Section 2.46A provides that the operator of a facility must make a copy of the safety case available at all times in a readily accessible place to persons, including HSRs, on the facility. This is to ensure that the safety case is easily accessible, without restriction, to the workforce at all times while they are at the facility and to ensure there is no barrier of access for HSRs or other workers. Providing better access to the safety case at the facility will improve safety outcomes by removing access barriers and increasing transparency.

A “readily accessible place” is not limited to a physical copy being provided in a physical location that is readily accessible to persons. It may be appropriate to provide a copy of the safety case in multiple formats and places to ensure accessibility. To manage concerns around facility security, discretion can be applied to the format in which the safety case would be available (i.e., electronic or hard copy) which will enable those concerns to be managed on a case-by-case basis.

It is a strict liability offence for the operator of a facility to contravene subsection 2.46A(1). The maximum penalty for a failure to comply with

subsection 2.46A(1) is 30 penalty units, or 150 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. A person is also liable to a civil penalty of 300 penalty units if the person contravenes subsection 2.46A(1), while a body corporate is liable to a civil penalty of 1,500 penalty units for contravening subsection 2.46A(1), due to the operation of paragraph 82(5)(a) of the Regulatory Powers Act.

For an explanation of the strict liability penalty, penalty amount, civil penalty and the reasons for imposing both a criminal and civil penalty, as well as financial sanctions, see section 2.30 above.

The infringement notice provisions, under Part 5 of the Regulatory Powers Act, may apply to subsection 2.46A(3) due to the operation of subsection 5.4(1) of the instrument. Under these provisions the Chief Executive of NOPSEMA or a NOPSEMA inspector may issue an infringement notice imposing a fine of 6 penalty units for an individual or 30 penalty units for a body corporate for an offence.

### **Section 2.46B – Reporting incidents of sexual harassment etc.**

Section 2.46B provides details of the information to be included in notices and reports of sexual harassment, bullying or harassment. An initial notice to NOPSEMA will be required as soon as practicable after an alleged incident has been notified to the operator. This will allow NOPSEMA to be aware of the situation should it be approached by the individual, a HSR or union about the alleged incident. The notice must be deidentified.

A de-identified report will then be required within 30 days, or such time as agreed by NOPSEMA, which will provide an account of the incident, details of action taken or proposed to be undertaken and details of measures that have been or will be put in place to prevent similar incidents occurring at the facility.

It is a strict liability offence for the operator of a facility not to notify NOPSEMA of an incident and to provide a written report to NOPSEMA of a sexual harassment, bullying or harassment incident. The maximum penalty for a failure to comply with subsection 2.46B(1) is 100 penalty units, or 500 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. A person is also liable to a civil penalty of 1000 penalty units if the person contravenes subsection 2.46B(1). For a body corporate the court can impose a fine of up to 5 times the civil penalty amount under section 82 of the Regulatory Powers Act.

For an explanation of the strict liability penalty, penalty amount, civil penalty and the reasons for imposing both a criminal and civil penalty, as well as financial sanctions, see section 2.30 above.

Subsection 2.46B(3) is a continuing offence under section 4K of the Crimes Act. Subsection 5.9(1) sets out the maximum daily penalty that may be imposed for a continuing offence as 10% of the maximum penalty that can be imposed in respect of the relevant offence. A daily penalty of 3 penalty units, or 15 penalty units for a body corporate, can be imposed for each day the report is outstanding.

Similarly, a contravention under subsection 2.46B(6) could carry a daily civil penalty of 30 penalty units, or 150 penalty units for a body corporate, under section 93 of the Regulatory Powers Act. Subsection 5.9(2) of the instrument sets out the maximum daily penalty that may be imposed for contravention of a civil penalty provision as 10% of the maximum penalty that can be imposed in respect of the contravention.

### **Section 2.47 – Maintaining records**

Section 2.47 establishes that it is an offence of strict liability for the operator of a facility to keep relevant documents in a manner that is contrary to the manner set out in the safety case.

The maximum penalty for a failure to comply with subsection 2.47(1) is 30 penalty units, or 150 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. A person is also liable to a civil penalty of 300 penalty units if the person contravenes subsection 2.47. For a body corporate the court can impose a fine of up to 5 times the civil penalty amount under section 82 of the Regulatory Powers Act.

For an explanation of the strict liability penalty, penalty amount, civil penalty and the reasons for imposing both a criminal and civil penalty, as well as financial sanctions, see section 2.30 above.

The infringement notice provisions, under Part 5 of the Regulatory Powers Act, may apply to subsection 2.47(2) due to the operation of subsection 5.4(1) of the instrument. Under these provisions the Chief Executive of NOPSEMA or a NOPSEMA inspector may issue an infringement notice imposing a fine of 6 penalty units for an individual or 30 penalty units for a body corporate for an offence.

### **Section 2.48 – Persons on a facility must comply with safety case**

Section 2.48 establishes that it is an offence of strict liability for a person on a facility to act in a manner that is contrary to the safety case in force for the facility as it relates to that person.

The maximum penalty for a failure to comply with section 2.48 is 50 penalty units, or 250 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act.

For an explanation of the strict liability penalty, penalty amount, as well as financial sanctions, see section 2.30 above.

### **Section 2.49 – Interference with accident sites**

Subsection 2.49(1) establishes that it is an offence of strict liability for a person to interfere with the site of an accident that causes death or serious personal injury or an accident that causes a member of the workforce to be incapacitated from performing work for a period of at least 3 days or a dangerous occurrence before a NOPSEMA

inspector has completed an inspection of the site, except in the circumstances specified in subsection 2.49(2).

The maximum penalty for a failure to comply with subsection 2.49(1) is 50 penalty units, or 250 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act.

For an explanation of the strict liability penalty, penalty amount, as well as financial sanctions, see section 2.30 above. For an explanation of the reverse burden of proof see section 2.45 above.

## **Part 9—Miscellaneous**

### **Section 2.50 – Details in applications or submissions**

Section 2.50 provides that applications or submissions that a person is required or permitted to make or give to NOPSEMA must include the personal details specified in the section. NOPSEMA may delay proceedings until the person or agent has complied.

## **Part 10—Application of this instrument if a remedial direction is in force**

### **Section 2.51 – Application of this instrument if a remedial direction is in force**

Subsection 2.51(1) provides that, if a direction is in force under section 586, 586A, 587 or 587A of the OPGGS Act (referred to as a *petroleum remedial direction*) or section 591B, 592, 594A or 595 of the OPGGS Act (referred to as a *greenhouse gas remedial direction*), the instrument applies in relation to the person who is subject to the direction.

Subsection 2.51(2) operates by deeming references to a titleholder in the instrument, excluding the definition of a *titleholder* in section 1.5, to include a reference to a person who is subject to a petroleum or greenhouse gas remedial direction. The definition of *titleholder* is excluded as it is not necessary for the reference to a titleholder in the definition to include a reference to a person subject to a remedial direction given the deeming effect of subsection 2.51(2).

The instrument applies to petroleum and greenhouse gas facilities located in Commonwealth waters. A *facility* is defined by clause 4 of Schedule 3 to the OPGGS Act, and persons are prohibited from carrying out activities in relation to a facility or part of the facility, including operating, modifying or decommissioning the facility or part of the facility, unless:

- there is an operator in respect of the facility (see section 2.43);
- there is a safety case in force for the facility that provides for the activity (see section 2.44); and
- persons carry out the activity in accordance with the safety case (see section 2.45).

The operator of the facility is subject to a number of duties and obligations relating to OHS under Schedule 3 to the OPGGS Act and the instrument, including the duties to

take all reasonably practicable steps to ensure that the facility is safe and without risk to the health of any person at or near the facility, and all work and other activities carried out on the facility are carried out in a manner that is safe and without risk to the health of any person at or near the facility (see subclause 9(1) of Schedule 3 to the OPGGS Act).

Only the operator of a facility is eligible to submit a safety case, or a revised safety case, to NOPSEMA for assessment and acceptance (see sections 2.24 and 2.30). In addition, only the owner of the facility or the titleholder are eligible to nominate a person to be the operator (see section 2.1).

Practically, if a remedial direction is in force and compliance with the direction requires the person who is subject to the direction to undertake an activity in relation to a facility or part of the facility (such as decommissioning the facility or part of the facility), the extended reference to a titleholder in section 1.5 applies in relation to the direction so that:

- the person who is subject to the direction is eligible to nominate a person to be the operator of the facility under section 2.1;
- the person who is subject to the direction may notify NOPSEMA that the operator has ceased to be the person who has, or will have, the day-to-day management and control of the facility under subsection 2.4(2); and
- the person who is subject to the direction is required to notify the operator and NOPSEMA of the occurrence of a significant new risk, or a significant increase to an existing risk, to health and safety arising from the activity undertaken in relation to the facility or part of the facility (including decommissioning of the facility or part of the facility) as soon as practicable under subsection 2.46(2).

If a person is a current titleholder subject to a remedial direction under section 586, 586A, 591B or 592, the instrument continues to apply to that person as a titleholder. The amendments ensure extended application of the instrument if a remedial direction is given to a person other than the current titleholder.

If a remedial direction is in force, the other provisions of the instrument also apply. This means that the facility must have an operator in respect of the facility, a safety case must be in force for the facility, and activities must be carried out in a manner that complies with the safety case in force for the facility.

## **CHAPTER 3—OCCUPATIONAL HEALTH AND SAFETY**

### **Part 1—Preliminary**

#### **Section 3.1AA – Simplified outline of this Chapter**

This section sets out a simplified outline Chapter 3 of the instrument. While simplified outlines are included to assist readers to understand the substantive provisions, the outlines are not intended to be comprehensive. It is intended that readers should rely on the substantive provisions of the instrument.

## **Part 2—Health and safety**

### **Section 3.1AB – Purpose of this Part**

This section provides that this Part is made for the purposes of section 639 of the OPGGS Act and clause 17 of Schedule 3 to that Act.

### **Section 3.1 – Avoiding fatigue**

Section 3.1 applies to the persons in subsection 3.1(1), the operator of a facility, an employer, another person in control of a facility or a part of a facility or particular work carried out a facility. If section 3.1 applies to a person, then that person must develop and implement strategies to prevent or minimise members of the workforce at the facility under that person’s control being exposed to work related conditions that may cause fatigue and to prevent and control exposure to work related conditions at the facility that may cause fatigue. This section is designed to avoid worker fatigue that could endanger persons at or near the facility.

The person would need to consider all factors (including physical, mental, emotional and environmental) that may expose members of the workforce to work-related condition that may cause fatigue. This could include the duration of shifts and time between shifts and other factors that can contribute to fatigue, such as sleeping arrangements and transit times to facilities.

A failure to comply with subsection 3.1(2) is a strict liability offence. The maximum penalty for a failure to comply with subsection 3.1(2) is 100 penalty units, or 500 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. A person is also liable to a civil penalty of 1,000 penalty units if the person contravenes subsection 3.1(2). For a body corporate the court can impose a fine of up to 5 times the civil penalty amount under section 82 of the Regulatory Powers Act.

For an explanation of the strict liability penalty, penalty amount, civil penalty and the reasons for imposing both a criminal and civil penalty, as well as financial sanctions, see section 2.30 above.

### **Section 3.2 – Possession or control of drugs or intoxicants**

Subsection 3.2(1) provides that it is an offence of strict liability for a person at a facility to have possession or control of a controlled substance or an intoxicant, except in accordance with subsection 3.2(2).

Subsection 3.2(2) provides that subsection 3.2(1) does not apply where the person had possession or control of a controlled substance that is a therapeutic drug and is in the possession or control of the person in the course of their employment, or as part of their duties as a medical practitioner, a qualified nurse or a qualified pharmacist or in accordance with the law of a State or Territory or if the person had lawfully acquired the therapeutic drug - for the person’s bona fide personal use.

A defendant bears the evidential burden in relation to the matters in subsection 3.2(2). For an explanation of the reverse burden of proof see section 2.45 of the instrument.

The maximum penalty for a failure to comply with subsection 3.2(1) is 50 penalty units, or 250 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act.

For an explanation of the strict liability penalty, penalty amount, as well as financial sanctions, see section 2.30 above.

### **Section 3.3 – Person must leave the facility when instructed to do so**

Section 3.3 provides that it is an offence for a person not to leave a facility when instructed to do so by a person in command of the facility. The person in command of a facility, may, in an emergency, give the instruction orally, otherwise this instruction must be in writing and must include the reason for the instruction. This provides protection against use of the provision for reasons unconnected with OHS.

A contravention of subsection 3.3(1) is an offence, punishable by 50 penalty units, or 250 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act.

It is appropriate to apply a fault based liability to the offence to ensure that the section can be enforced more effectively. The intention of the application of the penalty is to improve compliance in the regulatory regime, particularly in the case of the health and safety of divers and other members of the workforce who rely on diving supervisors for direction.

The penalty is consistent with the principles outlined in section 3.3 of the Guide, which states that penalties in regulations generally should not exceed 50 penalty units.

### **Section 3.4 – Prohibition on the use of certain hazardous substances**

Section 3.4 provides that a person in control at a facility (i.e., the operator of a facility, an employer, another person in control of a facility or part of a facility or particular work carried out a facility) must not allow a hazardous substance listed in Part 2 or Part 3 of Schedule 1 to the instrument to be used at the facility unless that use is:

- in a circumstance specified in column 3 of Part 2 or Part 3 of Schedule 1 for that section (subsection 3.4(2)); or
- in accordance with an exemption granted by NOPSEMA under section 3.7 (subsection 3.4(5)).

A contravention of subsection 3.4(2) is a strict liability offence, punishable by 100 penalty units or 500 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. A person is also liable to a civil penalty of 1,000 penalty units if the person contravenes subsection 3.4(2). For a body corporate the court can impose a fine of up to 5 times the civil penalty amount under section 82 of the Regulatory Powers Act.

For an explanation of the strict liability penalty, penalty amount, civil penalty and the reasons for imposing both a criminal and civil penalty, as well as financial sanctions, see section 2.30 above.

Subsection 3.4(5) provides an exemption to the offence in subsection 2 where the hazardous substance is used in accordance with an exemption granted by NOPSEMA under section 3.7. For an explanation of the reverse burden of proof see section 2.45.

### **Section 3.5 – Limitations on exposure to certain hazardous substances**

The section provides that a person in control at a facility (i.e., the operator of a facility, an employer, another person in control of a facility or part of a facility or particular work carried out a facility) must not allow a member of the workforce at the facility under the person's control to be exposed to an airborne concentration of a hazardous substance in the breathing zone of the member of the workforce above the prescribed exposure standard for the relevant period of time, except in accordance with an exemption granted by NOPSEMA under section 3.7.

A contravention of subsection 3.5(2) is a strict liability offence, punishable by 100 penalty units or 500 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. A person is also liable to a civil penalty of 1,000 penalty units if the person contravenes subsection 3.5(2). For a body corporate the court can impose a fine of up to 5 times the civil penalty amount under section 82 of the Regulatory Powers Act.

For an explanation of the strict liability penalty, penalty amount, civil penalty and the reasons for imposing both a criminal and civil penalty, as well as financial sanctions, see section 2.30 above.

Subsection 3.5(5) provides an exemption to the offence in subsection 2 where the exposure is in accordance with an exemption granted by NOPSEMA under section 3.7. For an explanation of the reverse burden of proof see section 2.45.

### **Section 3.6 – Exposure to noise**

This section provides that a person in control at a facility (i.e., the operator of a facility, an employer, another person in control of a facility or part of a facility or particular work carried out a facility) must not allow a member of the workforce under their control to be exposed to a level of noise that exceeds the prescribed exposure standard, except in accordance with an exemption granted by NOPSEMA under section 3.7.

A contravention of subsection 3.6(2) is a strict liability offence, punishable by 100 penalty units or 500 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. A person is also liable to a civil penalty of 1,000 penalty units if the person contravenes subsection 3.6(2). For a body corporate the court can impose a fine of up to 5 times the civil penalty amount under section 82 of the Regulatory Powers Act.

For an explanation of the strict liability penalty, penalty amount, civil penalty and the reasons for imposing both a criminal and civil penalty, as well as financial sanctions, see section 2.30 above.

Subsection 3.6(5) provides an exemption to the offence in subsection 2 where the noise exposure is managed in a manner consistent with the provisions of the *Model Code of Practice - Managing noise and preventing hearing loss at work (2020)* or the exposure is in accordance with an exemption granted by NOPSEMA under section 3.7 For an explanation of the reverse burden of proof see section 2.45.

### **Section 3.7 – Exemptions from hazardous substances and noise requirements**

Subsection 3.7(2) provides that an operator, an employer or another person in control of a facility, a part of a facility, or particular work at a facility may apply in writing to NOPSEMA for an exemption from compliance with subsections 3.4(2), 3.5(2) and 3.6(2). NOPSEMA may grant an exemption if it considers that, in the circumstances, compliance is not practicable and technical and control measures to reduce any risk arising from non-compliance to as low as is reasonably practicable are in place or will be implemented, and NOPSEMA may specify conditions and limitations on any exemption. Any exemption must be granted in writing.

## **Part 3—Election of health and safety representatives**

### **Division 1—Returning officer**

#### **Section 3.7A – Purpose of this Part**

Subclause 26(4) of Schedule 3 to the OPGGS Act provides that if an election is required to fill a vacancy in the office of HSR for a designated work group then it must be conducted in accordance with the regulations made for the purposes of that subclause if requested by the lesser of 100 members of the workforce normally in the designated work group; or a majority of the members of the workforce normally in the designated work group.

Section 3.7A provides that this Part is made for the purposes of subclause 26(4) of Schedule 3 to the OPGGS Act.

#### **Section 3.8 – Appointment of returning officer**

Subsection 3.8(1) provides that, when an operator is required to conduct or arrange for the conduct of an election under subclause 26(3) of Schedule 3 to the OPGGS Act, the operator must nominate a person to act as returning officer and must notify NOPSEMA of that nomination. Subsection 3.8(3) also provides that NOPSEMA may either approve the nomination and appoint the nominee as returning officer or appoint another person as returning officer.

## **Division 2—The poll**

### **Section 3.9 – Number of votes**

Section 3.9 provides that each person eligible to vote in an election is entitled to one vote only in that election.

### **Section 3.10 – Right to secret ballot**

Section 3.10 provides for a member of the designated work group to make a request to the returning officer for a secret ballot for the election. This provision helps to ensure that the election system is flexible and fair.

### **Section 3.11 – Conduct of poll by secret ballot**

If a secret ballot is requested section 3.11 requires the returning officer to issue ballot papers as soon as practicable and to conduct the election in accordance with Divisions 3 (Polling by secret ballot) and 4 (The count).

### **Section 3.12 – Conduct of poll if no request made for secret ballot**

Section 3.12 provides that if there is no request for a secret ballot the returning officer may conduct a poll in a manner determined by the returning officer to produce a fair result.

### **Section 3.13 – If no candidate is elected**

Section 3.13 provides that if no candidate is elected the election is taken to have failed.

## **Division 3—Polling by secret ballot**

### **Section 3.14 – Ballot-papers**

Section 3.14 sets out the matters that must be contained in a ballot-paper. This includes the name of the election, the name of each candidate in alphabetical order and the manner of voting.

### **Section 3.15 – Distribution of ballot-papers**

Section 3.15 specifies how the returning officer is to distribute the ballot-papers. The section provides that each voter must be given a ballot paper that is initialled by the returning officer and an envelope that is addressed to the returning officer showing that it relates to the election. The envelope may be postage prepaid and include a statement that the envelope may be posted to the returning officer without expense to the voter. The ballot paper and envelope should be enclosed in a covering envelope that is addressed to the voter.

### **Section 3.16 – Manner of voting by secret ballot**

Section 3.16 provides for procedures for voting and make provisions for the process of voting including spoilt ballot papers. The voter is required to place the number 1 next to the candidate of their choice. They are then to fold the ballot paper and place it in the envelope provided. The envelope is the sealed and lodged in a sealed ballot box in a secure part of the workplace or sent to the returning officer. If a ballot paper is spoilt the voter can return the ballot paper to the returning officer and request a further ballot paper. The returning officer is required to write the word spoilt on the returned paper and sign and date it. The spoilt ballot paper must be retained by the returning officer.

### **Division 4—The count**

#### **Section 3.17 – Envelopes given to returning officer**

Section 3.17 requires the returning officer to keep votes secure until the count and not to include votes received after the poll has closed. It is an offence if a person contravenes this requirement.

It is a strict liability offence for a returning officer not to secure ballots or to allow ballots after the poll has closed. The maximum penalty for a failure to comply with subsection 3.3(1) is 10 penalty units, or 50 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act.

For an explanation of the strict liability penalty, penalty amount, as well as financial sanctions, see section 2.30 above.

The infringement notice provisions, under Part 5 of the Regulatory Powers Act, may apply to subsection 3.17(3) due to the operation of subsection 5.4(1) of the instrument. Under these provisions the Chief Executive of NOPSEMA or a NOPSEMA inspector may issue an infringement notice imposing a fine of 2 penalty units for an individual or 10 penalty units for a body corporate for an offence.

#### **Section 3.18 – Scrutineers**

Section 3.18 provides that each candidate in a poll conducted by secret ballot can appoint one scrutineer to represent the candidate at the count.

#### **Section 3.19 – Returning officer to be advised of scrutineers**

Section 3.19 provides for notification of scrutineers to the returning officer by the candidate prior to the count.

#### **Section 3.20 – Persons present at the count**

Section 3.20 provides that a returning officer may direct a person to leave the place where the count is being conducted if they are not entitled to be present, or if they interrupt a count other than to advise that they consider an error has been made or to

object to a decision of the returning officer. Subsection 3.20(3) provides for offences and penalties.

It is a strict liability offence for a person not to leave the place where the count is being conducted if directed by the returning officer. The maximum penalty for a failure to comply with subsection 3.20(1) is 10 penalty units, or 50 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act.

For an explanation of the strict liability penalty, penalty amount, as well as financial sanctions, see section 2.30 above.

Subsection 3.20(4) provides an exemption to the offence in subsection (3) where the person has a reasonable excuse. For an explanation of the reverse burden of proof see section 2.45.

The infringement notice provisions, under Part 5 of the Regulatory Powers Act, may apply to subsection 3.20(3) due to the operation of subsection 5.4(1). Under these provisions the Chief Executive of NOPSEMA or a NOPSEMA inspector may issue an infringement notice imposing a fine of 2 penalty units for an individual or 10 penalty units for a body corporate for an offence.

### **Section 3.21 – Conduct of the count**

Section 3.21 sets out the procedures to be followed by the returning officer in conducting the count. The successful candidate is the one with the most votes and in the event of a tie the successful candidate will be determined by lots drawn by the returning officer.

### **Section 3.22 – Informal ballot-papers**

Section 3.22 sets out the circumstances in which a ballot-paper is informal.

### **Section 3.23 – Completion of the count**

Section 3.23 requires the returning officer to prepare, date and sign a statement setting out the number of valid votes given to each candidate and the number of informal votes.

### **Section 3.24 – Destruction of election material**

Section 3.24 allows the returning officer to destroy specified election material at the end of six months after notification of the results of the poll for an election is given under section 3.27.

## **Division 5—Result of election**

### **Section 3.25 – Request for recount**

Section 3.25 provides that at any time prior to notification of the result of the poll being given under section 3.27 the returning officer on his or her own initiative or if requested by a candidate can conduct a recount of the ballots. A candidate requesting a recount can do so orally or in writing and must provide reasons for the request.

Subsection 3.25(2) provides that in the case of a secret ballot the returning officer will have the same powers for the purposes of the recount and in any other case may make any reasonable decision in respect of the allowance or otherwise of a vote cast in the poll.

### **Section 3.26 – Irregularities at election**

Section 3.26 makes provision for election irregularities. The returning officer may declare an election void, before the notification of the result, if the returning officer has reasonable grounds to believe there has been an irregularity in the conduct of an election.

Subsection 3.26(2) provides that the returning officer must not declare the election void only because of a defect that does not affect the result of the election or a minor error in the documentation or as a result of an illegal practice, other than bribery or corruption, unless it would have affected the result, and it is just that the election be declared void.

### **Section 3.27 – Result of poll**

Subsection 3.27(1) requires that if an election has failed the returning officer must notify, as soon as practicable, the employer and NOPSEMA of the failure of an election.

Subsection 3.27(2) requires the returning officer to notify the successful candidate as soon as practicable after a successful poll. The returning officer must enclose a copy of the section 3.23 statement setting out the details of the count.

## **Part 4—Advice, investigations and inquiries**

### **Section 3.29 – Taking samples for testing etc**

Section 3.29 provides for the taking of samples for testing, in accordance with Schedule 3 to the OPGGS Act. Subclause 75(1) of Schedule 3 to the OPGGS Act empowers a NOPSEMA inspector, while conducting an inspection, to remove plant or equipment from the workplace or take a sample of substances or things for inspection or testing.

This section provides for the specific procedures related to taking these samples, including that the person taking the samples must take all reasonable steps to ensure that the plant is not damaged, or the sample contaminated, while it is away from the

workplace. Where samples are taken these must be in three parts with one part provided to the operator, the second part for testing and the remaining part kept for further testing if required. Where the substance or thing cannot be divided then the whole sample must be provided for testing, inspection, examination or measuring.

## **Part 5—Exemptions from the requirements in Part 3 of Schedule 3 to the Act**

### **Section 3.31 – Orders under clause 46 of Schedule 3 to the Act**

Section 3.31 provides that any person may apply in writing to NOPSEMA for an order exempting the person from one or more of the provisions of Part 3 of Schedule 3 to the OPGGS Act (“*Workplace Arrangements*”), and further specifies the details of this process, including that NOPSEMA must decide whether or not to grant the exemption within 28 days after receipt of an application.

In making its decision, NOPSEMA must consult with, and consider, submissions made by any persons who might be affected by the decision. In granting an exemption, NOPSEMA must give reasons for its decision and may specify a period of time for which the exemption applies.

## **Part 6—State and Northern Territory laws that do not apply**

### **Section 3.32 – Laws or parts of laws that do not apply**

Section 89 of the OPGGS Act provides that regulations can prescribe State and Territory OHS laws that do not apply in relation to facilities. These are exceptions to section 80 of the OPGGS Act which applies the laws of a State or Territory as laws of the Commonwealth in the offshore area of the State or Territory. For the purposes of paragraph 89(1)(f) of the OPGGS Act, subsection 3.32(1) prescribes in a table the State laws that do not apply at offshore petroleum facilities because they are wholly or substantially laws related to OHS, and hence overlap with, and duplicate the provisions of, the laws that are administered by NOPSEMA.

Laws related to radiation safety and food safety are not disapplied, because those laws relate to public health matters that could affect a State or the NT, as well as being related to health and safety at the offshore facilities. Such State and NT laws are to remain in force at offshore facilities, administered and enforced under memoranda of understanding between NOPSEMA and the relevant State and NT agencies.

For the purposes of paragraph 89(4)(b) of the OPGGS Act, subsections 3.32(3) and (4) provide that substantive criminal laws relating to OHS under the *Crimes at Sea Act 2000* are also disapplied. For the purposes of section 3.32, subsection 3.32(5) defines **substantive criminal law** as having the meaning given by subclause 1(1) of Schedule 1 to the *Crimes at Sea Act 2000*.

## **CHAPTER 4—DIVING**

### **Part 1—Preliminary**

#### **Section 4.1 – Simplified outline of this Chapter**

This section sets out a simplified outline of Chapter 4 of the instrument. While simplified outlines are included to assist readers to understand the substantive provisions, the outlines are not intended to be comprehensive. It is intended that readers should rely on the substantive provisions of the instrument.

#### **Section 4.2 – Purpose of this Chapter**

This section provides that this Chapter is made for the purposes of sections 639, 790 and 790A of the OPGGS Act and clause 17 of Schedule 3 to that Act.

### **Part 2—Diving safety management systems**

#### **Section 4.3 – No diving without DSMS**

Subsections 4.3(1), (2) and (3) provide that any diving contractor intending to undertake offshore diving work subject to the OPGGS Act is required to have a DSMS that has been accepted by NOPSEMA. The DSMS must be provided to the operator of the facility, where there is an operator, and the operator is not to allow diving to commence without a DSMS. The DSMS must also be current – ie: it must be an accurate representation of the policies, staffing, procedures and equipment that the diving contractor is currently using, it must be an up-to-date revision. A DSMS is current if it has not been revised or withdrawn since its last acceptance and it is not more than 5 years since its last acceptance. A person can consult the DSMS register, held by NOPSEMA (see section 4.9), to check on acceptance and currency.

It is a strict liability offence if a person contravenes subsection (1), (2) or (3). The maximum penalty for a failure to comply with any of subsections 4.3A(1) (2) and (3) is 100 penalty units, or 500 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. A person is also liable to a civil penalty of 1,000 penalty units if the person contravenes any of subsections 4.3A(1), (2) and (3). For a body corporate the court can impose a fine of up to 5 times the civil penalty amount under section 82 of the Regulatory Powers Act.

For an explanation of the strict liability penalty, penalty amount, civil penalty and the reasons for imposing both a criminal and civil penalty, as well as financial sanctions, see section 2.30 above.

#### **Section 4.3A – DSMS must be given to divers who request a copy**

Subsection 4.3A(1) provides that it is an offence if a diving contractor does not give a diver a copy of the DSMS for a diving project to any diver on the diving project who requests a copy of the DSMS.

Subsection 4.3A(2) provides that it is an offence for a diving contractor to allow diving work on a diving project to begin if a diver on the diving project requests a copy of the DSMS for the diving project and the diving contractor does not give a copy of the DSMS to the diver before the diving begins.

It is an offence, punishable by 30 penalty units, if a person contravenes subsection (1) or (2). The maximum penalty for a failure to comply with subsection 4.3A (1) or (2) is 30 penalty units, or 150 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act.

It is appropriate to apply a fault based liability to the offence to ensure that the section can be enforced more effectively. The intention of the application of the penalty is to improve compliance in the regulatory regime, particularly in the case of the health and safety of divers and other members of the workforce who rely on diving supervisors for direction.

The penalty is consistent with the principles outlined in section 3.3 of the Guide, which states that penalties in regulations generally should not exceed 50 penalty units.

#### **Section 4.4 – Contents of DSMS**

Section 4.4 provides that a DSMS must meet standards set out in guidelines made by NOPSEMA and meet the requirements specified under subsections 4.4(2), (3) and (4).

#### **Section 4.5 – Acceptance of new DSMS**

Section 4.5 provides that if a diving contractor does not have an accepted DSMS for a diving project they must submit a DSMS to NOPSEMA at least 60 days before a proposed diving project is expected to begin. NOPSEMA must accept or reject the DSMS within 60 days of receipt, notifying the contractor of its decision as soon as practicable. NOPSEMA can request further information under section 4.5A, which will extend the 60 day time period for notification of decision. If NOPSEMA accepts the DSMS, NOPSEMA may impose conditions on the acceptance.

#### **Section 4.5A – NOPSEMA may request more information**

NOPSEMA may request, in writing, the diving contractor to provide further written information about any matter required by the instrument to be included in a DSMS. A request from NOPSEMA must be in writing and set out each matter for which information is requested and specify a period of at least 30 days within which the information is to be provided. If the diving contractor provides all information requested by NOPSEMA within the time specified, then the information becomes part of the DSMS. NOPSEMA must have regard for the further information as if it had been included in the original request.

#### **Section 4.6 – Acceptance of revised DSMS**

Section 4.6 places an obligation on a diving contractor to submit a revised DSMS to NOPSEMA if the diving contractor has revised the DSMS. NOPSEMA must accept or reject the revised DSMS within 28 days of receipt, or within another period agreed

with the diving contractor, notifying the contractor of its decision as soon as practicable. NOPSEMA can request further information under section 4.6A which will extend the time period for notification of decision.

#### **Section 4.6A – NOPSEMA may request more information – revised DSMS**

If a diving contractor gives a revised DSMS for a diving project to NOPSEMA under section 4.6, NOPSEMA may request the diving contractor to provide, in writing, further information and provide at least 30 days for the response. A request from NOPSEMA must be in writing and set out each matter for which information is requested and specify a period of at least 30 days within which the information is to be provided. The further information provided by the contractor in response to the request becomes part of the DSMS. NOPSEMA must have regard to the further information as if it had been included in revised DSMS provided to NOPSEMA.

#### **Section 4.7 – Grounds for rejecting DSMS**

Section 4.7 sets out the circumstances in which NOPSEMA must reject a DSMS. NOPSEMA must reject a DSMS for a diving project if NOPSEMA is not satisfied that the DSMS or revised DSMS complies with section 4.4 or there was consultation with divers and other members of the workforce in the preparation of the DSMS as required by section 4.18.

#### **Section 4.8 – Notice of reasons**

Section 4.8 places an obligation on NOPSEMA to provide the diving contractor with the reasons why the DSMS or revised DSMS has been rejected or if NOPSEMA decides to impose conditions on acceptance of a DSMS or revised DSMS, the reasons for imposing the conditions. The notice of reasons must be set out in writing.

#### **Section 4.9 – Register of DSMSs**

Subsection 4.9(1) requires that NOPSEMA keep a register of the details of each DSMS and revised DSMS that it receives in a form that allows public access to this information. Subsection 4.9(2) requires that the register record the details in paragraphs (a) to (f) that apply to the DSMS. Subsection 4.9(3) requires NOPSEMA to record on the register each diving project plan it receives under section 4.13.

#### **Section 4.10 – Revision of DSMS**

Subsection 4.10(1) specifies the circumstances in which a diving contractor must revise a DSMS for a diving project to ensure that the DSMS continues to be an accurate record of the diving contractor's policies, practices and procedures. Subsection 4.10(4) requires that the DSMS must be revised every 5 years from the day it was accepted by NOPSEMA.

It is a strict liability offence if a person does not revise a DSMS when required under subsection 4.10(1) or 4.10(4). The maximum penalty for a failure to comply with subsection 4.10(1) is 100 penalty units, or 500 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act.

The strict liability offence for failure to comply with subsection 4.10(4) is punishable by 50 penalty units. The maximum penalty for a failure to comply with subsection 4.10(4) is 50 penalty units, or 250 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. A person is also liable to a civil penalty of 500 penalty units if the person contravenes subsection 4.10(4). For a body corporate the court can impose a fine of up to 5 times the civil penalty amount under section 82 of the Regulatory Powers Act.

For an explanation of the strict liability penalty, penalty amount, civil penalty and the reasons for imposing both a criminal and civil penalty, as well as financial sanctions, see section 2.30 above.

Subsection 4.10(5) is a continuing offence under section 4K of the Crimes Act. Subsection 5.9(1) sets out the maximum daily penalty that may be imposed for a continuing offence as 10% of the maximum penalty that can be imposed in respect of the relevant offence. A daily penalty of 5 penalty units, or 25 penalty units for a body corporate, can be imposed for each day the revision is outstanding.

Similarly, a contravention under subsection 4.10(6) could carry a daily civil penalty of 50 penalty units, or 250 penalty units for a body corporate, under section 93 of the Regulatory Powers Act. Subsection 5.9(2) sets out the maximum daily penalty that may be imposed for contravention of a civil penalty provision as 10% of the maximum penalty that can be imposed in respect of the contravention.

#### **Section 4.11 – Notice to revise DSMS**

This section provides that NOPSEMA may require the revision of a diving contractor's DSMS by the issuing of a notice in writing to the diving contractor setting out the matters to be revised, the reasons why the revision is necessary and the time within which the revision must be completed. The diving contractor may apply in writing to NOPSEMA within 21 days to have the revision notice varied. NOPSEMA must within 28 days decide whether to accept the reasons in the submission and give the diving contractor notice in writing affirming, varying or withdrawing the revision notice setting out the reasons for decision. Once NOPSEMA has decided on any variation, the diving contractor is then required to comply with NOPSEMA's direction in regard to revising the DSMS.

Subsection 4.11(5) provides that if NOPSEMA does not withdraw the revision notice the diving contractor must revise the DSMS in accordance with the notice or revised notice.

It is a strict liability offence if a person contravenes subsection 4.11(5) which requires the diving contractor to revise the DSMS. The maximum penalty for a failure to comply with subsection 4.11(5) is 100 penalty units, or 500 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. A person is also liable to a civil penalty of 1,000 penalty units if the person contravenes subsection 4.11(5). For a body corporate the court can impose a fine of up to 5 times the civil penalty amount under section 82 of the Regulatory Powers Act.

For an explanation of the strict liability penalty, penalty amount, civil penalty and the reasons for imposing both a criminal and civil penalty, as well as financial sanctions, see section 2.30 above.

Subsection 4.11(7) is a continuing offence under section 4K of the Crimes Act. Subsection 5.9(1) sets out the maximum daily penalty that may be imposed for a continuing offence as 10% of the maximum penalty that can be imposed in respect of the relevant offence. A daily penalty of 10 penalty units, or 50 penalty units for a body corporate, can be imposed for each day the revision is outstanding.

Similarly, a contravention under subsection 4.11(8) could carry a daily civil penalty of 100 penalty units or 500 penalty units for a body corporate, under section 93 of the Regulatory Powers Act. Subsection 5.9(2) sets out the maximum daily penalty that may be imposed for contravention of a civil penalty provision as 10% of the maximum penalty that can be imposed in respect of the contravention.

### **Part 3—Withdrawal of acceptance of DSMS**

#### **Section 4.11A – Withdrawing acceptance of a DSMS for a diving project**

Subsection 4.11A(1) sets out the grounds for NOPSEMA’s withdrawal of its acceptance of the DSMS for a diving project. Subsection 4.11A(2) provides that the notice from NOPSEMA must be in writing, specify the reasons for the withdrawal and specify the day when the withdrawal take effect.

#### **Section 4.11B – Steps to be taken before withdrawing acceptance of a DSMS**

Section 4.11B provides that before withdrawing acceptance of a DSMS for a diving project NOPSEMA must give the diving contractor, in writing, at least 30 days’ notice of NOPSEMA’s intention to withdraw acceptance of the DSMS. NOPSEMA may give a copy of the notice to such other persons (if any) as NOPSEMA thinks fit. The notice must specify a day by which the diving contractor (or person to whom a copy of the notice has been given) may make a written submission to NOPSEMA setting out any matters for NOPSEMA to take into account in deciding whether to withdraw acceptance of the DSMS. NOPSEMA, in making a decision, must take into account any action taken by the diving contractor to remove the grounds for withdrawal or action taken to prevent it reoccurring and any matter submitted by the diving contractor or person who was given a copy of the notice under subsection 4.11B(3).

### **Part 4—Diving project plans**

#### **Section 4.12 – Diving project plan to be approved**

Section 4.12 applies where the diving contractor is undertaking work in connection with a diving project, either directly for an operator of a facility or as a subcontractor through a principal contractor to the operator. The diving contractor must prepare the

diving project plan in consultation with the operator and be approved by the operator before diving operations can commence.

The diving project plan must take into account the specific requirements of the particular diving job, and dive site, and must form the bridging document between the operator's safety case and the DSMS.

The operator must ensure that the contents of the plan meet the requirements of section 4.16 before approving the plan. The operator must also ensure that there was in fact effective consultation with employees in development of the diving project plan as specified in section 4.18.

### **Section 4.13 – Diving project plan to be given to NOPSEMA if there is no operator of a facility in connection with a diving project**

Section 4.13 applies when diving work is undertaken in circumstances where there is no direct or indirect involvement of an operator of a facility in connection with the diving project. It requires the diving contractor to prepare a diving project plan and submit it to NOPSEMA for review and acceptance if it complies with sections 4.16 and subsection 4.18(2). NOPSEMA is also to consider if the diving operations to which the plan relates are appropriately covered by a single plan.

There may be a number of instances where a diving contractor undertakes an offshore diving contract subject to the Regulations that does not involve an operator or a facility as defined by clause 3 of Schedule 3 to the OPGGS Act. Examples may include:

- a diving operation on a well that is in a non-producing state to retrieve debris, or
- diving support provided for seismic survey operations conducted on an exploration licence.

The diving project plan must be accepted by NOPSEMA before diving can commence on the diving project.

### **Section 4.14 – Diving project plan to be given to NOPSEMA if requested**

Section 4.14 provides that the operator of a facility in connection with a diving project must submit the latest revision of the diving project plan to NOPSEMA on request.

### **Section 4.15 – Updating diving project plan**

Subsections 4.15 (1), (2), (3) and (4) provide that the diving contractor for a diving project must keep the diving project plan up to date. Any changes to the diving project plan that result in a significant increase in the overall level of risk or levels of specific risk must be incorporated into the latest revision of the plan under management-of-change procedures. Any revision must be done in conjunction with and be approved by the operator (or NOPSEMA, if there is no operator).

It is a strict liability offence if a person contravenes subsections 4.15(1), (2), (3) and (4) which requires the diving contractor to keep the diving project plan updated.

The maximum penalty for a failure to comply with the subsections is 100 penalty units, or 500 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. A person is also liable to a civil penalty of 1,000 penalty units if the person contravenes subsections 4.15(1), (2), (3) and (4). For a body corporate the court can impose a fine of up to 5 times the civil penalty amount under section 82 of the Regulatory Powers Act.

For an explanation of the strict liability penalty, penalty amount, civil penalty and the reasons for imposing both a criminal and civil penalty, as well as financial sanctions, see section 2.30 above.

#### **Section 4.16 – Contents of diving project plan**

Section 4.16 specifies the required contents of a diving project plan and provide that the diving project plan must cover the entire scope of work of the project and general principles of the diving techniques to be used as well as the needs of the particular operation. It must include details of the work, relevant legislation and codes of practice, hazard identification, risk and safety management and emergency response plans, supervision and communications. It must reference the provisions of the DSMS and safety case that are applicable and contain details of the consultation with divers and other members of the workforce.

#### **Section 4.17 – No diving without approved or accepted diving project plan**

Section 4.17 provides that a diving contractor for a diving project must not allow a person to dive on the project if:

- there is not an approved diving plan for the project;
- if there is an operator of the facility in connection with the diving project, the diving project plan or the updated project plan for the diving project has not been approved by the operator;
- If there is no operator of the facility in connection with the diving project, the diving project plan or the updated project plan, for the diving project has not been accepted by NOPSEMA; or
- If, under section 4.14, NOPSEMA has asked the operator of the facility in connection with the diving project for a copy of the diving project plan and the operator has not provided a copy of a requested diving project plan to NOPSEMA.

It is a strict liability offence if a person contravenes subsection 4.17(1) which requires that there be no diving without an approved diving project plan. The maximum penalty for a failure to comply with the subsections is 100 penalty units, or 500 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. A person is also liable to a civil penalty of 1,000 penalty units if the person contravenes subsection 4.17(1). For a body corporate the court can impose a fine of up to 5 times the civil penalty amount under section 82 of the Regulatory Powers Act.

For an explanation of the strict liability penalty, penalty amount, civil penalty and the reasons for imposing both a criminal and civil penalty, as well as financial sanctions, see section 2.30 above.

## **Part 5—Involvement of divers and members of the workforce**

### **Section 4.18 – Involvement of divers and members of the workforce in DSMS and diving project plan**

Section 4.18 provides that in developing or revising a DSMS or a diving project plan a diving contractor must ensure there is effective consultation with and participation of divers and other members of the workforce who will, or may, be working on diving projects for which the DSMS would be appropriate. It also provides that in developing or revising a diving project plan for a diving project, a diving contractor must ensure there is effective consultation with, and participation of, divers and other members of the workforce who will, or may be, working on the diving project.

When submitting a DSMS to NOPSEMA for acceptance the diving contractor must set out the details of the consultation and participation, any submissions or comments from consultations and any changes as a result of the consultation or participation.

## **Part 6—Safety responsibilities**

### **Section 4.19 – Safety responsibilities of diving contractors**

Section 4.19 provides that the diving contractor has an ongoing responsibility to ensure that risks to divers and other members of the workforce are reduced to a level that is ALARP and that the diving operations are carried out in accordance with the policies, procedures, standards and practices of the accepted DSMS and the approved diving project plan.

This section makes it an offence if a diving contractor does not take all necessary steps to ensure that a diving operation for which the diving contractor is responsible is carried out in a way that complies with the accepted DSMS and the diving project plan, as approved by the operator of a facility under section 4.12, or accepted by NOPSEMA under section 4.13.

It is an offence if a person contravenes subsections 4.19(1) or (2) which ensures that risks to divers and other members of the workforce is reduced to ALARP.

The maximum penalty for a failure to comply with the section is 100 penalty units, or 500 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. A person is also liable to a civil penalty of 1,000 penalty units if the person contravenes subsections 4.19(1) or (2). For a body corporate the court can impose a fine of up to 5 times the civil penalty amount under section 82 of the Regulatory Powers Act.

For an explanation of the penalty, penalty amount, civil penalty and the reasons for imposing both a criminal and civil penalty, as well as financial sanctions, see section 2.30 above.

## **Section 4.20 – Safety in the diving area**

Subsection 4.20(1) provides that at each place of diving a diving contractor must make available copies, before commencement of diving operations included in a diving project, of the instrument under which the diving supervisor was appointed (see section 4.22), the accepted DSMS and the approved diving project plan for the diving project.

It is a strict liability offence for a person not to provide copies of relevant documents or not to comply with an instruction or direction from a diving supervisor.

The maximum penalty for a failure to comply with subsection 4.20(1) is 30 penalty units, or 150 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. For subsection 4.20(4) it is 50 penalty units or 250 penalty units. A civil penalty of 300 penalty units also applies to the contravention of subsection 4.20(1). For a body corporate the court can impose a fine of up to 5 times the civil penalty amount under section 82 of the Regulatory Powers Act.

For an explanation of the strict liability penalty, penalty amount, civil penalty and the reasons for imposing both a criminal and civil penalty, as well as financial sanctions, see section 2.30 above.

The infringement notice provisions, under Part 5 of the Regulatory Powers Act, may apply to subsections 4.20(2) and (4) due to the operation of subsection 5.4(1) of the instrument. Under these provisions the Chief Executive of NOPSEMA or a NOPSEMA inspector may issue an infringement notice imposing a fine of 6 penalty units for an individual or 30 penalty units for a body corporate for an offence.

## **Section 4.21 – Diving depths**

Subsections 4.21(1) and (2) provide that the operator of a facility and the diving contractor must not allow surface orientated diving operations that use air or mixed gas to be carried out at a depth of more than 50 metres. This is considered the maximum safe depth for surface orientated diving.

Subsections 4.21(3) and (4) provide that the operator of a facility and the diving contractor for diving operations over 50 meters depth must use closed bell techniques or manned submersible craft.

It is a strict liability offence if a person contravenes subsections 4.21(1), (2), (3) or (4) which reduces the risks to divers of diving at a depth of more than 50 meters. The maximum penalty for a failure to comply with the subsections is 100 penalty units, or 500 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. A person is also liable to a civil penalty of 1,000 penalty units if the person contravenes subsections 4.21(1), (2), (3) or (4). For a body corporate the court can impose a fine of up to 5 times the civil penalty amount under section 82 of the Regulatory Powers Act.

For an explanation of the strict liability penalty, penalty amount, civil penalty and the reasons for imposing both a criminal and civil penalty, as well as financial sanctions, see section 2.30 above.

## **Part 7—Diving supervisors**

### **Section 4.22 – Appointment of diving supervisors**

Subsection 4.22(1) provides that the diving contractor responsible for a diving operation must appoint in writing at least one diving supervisor to ensure that there is a diving supervisor to supervise all diving for each diving operation.

The supervisors must be accredited under the Australian Diver Accreditation Scheme to undertake offshore diving operations. The supervisor must be competent and have adequate practical and theoretical knowledge and experience of the diving techniques to be used in the diving operation for which he or she is appointed.

It is a strict liability offence if a person contravenes subsections 4.22(1) or (2) which provide for the appointment of suitably qualified diving supervisors. The maximum penalty for a failure to comply with the subsections is 100 penalty units, or 500 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. A person is also liable to a civil penalty of 1,000 penalty units if the person contravenes subsections 4.22(1) or (2). For a body corporate the court can impose a fine of up to 5 times the civil penalty amount under section 82 of the Regulatory Powers Act.

For an explanation of the strict liability penalty, penalty amount, civil penalty and the reasons for imposing both a criminal and civil penalty, as well as financial sanctions, see section 2.30 above.

### **Section 4.23 – Duties of diving supervisors**

Subsection 4.23(1) sets out the duties of the diving supervisor and provides that the supervisor must ensure that the diving operation is undertaken safely and without risk to health or safety of persons at or near the operation. The subsection also requires reporting of listed incidences to the operator of a facility in connection with the diving project or to NOPSEMA and the titleholder where there is no operator.

Subsection 4.23(2) makes it an offence if the diving supervisor fails to carry out a duty required of them under subsection 4.23(1). The maximum penalty for contravention of this provision is 50 penalty units.

Subsection 4.23(3) empowers the diving supervisor to give reasonable directions in relation to health and safety to any person taking part in the diving operation.

Subsection 4.23(4) provides that it is an offence for the diving supervisor, while on duty as the supervisor for a diving operation, to dive. The maximum penalty for contravention of this provision is 50 penalty units.

Subsection 4.23(5) provides that it is an offence if the diving supervisor does not advise each person taking part in the diving operation of any instructions in the diving project plan that applies to the person. The maximum penalty for contravention of this provision is 50 penalty units.

All persons involved in the diving operation are to be thoroughly and adequately briefed and provided with all relevant information that is necessary to enable those persons to safely carry out their part in the operation.

It is appropriate to apply a fault based liability to the offences imposed under subsections 4.23(2), (4) and (5) to ensure that the section can be enforced more effectively. The intention of the application of the penalty is to improve compliance in the regulatory regime, particularly in the case of the health and safety of divers and other members of the workforce who rely on diving supervisors for direction.

The penalty is consistent with the principles outlined in section 3.3 of the Guide, which states that penalties in regulations generally should not exceed 50 penalty units.

Subsection 4.23(6) provides a definition for man riding equipment which is an industry term that typically describes equipment used to raise and lower workers and in particular where this equipment is used in diving.

## **Part 8—Start-up notices**

### **Section 4.24 – Start-up notice**

Section 2.24 defines a start-up notice for a diving project. The start-up notice must be signed, dated and contain information relevant to the dive. This includes contact details, details of the proposed diving operation (including location, commencement, duration, depth of diving, dive table, diving equipment, breathing mixtures, decompression rates for deep diving, tasks and duties for each dive, purpose and number of people engaged) and the title, document number and revision number for the accepted DSMS for the diving project, in addition to the diving project plan.

### **Section 4.24AA – Start-up notice required for diving projects**

Section 4.24AA provides that the operator of a facility in connection with a diving project has an approved diving project plan for a diving project, the operator must allow the diving project to begin unless a start-up notice and an approved diving project plan has been given to NOPSEMA by the diving contractor for the diving project (at least 28 days before the diving is to begin or another day agreed between NOPSEMA and the diving contractor) and NOPSEMA has accepted the start-up notice under section 4.24A.

Subsection 4.24AA(2) provides that, where there is no operator of the facility in connection with a diving project, that the diving contractor for the diving project has the responsibility to provide NOPSEMA with the start-up notice and no diving can commence until NOPSEMA has accepted the notice under section 4.24A.

The provisions ensure that NOPSEMA can confirm that a dive is occurring safely and in accordance with an approved diving project plan and can assess start-up notices to ensure that the dive is undertaken in accordance with the DSMS and diving project plan.

To ensure that NOPSEMA has sufficient time to assess a start-up notice, and to allow for any identified safety issues to be resolved the notification period has been increased to at least 28 days before the day the diving is to begin.

It is a strict liability offence if a person contravenes subsection 4.24AA(1) or (2) which provide that no diving can commence until NOPSEMA has been provided with a start-up notice and NOPSEMA has accepted the notice under section 4.24A. The maximum penalty for a failure to comply with the subsections is 100 penalty units, or 500 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. A person is also liable to a civil penalty of 1,000 penalty units if the person contravenes subsections 4.24AA(1) or (2). For a body corporate the court can impose a fine of up to 5 times the civil penalty amount under section 82 of the Regulatory Powers Act.

For an explanation of the strict liability penalty, penalty amount, civil penalty and the reasons for imposing both a criminal and civil penalty, as well as financial sanctions, see section 2.30 above.

#### **Section 4.24A – NOPSEMA must accept or reject a start-up notice**

This section provides that NOPSEMA, within 28 days of receipt or such other period as agreed between NOPSEMA and the diving contractor, is required to either accept or reject a start-up notice, considering the following matters:

- whether the start-up notice meets the requirements of the definition of start-up-notice in section 4.24;
- whether all of the activities covered by the start-up notice are consistent with the DSMS and diving project plan for the diving project to which the start-up-notice relates.

NOPSEMA must notify the operator, in writing, as soon as practicable after making a decision if it is accepted or rejected. If rejected, then the notice must include the reasons for the decision.

#### **Section 4.24B – NOPSEMA may request further information**

If an operator of a facility in connection with a diving project, or a diving contractor for a diving project, gives a start-up notice to NOPSEMA, NOPSEMA may request, in writing, further information within 14 days of receiving the start-up notice. The request must set out each matter for which information is requested and specify a reasonable period for the operator (or diving contractor) to provide the information that has been requested. A request for information under this section stops the clock on section 4.24A and it restarts once the information is received by NOPSEMA.

If the operator or contractor fails to comply with the request NOPSEMA must reject the notice.

### **Section 4.24C – Withdrawal of acceptance of start-up notice if diving has not commenced**

Section 4.24C provides that NOPSEMA may by written notice given to the operator of a facility in connection with a diving project, or a diving contractor for a diving project withdraw the acceptance of a start-up notice where it has reasonable safety concerns about the diving project and diving under the accepted start-up notice has not commenced. The notice must set out reasons for the decision. This provision is intended as a last resort action where a new or increased diving impact or risk arising from the diving activity has been identified that is not provided for in the DSMS or DPP for the activity.

### **Section 4.24D – Withdrawal of acceptance of start-up notice if new or increased risks identified**

Section 4.24D provides that NOPSEMA may by written notice to the operator of a facility in connection with a diving project, or to a diving contractor for a diving project, as applicable, withdraw acceptance of a diving start-up notice where there are new or increased diving risks and the management or elimination of that risk is not provided for in the DSMS or diving project plan. The notice must set out the reasons for the decision.

This provides a diving ‘stop button’ and empowers NOPSEMA to delay and/or refuse the commencement of a diving activity if there are reasonable concerns about the safety of the proposed dive. This would be a measure of last resort, to be used to stop a dive from going ahead where NOPSEMA has safety concerns. If NOPSEMA withdraws acceptance of a start-up-notice then if there is an operator of the facility, the operator, otherwise, the diving contractor, must ensure that diving on the diving project ceases.

### **Section 4.24E – Reinstatement of acceptance of start-up notice**

This section provides that where NOPSEMA has withdrawn acceptance of a start-up notice under section 4.24C or 4.24D and the operator of the facility in connection with the diving project, or the diving contractor for the diving project, as applicable, demonstrates to NOPSEMA the reasons for withdrawal no longer apply NOPSEMA may re-instate a diving start-up notice. NOPSEMA must notify the operator or contractor of the decision and the reasons for the decision.

## **Part 9—Diving operations**

### **Section 4.25 – Divers in diving operations**

This section places a specific responsibility on the diving contractor for a diving operation and supervisor for a diving operation to ensure that any diver taking part in the project is competent to safely undertake all aspects of the diving operation.

It is a strict liability offence if a person contravenes subsection 4.25(1) which provides that a diving contractor must not allow a person to dive where they are not competent.

The maximum penalty for a failure to comply with the subsections is 100 penalty units, or 500 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. A person is also liable to a civil penalty of 1,000 penalty units if the person contravenes subsection 4.25(1). For a body corporate the court can impose a fine of up to 5 times the civil penalty amount under section 82 of the Regulatory Powers Act.

Subsection 4.25(4) provides a strict liability penalty for diving supervisors where a supervisor allows a person to dive and they are not competent to carry out safely any activity that may be necessary as part of the dive. The maximum penalty for a failure to comply with the subsections is 50 penalty units, or 250 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act.

Subsection 4.25(5) requires that a diving contractor must not allow any person to dive in the diving operation unless the person has the appropriate level of ADAS diving qualification.

It is a strict liability offence if a person contravenes subsection 4.25(5) which provides that a diving contractor must not allow a person to dive where the person does not have the appropriate level of ADAS qualification. The maximum penalty for a failure to comply with the subsection is 100 penalty units, or 500 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. A person is also liable to a civil penalty of 1,000 penalty units if the person contravenes subsection 4.25(5). For a body corporate the court can impose a fine of up to 5 times the civil penalty amount under section 82 of the Regulatory Powers Act.

Subsection 4.25(8) provides a strict liability offence for a diving supervisor who allows a person to dive and the person does not have the appropriate level of ADAS qualification to carry out any activity that may be necessary as part of the dive. The maximum penalty for a failure to comply with the subsections is 50 penalty units, or 250 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act.

Subsection 4.25(9) provides that a diving contractor must not allow any diver to dive in the diving operation unless the diver has a valid medical certificate. A note explains that *valid medical certificate* is defined in section 4.26.

It is a strict liability offence if a person contravenes subsection 4.25(9) which provides that a diving contractor must not allow a person to dive where they do not have a valid medical certificate. The maximum penalty for a failure to comply with the subsections is 100 penalty units, or 500 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. A person is also liable to a civil penalty of 1,000 penalty units if the person contravenes subsection 4.25(9). For a body corporate the court can impose a fine of up to 5 times the civil penalty amount under section 82 of the Regulatory Powers Act.

Subsection 4.25(12) provides a strict liability offence for a diving supervisor who allows a person to dive and the person does not have a valid medical certificate. The

maximum penalty for a failure to comply with the subsections is 20 penalty units, or 100 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act.

For an explanation of the strict liability penalty, penalty amount, civil penalty and the reasons for imposing both a criminal and civil penalty, as well as financial sanctions, see section 2.30 above.

Subsection 4.25(13) provides an exemption to the offence in subsections 4.25(5), (8), (9) and (12) where the person is diving in a manned submersible craft or is diving to provide emergency medical care to an injured person in a chamber. For an explanation of reverse burden of proof see section 2.45.

### **Section 4.26 – Medical certificates**

Section 4.26 sets out requirements for medical certificates for the purposes of Part 8. Divers are required to comply with strict industry-agreed standards of health and have a certificate to this effect from a medical practitioner trained in diving medicine.

Section 4.26 specifies that to be a valid medical certificate under this section, the medical examination must have been undertaken in accordance with the relevant Australian/New Zealand Standards.

## **Part 10—Records**

### **Section 4.27 – Diving operations record**

Subsection 4.27(1) provides that it is a strict liability offence for diving supervisors for a diving operation who do not ensure that a record of every diving operation supervised is kept in the form required by subsections 4.27(2) and (3).

Subsections 4.27(2) and (3) provide that the diving operations record must be kept in a hard covered bound volume such as that the pages cannot be easily removed or if it has multiple copies of each page bound in such a way as at least one of the copies remain. The pages must be serially numbered.

The maximum penalty for a failure to comply with subsection 4.27(1) is 50 penalty units, or 250 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act.

Subsection 4.27(4) makes it a strict liability offence if the diving supervisor does not ensure that there is an entry in the diving operations record for each day when diving operations take place. The subsection specifies the information to be recorded for each dive. The maximum penalty for a failure to comply with subsection 4.27(4) is 30 penalty units, or 150 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act.

Subsection 4.27(5) makes it a strict liability offence if the diving supervisor does not sign the original of each page of the diving operations record and print their name below their signature. If there were two or more diving supervisors for the operation

each supervisor must sign those parts of the entry that they were responsible for and print their name below. The maximum penalty for a failure to comply with subsection 4.27(5) is 30 penalty units, or 150 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act.

Subsection 4.27(6) requires that the diving contractor must retain a diving operations record for a least 7 years after the date of the last entry into the record.

Subsection 4.27(7) provides a strict liability penalty for diving supervisors of 30 penalty units where a supervisor does not keep the diving operations record for at least 7 years from the date of the last entry (subsection 4.27(6)). The maximum penalty for a failure to comply with the subsections is 30 penalty units, or 150 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. A person is also liable to a civil penalty of 300 penalty units if the person contravenes subsection 4.27(6). For a body corporate the court can impose a fine of up to 5 times the civil penalty amount under section 82 of the Regulatory Powers Act.

For an explanation of the strict liability penalty, penalty amount, civil penalty and the reasons for imposing both a criminal and civil penalty, as well as financial sanctions, see section 2.30 above.

The infringement notice provisions, under Part 5 of the Regulatory Powers Act, may apply to subsections 4.27(1), (4), (5) and (7) due to the operation of subsection 5.4(1) of the instrument. Under these provisions the Chief Executive of NOPSEMA or a NOPSEMA inspector may issue an infringement notice imposing a fine of 10 penalty units for an individual or 50 penalty units for a body corporate for an offence under subsection 4.27(1) and 6 penalty units individual or 30 penalty units for a body corporate for subsections 4.27(4), (5) and (7).

### **Section 4.28 - Divers' log books**

Subsection 4.28(1) provides that it is a strict liability offence for a diver not to have a log book in the form required by subsection 4.28(2). The diver must make a permanent entry into the log book, in ink, every time that they dive, sign the entry and have the diving supervisor countersign the entry. The diver's log book must be kept for at least 7 years after the date of the final entry.

The maximum penalty for a failure to comply with subsection 4.28(1) is 30 penalty units, or 150 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act.

For an explanation of the strict liability penalty see section 2.30 above.

Subsection 4.28(2) requires that the log book must have hard covers, be bound so that pages are not easily removed, have its pages serially numbered, show the diver's name, a photograph and specimen signature. Subsection 4.28(3) requires that entries into the log book be dated, contain information about the dive – location; maximum depth; time when the diver left the surface, reached the bottom, left the bottom and time surfaced; breathing apparatus and breathing mixture used; decompression

schedule followed; work done and tools used; any decompression illness, discomfort or injury; details of any emergency; and, anything else relevant to the divers health and safety.

The infringement notice provisions, under Part 5 of the Regulatory Powers Act, may apply to subsection 4.28(1) due to the operation of subsection 5.4(1) of the instrument. Under these provisions the Chief Executive of NOPSEMA or a NOPSEMA inspector may issue an infringement notice imposing a fine of 6 penalty units for an individual or 30 penalty units for a body corporate for an offence.

## **CHAPTER 5—COMPLIANCE AND ENFORCEMENT**

### **Part 1—Preliminary**

#### **Section 5.1 – Simplified outline of this Chapter**

This section sets out a simplified outline of Chapter 5 of the instrument. While simplified outlines are included to assist readers to understand the substantive provisions, the outlines are not intended to be comprehensive. It is intended that readers should rely on the substantive provisions.

The outline notes that the penalty provisions in the instrument are enforceable under Parts 4, 5, 6 and 7 of the Regulatory Powers Act.

The note to section 5.1 is intended to inform the reader that the instrument is a *listed NOPSEMA law* as defined in section 601 of the OPGGS Act. This means that the OPGGS Act makes the Safety instrument subject to monitoring under Part 2 of the Regulatory Powers Act, and offences and civil penalty provisions of the Safety instrument subject to investigation under Part 3 of the Regulatory Powers Act.

#### **Section 5.2 – Purpose of this Chapter**

This section states that the provisions of Chapter 5 (except for subsection 5.9(1)) are made for the purposes of sections 790A and 790 of the OPGGS Act. Section 790A enables the instrument to provide that a civil penalty provision of the instrument may be enforced under Part 4 of the Regulatory Powers Act, and that a provision of the regulations is enforceable under Part 6 (which deals with enforceable undertakings) and Part 7 (which deals with injunctions) of the Regulatory Powers Act. Section 790A also provides for the regulations to specify matters for the purposes of the Regulatory Powers Act (for example, who is an authorised applicant in relation to a civil penalty provision).

The ability to provide for the application of the Regulatory Powers Act in instruments under the OPGGS Act was inserted by the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures) Act 2013*, the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures No. 2) Act 2013* and the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Miscellaneous Amendments) Act 2019*. In each case, Parliament had the ability to consider the appropriateness of prescribing these matters in instruments prior to passing the

legislation. A similar provision is also included in section 308 of the *Offshore Electricity Infrastructure Act 2021*.

In addition, the OPGGS Act sets out a range of regulation-making powers to prescribe matters in relation to safety, such as matters relating to the safety case, in the instrument. As a result, the instrument comprehensively deals with these matters, rather than provisions set out in the OPGGS Act. It is considered that setting out all of the provisions (including enforcement provisions) in one instrument provides greater clarity to titleholders and operators, rather than including the substantive provisions in the instrument, and matters relating to enforcement of those provisions in the OPGGS Act.

It is considered necessary and appropriate that a broad range of enforcement tools be available in relation to regulatory provisions to ensure that sufficient incentive is provided for titleholders and operators to return to compliance and to ensure that enforcement actions can be targeted, proportionate and effective in achieving safe and sustainable operations.

Section 790 of the OPGGS Act also provides authority for regulations to provide for offences against regulations. Under subsection 790(2), the penalties for offences against the regulations must not exceed a fine of 100 penalty units, or a fine of 100 penalty units for each day on which the offence occurs.

## **Part 2—Civil penalties**

### **Section 5.3 – Civil penalty provisions**

This section applies Part 4 of the Regulatory Powers Act to enforce the civil penalty provisions in the instrument. Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision. See the discussion at section 5.2 regarding the authority to trigger application of the Regulatory Powers Act by regulation.

Subsection 5.3(2) provides that the Chief Executive Officer of NOPSEMA is the “authorised applicant” who can make an application for a civil penalty order.

Subsection 5.3(3) provides for a “relevant court” for the purposes of Part 4 of the Regulatory Powers Act to be the Federal Court, the Federal Circuit and Family Court of Australia (Division 2), and the Supreme Court of a State or Territory. An authorised applicant may make an application for a civil penalty order to any one of those courts.

Subsection 82(6) of the Regulatory Powers Act applies if a relevant court is satisfied that a person has contravened a civil penalty provision and orders a person to pay a pecuniary penalty. In determining the pecuniary penalty, the court must take into account all relevant matters, including:

- the nature and extent of the contravention;
- the nature and extent of any loss or damage suffered because of the contravention;

- the circumstances in which the contravention took place;
- whether the person has previously been found by a court (including a court in a foreign country) to have engaged in any similar conduct.

### **Part 3—Infringement notices**

#### **Section 5.4 – Infringement notices**

Subsection 5.4(1) provides a list of provisions where an infringement notice may be issued under Part 5 of the Regulatory Powers Act. An infringement notice gives the person specified in the notice the option to pay the fine specified or elect to have the offence heard by the court. Notices are generally issued for minor offences that are regulatory in nature.

Part 5 of the Regulatory Powers Act creates a framework for issuing infringement notices including when they may be issued, the matters to be included in the notice, payment and withdrawal. The amount of the fine will be the lesser of one fifth of the maximum penalty or 12 penalty units for an individual or 60 penalty units for a body corporate. See the discussion at section 5.2 regarding the authority to trigger application of the Regulatory Powers Act by regulation.

Subsection 5.4(2) provides that the Chief Executive Officer of NOPSEMA and a NOPSEMA inspector are authorised officers who can issue infringement notices.

Subsection 5.4(3) provides that the Chief Executive Officer of NOPSEMA is the relevant chief executive for the purposes of this provision.

### **Part 4—Enforceable undertakings**

#### **Section 5.5 – Enforceable undertakings**

This section triggers the application of Part 6 of the Regulatory Powers Act to enforce offence and civil penalty provisions in the instrument. Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions. See the discussion at section 5.2 regarding the authority to trigger application of the Regulatory Powers Act by regulation. Subsection 5.5(2) provides that the Chief Executive Officer of NOPSEMA is the “authorised person” who can accept written undertakings under Part 6 of the Regulatory Powers Act.

Subsection 5.5(3) provides for circumstances where an undertaking must not be accepted. These are where the alleged contravention contributed, or may have contributed, to the death of a person or where there was alleged recklessness or where during the previous 5 years the person was convicted of an offence that contributed to the death of another person. This provision need not apply if there are exceptional circumstances.

Subsection 5.5(5) provides for a “relevant court” for the purposes of Part 6 of the Regulatory Powers Act to be the Federal Court, the Federal Circuit and Family Court of Australia (Division 2), and the Supreme Court of a State or Territory. An

authorised person may make an application to a relevant court for an order in relation to enforcement of undertakings, if the authorised person considers that a person has breached an undertaking.

### **Section 5.6 – Publication of enforceable undertakings**

This section requires that the Chief Executive Officer of NOPSEMA publish an undertaking that has accepted under section 114 of the Regulatory Powers Act, and that has not been withdrawn or cancelled. The Chief Executive Officer of NOPSEMA must publish the undertaking on the NOPSEMA website.

It is considered desirable that enforceable undertakings are required to be published, given ongoing work across government to increase transparency. The publicity attached to undertakings may also act as a deterrent for non-compliance with the instrument.

Subsection 5.6(2) requires the Chief Executive Officer of NOPSEMA to take such steps as are reasonable in the circumstances to ensure any personal information (within the meaning of the Privacy Act) that is contained in the undertaking is de-identified before the undertaking is published. This is to ensure the protection of personal information and the right to privacy. Under subsection 5.6(3), information is ‘de-identified’ if it is no longer about an identifiable individual or an individual who is reasonably identifiable.

An operator or titleholder and the Chief Executive Officer of NOPSEMA can work together to ensure that undertakings are written in a manner that will avoid or reduce risks of prejudice to commercial interests when they are published.

## **Part 5—Injunctions**

### **Section 5.7 – Injunctions**

This section triggers the application of Part 7 of the Regulatory Powers Act to enforce offence and civil penalty provisions in the instrument. Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions. See the discussion at section 5.2 regarding the authority to trigger application of the Regulatory Powers Act by regulation.

The ability for a court to grant an injunction will ensure that persons who are failing to meet their regulatory obligations can be required to return to a position of compliance, in addition or as an alternative to the application of any financial penalty for a contravention. It also aims to encourage future behavioural change; for example, an injunction against a company whose breach is due to poor compliance programs and internal controls will encourage that company to address those internal deficiencies, and thereby reduce the risk of future non-compliance.

Subsection 5.7(2) provides that the Chief Executive Officer of NOPSEMA is the “authorised person” who can apply to the court for an injunction under Part 7 of the Regulatory Powers Act.

Subsection 5.7(3) provides for a “relevant court” for the purposes of Part 7 of the Regulatory Powers Act to be the Federal Court, the Federal Circuit and Family Court of Australia (Division 2), and the Supreme Court of a State or Territory. An authorised person may make an application to a relevant court for an injunction.

Section 121 of the Regulatory Powers Act sets out the circumstances in which a relevant court may grant an injunction. However, subsection 5.7(4) of the instrument provides that a relevant court may grant an injunction by consent of all the parties to proceedings, whether or not the court is satisfied that section 121 of the Regulatory Powers Act applies. This would aim to reduce the necessity for the court to consider the merits of an application for an injunction in instances where the parties are in agreement, and thereby reduce the time taken for an injunction to be granted, and free up the court’s time for other matters in dispute.

## **Part 6—Other matters**

### **Section 5.8 – Contravening offence provisions and civil penalty provisions**

This section applies if a provision of the instrument provides that a person contravening another provision of the instrument (the ‘conduct provision’) commits an offence or is liable to a civil penalty. For the purposes of the instrument and the Regulatory Powers Act, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.

This section supports references in the instrument and the Regulatory Powers Act to contraventions of offence and civil penalty provisions. In many cases, an offence or civil penalty provision in the instrument states that a person is liable to a penalty for a contravention or breach of another provision, which contains a conduct rule. For example, subsection 2.30(6) states that a person is liable to a civil penalty if the person contravenes subsection 2.30(1) or (2). Subsection 2.30(1) provides that an operator must submit a revised safety case if there is a change in circumstances or operations. Subsection 2.30(2) requires an operator to submit a revised safety case where there has been a significant increase in risk or a series of increased risks in total are significant. Subsections 2.30(1) and (2) are therefore the relevant conduct provisions.

Provisions in the instrument or the Regulatory Powers Act may refer to contravention of an offence or civil penalty provision. For example, subsection 82(3) of the Regulatory Powers Act provides that if a relevant court is satisfied that a person has contravened a civil penalty provision, the court may order the person to pay a pecuniary penalty for the contravention as the court determines to be appropriate. For the purposes of this provision, as a result of the application of section 5.8 of the instrument, a person will be taken to have contravened the civil penalty provision if the person has contravened the requirement of the conduct provision. Continuing with the previous example, a person will be taken to have contravened subsection 2.30(6) if the person has contravened subsection 2.30(1) or (2).

## **Section 5.9 – Daily penalties for continuing offences and continuing contraventions of civil penalty provisions**

A number of the offence provisions in the instrument (listed in subsection 5.9(1)) are continuing offences under section 4K of the Crimes Act. Subsection 5.9(1) sets out the maximum daily penalty that may be imposed for a continuing offence as 10% of the maximum penalty that can be imposed in respect of the relevant offence.

Similarly, a number of the civil penalty provisions in the instrument (listed in subsection 5.9(2)) are continuing civil penalty provisions under section 93 of the Regulatory Powers Act. Subsection 5.9(2) sets out the maximum daily penalty that may be imposed for contravention of a civil penalty provision as 10% of the maximum penalty that can be imposed in respect of the contravention.

## **CHAPTER 6—TRANSITIONAL, SAVING AND APPLICATION PROVISIONS**

### **Part 1—Provisions relating to this instrument as made**

#### **Section 6.1 – Definitions**

For this Part, section 6.1 defines *commencement day* of the new Instrument, and defines *old regulations* as meaning the 2009 Safety Regulations.

#### **Section 6.2 – Things done by, or in relation to, NOPSEMA**

This section ensures that things done by, or in relation to NOPSEMA before commencement day under the 2009 Safety Regulations are taken to have been done under the new instrument.

#### **Section 6.3 – Things started but not finished by NOPSEMA**

This section ensures that things started by NOPSEMA before commencement day under the 2009 Safety Regulations that NOPSEMA may on or after commencement day finish the things under the new instrument.

#### **Section 6.4 – Instruments made and other things done under the old regulations**

This section ensures that if a thing was done under the 2009 Safety Regulations before commencement day and it was done for a purpose under that instrument then the thing has effect for the purposes of the new instrument.

#### **Section 6.5 – Conduct, event, circumstances occurring before commencement day**

This section ensures that a function or duty may be performed, or a power exercised, under the new instrument in relation to conduct engaged in, an event that occurred, or a circumstance that arose, before the commencement day.

## **Section 6.6 – Operator of a facility before commencement day**

This section provides that a person registered as an operator under the 2009 Safety Regulations immediately before the commencement day continues to be registered as the operator of the facility until such time that NOPSEMSA removes that person's name from the register under section 2.4 of this instrument.

## **Section 6.7 – Existing safety cases remain in force**

This section provides that a safety case that was in force immediately before the commencement day is taken to be a safety case for that facility that was accepted by NOPSEMA under section 2.26 with effect from the date on which it was accepted under the 2009 Safety Regulations.

Subsection 6.7(2) specifies that, where applicable, a safety case for the facility continues to be subject to any limitations, conditions or restrictions imposed on it under the 2009 Safety Regulations.

Subsection 6.7(3) will require that operators report, as a dangerous occurrence (under section 2.42) damage to safety critical equipment which was specified under item 8 in the table in section 2.41 in the 2009 Safety Regulations. This provision will ensure that damage to safety critical equipment will continue to be reported as a dangerous occurrence.

## **Section 6.8 – Existing DSMS remains in force**

Section 6.8 provides that a DSMS in force immediately before the commencement day is taken to be a DSMS that was accepted by NOPSEMA under section 4.13 with effect from the date on which it was accepted under the former 2009 Safety Regulations.

## **Section 6.9 – Existing diving project plans remain in force**

This section provides that a diving project plan in force immediately before the commencement day is taken to be a diving project plan that was accepted by NOPSEMA under section 4.13 with effect from the date on which it was accepted under the 2009 Safety Regulations.

## **Section 6.10 – Elections for health and safety representatives**

This section provides that where an election process was commenced prior to the commencement of the instrument but the count has not been completed then the old regulations will continue to apply. This will ensure that an election is not invalidated because it had not concluded prior to the commencement date.

## **Section 6.11 – Existing exemptions remain in force**

This section provides that orders issued by NOPSEMA under the 2009 Safety Regulations before the commencement day exempting a person from one or more of

the provisions of Part 3 of Schedule 3 to the OPGGS Act remain in force subject to any conditions or time limitations to which the order was subject.

## **Schedule 1—Hazardous substances**

### **Part 1—Definitions**

#### **Section 1 – Definitions**

Section 1 defines *bone fide research* and *in situ* for the purposes of the schedule.

### **Part 2—Permitted circumstances for using certain hazardous substances**

#### **Section 2 – Permitted circumstances – certain hazardous substances**

Section 2 prescribes in a table the permitted circumstances for using certain hazardous substances known as PCBs or polychlorinated biphenyls.

### **Part 3—Permitted circumstances for using certain hazardous substances with carcinogenic properties**

#### **Section 3 – Permitted circumstances – certain hazardous substances with carcinogenic properties**

Section 3 prescribes in a table the permitted circumstances for using certain hazardous substances with carcinogenic properties. Table items 301 to 315 provide permitted circumstances for using the hazardous substances listed:

- 2-Acetylaminofluorene
- 4-Aminodiphenyl
- Benzidine and its salts, including benzidine dihydrochloride
- Chloromethyl methyl ether (technical grade containing bis(chloromethyl) ether)
- 4-Dimethylaminoazo-benzene
- 4-Nitrodiphenyl
- Anthrophyllite asbestos
- Tremolite asbestos
- Aflatoxins
- Amosite (brown asbestos)
- Bis (Chloromethyl) ether
- Crocidolite (blue asbestos)
- 2-Naphthylamine and its salts
- Actinolite asbestos
- Chrysotile (white asbestos)

**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 (Safety) Regulations 2024*

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

**Overview of the Legislative Instrument**

The *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2024* (the Regulations) remake the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* (2009 Safety Regulations) and makes various policy and technical changes to clarify and improve the operation of the 2009 Safety Regulations as follows:

- Introducing a Design Notification Scheme to support early engagement between industry and National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) on offshore facility design safety matters.
- Clarifying the circumstances that require a safety case revision by relating this requirement to the loss or removal of a technical or other control measure identified in the safety case as being critical to safety.
- Clarifying that a safety case must be revised at the end of every 5-year period starting from the day the safety case is first accepted, even if it has been revised during the 5-year period.
- Strengthening the requirements for operator registration, including ensuring that potential operators must demonstrate that they are able to undertake the functions of an offshore facility operator.
- Streamlining the transfer of operators in relation to the same facility.
- Inserting provisions enabling the use of civil penalties, infringement notices, injunctions enforceable undertakings and other alternative enforcement mechanisms in accordance with the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act), as part of implementing a graduated enforcement regime for the offshore petroleum sector.
- Making enhancements to the diving safety management system, diving project plan, start-up notices and reporting obligations for diving supervisors.
- Replacing references to ‘OHS inspectors’ with references to ‘NOPSEMA inspectors’, to reflect Act amendments which replace two categories of inspectors (petroleum project inspectors and OHS inspectors) with inspectors appointed by NOPSEMA.

In addition, the instrument will include new and changed provisions as a consequence of recent amendments to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act), to ensure consistency between the primary and secondary legislation. The amendments to the OPGGS Act were made in the *Offshore Petroleum*

*and Greenhouse Gas Storage Legislation Amendment (Safety and Other Measures) Act 2024*. These amendments were to the relationship between titleholders and operators, diving inspections, operator notification and reporting requirements to NOPSEMA, and the introduction of a vessel activity notification scheme.

### **Human rights implications**

The instrument engages the following human rights:

- Article 7 of the International Covenant on Economic, Social and Cultural Rights (the ICESCR) - the right to work and rights in work;
- Article 14 of the International Covenant on Civil and Political Rights (the ICCPR) – criminal process rights, specifically the right to be presumed innocent until proven guilty according to law;
- Article 17 of the ICCPR – right to privacy and reputation.

### **The right to work and rights in work (Article 7 of the ICESCR)**

The measures in the instrument promote the right to work and rights in work, specifically the right to just and favourable working conditions in article 7 of the ICESCR. The right to just and favourable conditions of work encompasses a number of elements, including safe and healthy working conditions. The changes to clarify and improve the operation of the 2009 Safety Regulations will help to strengthen the offshore petroleum and greenhouse gas storage safety regime, contributing to safe work conditions for employees in the offshore industry.

For example, changes made in the instrument clarify sections 1.6 and 1.7 to ensure that certain vessels, which are engaging in activities that would appropriately classify them as a facility (e.g. due to the presence of a hydrocarbon risk), are not inadvertently excluded from being defined as a “facility” or an “associated offshore place”. This is important because Schedule 3 to the OPGGS Act and the instrument apply in relation to facilities (including associated offshore places), so if these vessels are not defined as facilities or associated offshore places when they should be, then the activities undertaken on those vessels will not be subject to the high-hazard petroleum and greenhouse gas storage safety regime.

Another provision will ensure that a diving project plan must not include diving operations at more than one facility unless the risks to people undertaking the diving operations are of the same kind at each facility. The purpose of having an approved diving project plan is to take into account the specific safety requirements of a particular diving project and dive site. This purpose cannot be satisfied if a plan relates to different facilities at which the risks associated with diving operations are different. Inclusion of diving operations at more than one facility in a single diving project plan is only appropriate where the risks being dealt with in the diving project plan are of the same kind.

On the whole, the introduction of these amendments will help to promote safe and healthy working conditions in offshore petroleum and greenhouse gas storage operations.

### ***Right to be presumed innocent until proven guilty (Article 14(2) of the ICCPR)***

Article 14(2) of the ICCPR provides that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law. Generally, consistency with the presumption of innocence requires the prosecution to prove each element of an offence beyond reasonable doubt. Offences of strict liability engage the presumption of innocence. This is because a fault element, such as intention to do an act or not do an act, is not required to be proved.

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.

The instrument provides that an operator or person commits an offence of strict liability if:

- the operator of a facility for which a safety case is in force does not submit a revised safety case to NOPSEMA as soon as practicable (section 2.30)
- the operator of a facility does not comply with a request from NOPSEMA to revise a safety case (section 2.31)
- the operator of a facility does not submit a revised safety case within 14 days of the end of each 5-year period (section 2.32)
- a person carries out facility activities in Commonwealth waters if there is no operator in respect of the facility (section 2.43)
- a person carries out facility activities in Commonwealth waters if there is no safety case in respect of the facility (section 2.44)
- a person carries out facility activities in Commonwealth waters if the activity is carried out contrary to a safety case in force or a limitation or condition imposed (section 2.45)
- a person carries out facility activities in Commonwealth waters if there has been an occurrence of a significant new risk to health and safety not provided for in the safety case or revised safety case or if the titleholder becomes aware of such an occurrence and does not notify NOPSEMA (section 2.46)
- the operator does not make a copy of the safety case available at all times in a readily accessible place to persons at the facility (section 2.46A)
- the operator does not provide notice of incidents of sexual harassment, bullying or harassment as soon as practicable and a report within 30 days (or such further time as NOPSEMA approves) of the incident (section 2.46B)
- the operator does not keep all documents required by the safety case (section 2.47)
- the person does not comply with a safety requirement of the safety case (section 2.48)
- the person interferes with an accident site (section 2.49)
- the person does not develop and implement strategies to prevent or minimise conditions that cause fatigue at the facility (section 3.1)
- the person has possession or control of a controlled substance or intoxicant (section 3.2)
- the person allows a hazardous substance to be used at a facility other than in specified circumstances (section 3.4)

- the person allows persons, under their control, to be exposed to an airborne concentration of a hazardous substance (section 3.5)
- the person allows persons, under their control, to be exposed to a level of noise that is in excess of the noise exposure standard (section 3.6)
- the returning officer for an election fails to secure ballot papers or fails to keep envelopes containing ballot papers unopened until the count, or admits to the count any ballot papers received by the returning officer after the close of the poll (section 3.17)
- a person who has been directed to leave by the returning officer the place where a count is being conducted fails to comply with the direction (section 3.20)
- a diving contractor or operator allows a person to carry out diving work without an accepted and current DSMS (section 4.3)
- a diving contractor has not revised a DSMS as a result of changes to operating conditions or does not submit a revised DSMS within 14 days of the end of each 5 year period (section 4.10)
- a diving contractor does not revise a DSMS in accordance with a revision notice issued by NOPSEMA (section 4.11)
- a diving contractor has not kept the diving project plan for a diving project up to date or has not had the plan approved or accepted by the operator or NOPSEMA as applicable (section 4.15)
- a diving contractor has allowed a person to dive if there is no approved or accepted diving project plan (section 4.17)
- a diving contractor has not made available to workers involved in diving operations copies of documents that appoint the diving supervisor, the DSMS and the diving project plan (section 4.20)
- a person fails to comply with a direction or instruction given by a diving supervisor (section 4.20)
- an operator or diving contractor allows diving contrary to specified diving depths (section 4.21)
- a diving contractor appoints a diving supervisor who is not qualified or competent (section 4.22)
- an operator or diving contractor allows diving without a diving start-up notice (section 4.24AA)
- a diving contractor or diving supervisor allows diving by a person who is not competent to carry out safely any activity that is reasonably likely to be necessary during the dive (section 4.25)
- a diving contractor or diving supervisor who allows a person to dive without a current diving qualification (section 4.25)
- a diving contractor or diving supervisor who allows a person to dive without a current medical certificate (section 4.25)
- a diving supervisor who allows a person to dive without maintaining a diving operations record (section 4.27)
- a diving supervisor who does not complete and sign an entry in the diving operations record for each day when diving operations take place (section 4.27)
- a diving contractor does not retain diving operations records for a period of at least 7 years (section 4.27)

- a diver who does not have a log book and does not make signed and countersigned entries into that book for each dive (section 4.28)
- a diver who does not maintain a diver's log book for at least 7 years (section 4.28)

Strict liability is applied to these offence provisions to enhance the effectiveness of the provisions in deterring certain conduct, and thereby reduce the likelihood of non-compliance. Strict liability will also ensure that the provisions can be effectively enforced.

Given the nature of offshore petroleum and greenhouse gas operations, there is a risk of potentially severe consequences if responsible persons fail to comply with their regulatory obligations. In addition, the remote and complex nature of offshore operations makes it extremely difficult to prove intent. Application of strict liability to the relevant offence provision is therefore necessary to ensure that the instrument can be enforced more effectively, and thereby improve compliance with the regulatory regime. This is consistent with the principles outlined in *A Guide To Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, September 2011 (the Guide), which include that the punishment of offences not involving fault may be appropriate where it is likely to significantly enhance the effectiveness of the enforcement regime in deterring certain conduct.

Strict liability is also appropriate to ensure responsible persons are accountable for notifying and reporting on incidents relating to offshore operations given the serious consequences that may result from an incident, particularly if remedial action is not taken quickly. It is also appropriate to ensure that operators are accountable for ensuring that the safety cases and diving management for their operations are kept up to date and fit for purpose to ensure safe and sustainable operations.

An operator or responsible person would be well aware of their obligations under the instrument. They would also be aware of the importance of maintaining a safe and health workplace and the requirement to take all reasonable steps to ensure that regulatory obligations are complied with, noting the high-hazard nature of operations, and that tenure over the relevant titleholding area is granted to the titleholder based on factors such as their capacity to undertake safe and sustainable operations.

Many of the strict liability offences in the instrument apply a penalty of 100 penalty units. The imposition of a penalty of up to 100 penalty units for an offence against the instrument is authorised by section 790 of the OPGGS Act. It is appropriate to apply this penalty, noting this is higher than the preference stated in the Guide for a maximum of 60 penalty units. The penalty of 100 penalty units applies to the most serious offences within the instrument. The potential for serious consequences resulting from a breach of these provisions justifies the application of a higher penalty. In addition, offshore resources activities, as a matter of course, require a very high level of expenditure and therefore titleholders are generally well-resourced, sophisticated entities. In this context, a smaller penalty for a significant offence would not be sufficient to appropriately punish the offending conduct, especially considering the potential for severe risks to or impact on the workforce and the environment.

Offences of strict liability allow the accused person to raise a defence of honest and reasonable mistake of fact. While the burden is on the accused to raise evidence in support of the defence (noting that the circumstances are likely to be exclusively within the knowledge of the defendant), the prosecution is then required to persuade

the court that there was no mistake or that the mistake was unreasonable. This is in keeping with the fundamental principle that a person is innocent until guilt is proved beyond reasonable doubt.

The presumption of innocence is afforded to *individuals*, whereas in the offshore regulatory regime investigations and prosecutions are conducted largely, if not solely, in relation to corporations. Prosecutions to date have only been in relation to corporations, and it is not anticipated that this regulatory approach would change in the future given the nature of the industry and the requirements imposed.

The inclusion of strict liability offences in the instrument is aimed at the legitimate objective of deterring misconduct and reducing the likelihood of non-compliance with safety obligations that have been put in place to eliminate or reduce the risk of serious adverse consequences to safety and the operations of other titleholders. The strict liability offences are reasonable, necessary and proportionate to that objective.

#### *Reverse burden provision*

There are a number of provisions (subsections 2.45(4), 2.49(2), 3.2(2), 3.4(5), 3.5(5), 3.6(5), 3.20(4) and 4.25(13)) where the defendant bears an evidential burden in relation to the offence. Under subsection 13.3 of the Criminal Code and section 96 of the Regulatory Powers Act respectively, the defendant bears an evidential burden in relation to a matter. The burden of proof is reversed because the matter is likely to be exclusively within the knowledge of the defendant. This is particularly the case given the remote nature of offshore operations.

It is therefore reasonable to require the defendant to prove the matter on the balance of probabilities. This is consistent with the Guide, which states that where the facts of a defence (or to rebut a presumption) are peculiarly within a defendant's knowledge, and it would be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter, it may be appropriate for the burden of proof to be placed on the defendant.

The limitation of the right to be presumed innocent until proven guilty is therefore aimed at a legitimate objective, and is reasonable, necessary, and proportionate to that objective.

#### ***Right to privacy and reputation (Article 17 of the ICCPR)***

Article 17 of the ICCPR provides for the right of every person to be protected against arbitrary or unlawful interference with their privacy, family, home or correspondence, as well as unlawful attacks on their honour and reputation. It also provides that a person has the right to the protection of the law against such interference or attacks.

The right to privacy and reputation may be limited, provided that the interference with the right is authorised by law and not 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.

Section 5.6 of the instrument provides that if the Chief Executive Officer NOPSEMA (CEO) has accepted an undertaking under section 114 of the Regulatory Powers Act relating to compliance with a provision of the instrument, and the undertaking has not been withdrawn or cancelled, the CEO must publish the undertaking on the

department's website. This requirement is considered important in the context of ongoing work across government to increase transparency.

To ensure the right to privacy is safeguarded, subsection 5.6(2) of the instrument provides that if an undertaking contains personal information within the meaning of the *Privacy Act 1988* (Privacy Act), the CEO must take steps that are reasonable in the circumstances to ensure that the information is de-identified before publication. Subsection 5.6(3) provides that information is 'de-identified' if it is no longer about an identifiable individual or an individual who is reasonably identifiable.

The protection of a person's personal information by de-identification before the CEO publishes an enforceable undertaking is in accordance with the principles of the Privacy Act. Accordingly, the right to privacy and reputation under Article 17 of the ICCPR is promoted by the instrument.

### **Conclusion**

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

**The Hon Madeleine King MP**  
**Minister for Resources**

## Table

In addition to the rewrite of the 2009 Regulations to comply with the sunset provisions a number of changes were introduced as part of the safety review and to correct technical issues. The following table tracks those changes and provides a brief summary of the change. The information is indicative only and any interpretive reference should be made to the section as made.

<b>2009 Regulations</b>	<b>2024 Safety Regulations</b>	<b>Change</b>
Chapter 1	Chapter 1	No change.
1.1	1.1	Updated name of regulations.
	1.2	Updated commencement timing for new regulations.
	1.3	New section – Authority for new regulations.
1.4	1.4	Objects – include Diving Project Plans (DPPs).
1.5	1.5	New and revised definitions.
1.6	1.6	Re-written to clarify when a vessel is not a facility.
1.7	1.7	Re-written to clarify when a vessel is not an associated offshore place.
1.8	1.8	Removed reference to forms – forms are not specified in the regulations.
1.9		Deleted.
Chapter 2	Chapter 2	
Part 1	Part 1	Preliminary
	2.1AA	New section to provide a simplified outline of this Chapter.
	Part 2	Operators and proposed operators - new title.
	Division 1	Operators – new Division.
	2.1AB	New section to include purpose of this Part
2.1	2.1	No change.

<b>2009 Regulations</b>	<b>2024 Safety Regulations</b>	<b>Change</b>
2.3	2.3	Includes the registration requirement for foreign companies, and additional considerations before an operator nomination is accepted by NOPSEMA.
2.4	2.4	Includes the registration requirement for foreign companies.
	Division 2	New division – Proposed Operators
	2.4A	New section – Nomination of a proposed operator – general.
	2.4B	New section – Acceptance or rejection of nomination of proposed operator.
	2.4C	New section – Submission and acceptance of safety cases by proposed operators.
	2.4D	New section – Proposed operators to be registered as the operator and previous safety case ceases to be in force.
	2.4E	New section – Register of proposed operators.
	Part 3	New Part – Design notification for new production facilities and new GHG facilities.
	2.4F	New section – Purpose of this Part.
	2.4FA	New section – New production facilities.
	2.4FB	New section – New GHG facilities.
	2.4G	New section - Design notification requirement for proposed new production facility or new GHG facility.
	2.4H	New section – Requirements of design notification.
	2.4J	New section – NOPSEMA to assess and respond to a design notification.
	2.4K	New section – Fee for assessing design notification.
Part 2	Part 4 Division 1A	Changed Part and new Division.
	2.4L	New section to include purpose of this Part.
Division 1 Subdivision A	Division 1 Subdivision A	No change.

<b>2009 Regulations</b>	<b>2024 Safety Regulations</b>	<b>Change</b>
2.5	2.5	Expanded coverage including identification of control measures critical to safety and requirements for a new production or GHG facility.
2.6	2.6	No change.
Subdivision B	Subdivision B	
2.7	2.7	No change.
2.8	2.8	Change to clarify that the requirements apply to all facilities (not just manned facilities).
2.9	2.9	No change.
2.10	2.10	No change.
2.11	2.11	No change.
2.12	2.12	No change.
2.13	2.13	No change.
2.14	2.14	No change.
2.15	2.15	No change.
	2.15A	New section – Sexual harassment, bullying and harassment prevention and reporting measures to be included in safety case.
Subdivision C	Subdivision C	
2.16	2.16	Revised wording.
2.17	2.17	Revised wording.
2.18	2.18	No change.
2.19	2.19	Revised wording.
2.20	2.20	No change.
2.21	2.21	Increased information requirement.
2.22	2.22	Revised wording.
Subdivision D	Subdivision D	
2.23	2.23	Clarification that the records must be retained by the operator.
Division 2	Division 2	

<b>2009 Regulations</b>	<b>2024 Safety Regulations</b>	<b>Change</b>
2.24	2.24	Replaced reference to 'Safety Authority waters' with 'NOPSEMA waters' and included an additional note in relation to the relevant section on validation.
2.25	2.25	No change.
2.26	2.26	Revised wording for the validation criteria. Included design notification requirements.
2.27	2.27	No change.
2.28	2.28	No change.
2.29	2.29	No change.
Division 3	Division 3	
2.30	2.30	Requirement to revise safety case for loss or removal of a technical or control measure critical to safety. Inclusion of penalty provisions.
2.31	2.31	Reworded and inclusion of penalty provisions.
2.32	2.32	Clarification of when a revised safety case must be submitted. Inclusion of penalty provisions.
2.33	2.33	No change.
2.34	2.34	Reworded for clarification.
2.35	2.35	No change.
2.36	2.36	No change.
Division 4	Division 4	
2.37	2.37	Changed heading, reworded and inclusion of 'NOPSEMA inspector' rather than 'OHS inspector'.
2.38	2.38	Changed heading and clarified steps to be taken before withdrawing acceptance.
Division 5	Division 5	
2.39	2.39	Reworded and expanded to provide additional clarity.
Part 3	Part 5	
	2.39A	New section to include purpose of this Part.

<b>2009 Regulations</b>	<b>2024 Safety Regulations</b>	<b>Change</b>
2.40	2.40	Changed heading and rewording to reflect requirements for a proposed significant change to a facility.
Part 4	Part 6	Changed Part.
2.41	2.41	Clarification of provisions. The prescribed period has moved to section 2.42.
2.42	2.42	Changed heading to 'Periods of incapacitation and notices and reports of accidents and dangerous occurrences'. Included the prescribed period of incapacitation (moved from section 2.41). Reworded to include accidents or dangerous occurrences at or near the facility and diving operations. Additional content requirements for reports of accidents and dangerous occurrences. Requirement for additional reports that include a root cause analysis of the occurrence. Revised monthly reporting requirements moved to new section 2.42A.
	2.42A	New section on monthly reporting of operational activities – expanded provisions.
	Part 7	New Part – Vessel activity notification scheme.
	2.42B	New section – Duty to notify NOPSEMA when vessel becomes a facility or associated offshore place.
	2.42C	New section – Duty to notify NOPSEMA when vessel ceases to be a facility or associated offshore place.
Part 5	Part 8	Changed Part.
	2.42D	New section to include purpose of this Part.
2.43	2.43	Reworded and expanded penalty provisions.
2.44	2.44	Reworded and expanded penalty provisions.
2.45	2.45	Reworded and expanded penalty provisions.
2.46	2.46	Heading reworded to reflect significant new health and safety risk or significant increase in existing risk. Section reworded and expanded penalty provisions.

<b>2009 Regulations</b>	<b>2024 Safety Regulations</b>	<b>Change</b>
	2.46A	New section to provide for access to safety case. Includes penalties for non-compliance.
	2.46B	New section for reporting of incidents of sexual harassment, bullying and harassment. Includes penalties for non-compliance.
2.47	2.47	Expanded penalty provisions.
2.48	2.48	Increased penalty.
2.49	2.49	Reworded, 'NOPSEMA inspector' rather than 'OHS inspector', introduction of strict liability and increased penalty.
Part 6	Part 9	Changed Part.
2.50	2.50	Replace reference to facsimile number with email address.
Part 7	Part 10	Changed Part.
	2.51	Reworded.
Chapter 3	Chapter 3	
Part 1	Part 1	Preliminary.
	3.1AA	Simplified outline of this Chapter.
	Part 2	New Part – Health and Safety.
	3.1AB	New section to include purpose of this Part.
3.1	3.1	Reworded and expanded requirements in relation to the prevention and minimisation of risk. Expanded penalty provisions.
3.2	3.2	Increased penalty.
3.3	3.3	Reworded and increased penalty.
3.4	3.4	Reworded and expanded penalty provisions. Exemption for chrysotile asbestos is no longer relevant and is consolidated with all other types of asbestos.
3.5	3.5	Reworded, references updated and expanded penalty provisions.
3.6	3.6	Reworded, references updated and expanded penalty provisions.

<b>2009 Regulations</b>	<b>2024 Safety Regulations</b>	<b>Change</b>
3.7	3.7	Reworded. Additional criterion for NOPSEMA to grant an exemption.
Part 2	Part 3	Changed Part.
Division 1	Division 1	No change.
	3.7A	New section to include purpose of this Part.
3.8	3.8	No change.
Division 2	Division 2	No change.
3.9	3.9	No change.
3.10	3.10	No change.
3.11	3.11	No change.
3.12	3.12	No change.
3.13	3.13	No change.
Division 3	Division 3	No change.
3.14	3.14	No change.
3.15	3.15	No change.
3.16	3.16	No change.
Division 4	Division 4	No change.
3.17	3.17	Inclusion of penalty.
3.18	3.18	No change.
3.19	3.19	No change.
3.20	3.20	Increased penalty.
3.21	3.21	No change.
3.22	3.22	No change.
3.23	3.33	No change.
3.24	3.24	No change.
Division 5	Division 5	No change.
3.25	3.25	No change.
3.26	3.26	No change.
3.27	3.27	No change.

<b>2009 Regulations</b>	<b>2024 Safety Regulations</b>	<b>Change</b>
Part 3	Part 4	Changed Part.
3.28		Deleted provision – ‘OHS inspectors - identity cards’ – deleted as a redundant provision.
3.29	3.29	‘NOPSEMA inspector’ rather than ‘OHS inspector’.
3.30		Deleted as form of notices no longer specified in the regulations.
Part 4	Part 5	Changed Part.
3.31	3.31	Removed ability to grant an exemption subject to conditions.
Part 5	Part 6	Changed Part.
3.32	3.32	Updated references to legislation.
Chapter 4	Chapter 4	No change.
Part 1	Part 1	Preliminary.
4.1	4.1	Deleted – included in OPGGS Act through the Safety Bill. Added a simplified outline of this Chapter.
4.2	4.2	Deleted – included in OPGGS Act through the Safety Bill. Added Purpose of this Chapter.
Part 2	Part 2	No change.
4.3	4.3	Reworded and expanded penalty provisions.
	4.3A	New section – Diving Safety Management System (DSMS) must be given to divers who request a copy. Includes penalty provisions.
4.4	4.4	Expanded to include the identification of safety critical operations, procedures and equipment.
4.5	4.5	Amended to reflect that NOPSEMA can request for further information under section 4.5A. Clarified ability of NOPSEMA to impose conditions on acceptance.
	4.5A	New section for NOPSEMA to request more information in relation to a DSMS.
4.6	4.6	Reworded and reflects that NOPSEMA can request further information under section 4.6A. Clarified

<b>2009 Regulations</b>	<b>2024 Safety Regulations</b>	<b>Change</b>
		ability of NOPSEMA to impose conditions on acceptance.
	4.6A	New section for NOPSEMA to request for further information.
4.7	4.7	Reworded.
4.8	4.8	Minor changes to reflect new numbering and specifically include reference to a revised DSMS.
4.9	4.9	Reworded and clarified for DPPs accepted by NOPSEMA under section 4.13 or given to NOPSEMA under section 4.24AA.
4.10	4.10	Reworded, inclusion of requirement to revise a DSMS for changes to safety critical methods of operation or procedures or equipment, clarification of 5 year revision requirement and inclusion of penalty provisions.
4.11	4.11	Reworded including reference to diving project and inclusion of penalty provisions.
	Part 3	New Part – Withdrawal of acceptance of DSMS.
	4.11A	New section – Withdrawing acceptance of DSMS, including grounds for withdrawal.
	4.11B	New section – Notice before withdrawal of acceptance of DSMS.
Part 3	Part 4	Changed Part.
4.12	4.12	Reworded including clarifying reference to operator of a facility in connection with a diving project.
4.13	4.13	Changed heading. Reworded including clarifying reference to operator of a facility in connection with a diving project and that DPP must be accepted before diving can commence.
4.14	4.14	Changed heading. Reference to facility in connection with a diving project.
4.15	4.15	Reworded to clarify reference to operator of the facility in connection with a diving project and that updated DPP must be approved or accepted before

<b>2009 Regulations</b>	<b>2024 Safety Regulations</b>	<b>Change</b>
		diving commences under the updated DPP, and new penalty provisions.
4.16	4.16	Reworded to include reference to diving project.
4.17	4.17	Updated to include reference to diving project, clarifying requirements where there is or is not an operator of the facility in connection with the diving project, incorporating obligation under section 4.14 and expanded penalty provisions.
Part 4	Part 5	Changed Part.
4.18	4.18	Reworded to include reference to diving project and fix typographical errors.
Part 5	Part 6	Changed Part.
4.19	4.19	Updated to include reference to diving project and diving contractor compliance with DPP, and expanded penalty provisions.
4.20	4.20	Updated to clarify obligation of a diving contractor and include expanded penalty provisions.
4.21	4.21	Reworded to include in connection to a diving project, to clarify that it is the operator of a facility and include expanded penalty provisions.
Part 6	Part 7	Changed Part.
4.22	4.22	Includes expanded penalty provisions.
4.23	4.23	Updated to include reporting obligations of diving supervisors if there is no operator of a facility in connection with a diving project, reference any conditions on an accepted DSMS, and increased penalty amounts.
Part 7	Part 8	Changed Part.
4.24	4.24	Amended to split up the provision into distinct sections and include additional content requirements for a start-up notice.
	4.24AA	New section – Start-up notice required for diving projects (previously covered by subregulations 4.24(2) and (3)). Amending the time to provide a start-up notice and accepted DPP to 28 days before the diving begins, and included

<b>2009 Regulations</b>	<b>2024 Safety Regulations</b>	<b>Change</b>
		reference to acceptance of a start-up notice by NOPSEMA. Enhanced penalties.
	4.24A	New section – NOPSEMA must accept or reject a start-up notice.
	4.24B	New section – NOPSEMA may request further information.
	4.24C	New section – Withdrawal of acceptance of start-up notice if diving not commenced.
	4.24D	New section – Withdrawal of acceptance of start-up notice if new or increased risks identified
	4.24E	New section - Reinstatement of acceptance of start-up notice.
Part 8	Part 9	Changed Part.
4.25	4.25	Reworded and expanded penalty provisions.
4.26	4.26	The provision relating to a valid medical certificate for the United Kingdom has been removed.
Part 9	Part 10	Changed Part.
4.27	4.27	Expanded penalty provisions.
4.28	4.28	Reworded and expanded penalty provisions.
	Chapter 5	New chapter - Compliance and enforcement.
	Part 1	New Part – Preliminary.
	5.1	New section – Simplified outline of this Chapter.
	5.2	New section – Purpose of this Chapter.
	Part 2	New Part – Civil Penalties.
	5.3	New section – Civil penalty provisions.
	Part 3	New Part – Infringement notices.
	5.4	New section – Infringement notices.
	Part 4	New Part – Enforceable undertakings.
	5.5	New section – Enforceable undertakings.
	5.6	New section – Publication of enforceable undertakings.

<b>2009 Regulations</b>	<b>2024 Safety Regulations</b>	<b>Change</b>
	Part 5	New Part – Injunctions.
	5.7	New section – Injunctions.
	Part 6	New Part – Other matters.
	5.8	New section – Contravening offences provisions and civil penalty provisions.
	5.9	New section – Daily penalties for continuing offences and continuing contraventions of civil penalty provisions.
Chapter 5	Chapter 6	Renamed – Transitional, saving and application provisions.
Part 1	Part 1	Provisions relating to this instrument as made.
5.1	6.1	Deleted and revised definitions included.
	6.2	New section – Things done by, or in relation to, NOPSEMA.
	6.3	New section – Things started but not finished by NOPSEMA.
	6.4	New section – Instruments made and other things done under the old regulations.
	6.5	New section – Conduct, event, circumstances occurring before commencement day.
Part 2		Deleted.
5.2	6.6	Revised section – Operator of a facility before commencement day.
Part 3		Deleted.
5.4	6.7	Revised section – Existing safety cases remain in force.
Part 4		Deleted.
5.6		Deleted.
5.8		Deleted.
Part 5		Deleted.
5.10	6.8	Revised section – Existing DSMS remain in force.
5.13	6.9	Revised section – Existing DPPs remain in force.

<b>2009 Regulations</b>	<b>2024 Safety Regulations</b>	<b>Change</b>
Part 7		Deleted.
	6.10	New section – Elections for health and safety representatives
5.15	6.11	Revised section – Existing exemptions remain in force.
Schedules	Schedules	No change.
Schedule 3.1 – Forms		Deleted. Forms now published on NOPSEMA’s website.
Schedule 3.2	Schedule 1	Renamed schedule to Schedule 1—Hazardous substances.
Part 1 - Interpretation	Part 1 - Definitions	Renamed.
101	1	No change.
Part 2	Part 2	No Change.
	2	Table heading added.
Table	Table	No change.
Part 3	Part 3	No change.
	3	Table heading added.
Table	Table	No change.