

EXPLANATORY MEMORANDUM

Minute No. 438 of 2024 - Minister for Resources

Subject - *Offshore Petroleum and Greenhouse Gas Storage Act 2006*

Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2024

The proposed Regulations would remake the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* (2009 Safety Regulations) and include technical amendments and recommendations from the 2021 Offshore Oil and Gas Safety Review.

The *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act) provides an effective regulatory framework for petroleum exploration and recovery, and the injection and storage of greenhouse gas substances, in offshore areas.

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. In addition:

- Section 639 provides that the 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 National Offshore Petroleum Safety and Environmental Management Authority (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 the regulations may make provision 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 (Standard Provisions) Act 2014* (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, under clause 41, 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.

The purpose of the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2024* (the proposed Regulations) is to remake the 2009 Safety Regulations in substantially the same form with amendments to ensure consistency with current drafting practices and simplifying language.

The main purpose of the proposed Regulations would be 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 (ALARP).

The section numbers in the proposed Regulations would 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 would alleviate cost and impost to NOPSEMA and the National Offshore Petroleum Titles Administrator (NOPTA) in updating their systems and would maintain continuity for industry.

The Department of Industry, Science and Resources, in consultation with NOPSEMA and NOPTA, reviewed the effectiveness and efficiency of the operation of the 2009 Safety Regulations in line 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 OPGGS Act specifies no conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

The proposed Regulations would be a legislative instrument for the purposes of the *Legislation Act 2003*.

The proposed Regulations would commence on 12 June 2025.

Details of the proposed Regulations are set out in the [Attachment](#).

The Minute recommends that the Regulations be made in the form proposed.

Authority: Section 781 of the
*Offshore Petroleum and Greenhouse
Gas Storage Act 2006*

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

Chapter 1—Preliminary

Section 1.1 – Name of Regulations

This section would provide that the title of the instrument is the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2024*.

Section 1.2 – Commencement

This section would provide for the instrument to commence on 12 June 2025. The commencement would align 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 would provide that the instrument is made under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act).

Section 1.4 – Objects

Section 1.4 would specify the objects of the instrument including that:

- offshore petroleum and greenhouse gas storage facilities (which includes offshore pipelines according to the definition of “facility”) would be designed, constructed installed, operated, modified and decommissioned in Commonwealth waters only in accordance with an accepted safety case;
- safety cases for facilities would make provision for 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 for management of 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, would be reduced to a level that is as low as reasonably practicable (ALARP);
- diving activities under the OPGGS Act and instrument would be carried out in accordance with accepted diving safety management systems and diving project plans that have been approved by operators of facilities or accepted by National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA); and
- that diving safety management systems would make provision for certain matters in relation to the health and safety of persons that would be 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 would be reduced to a level that is ALARP.

Section 1.5 – Definitions

Section 1.5 would define expressions used in the instrument. A number of expressions that were in the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* (the 2009 Safety Regulations) are now included in the OPGGS Act so would not be remade in this instrument. These include:

- (a) diving;
- (b) diving operations;
- (c) health;
- (d) NOPSEMA;
- (e) NOPSEMA inspector.

The following changes would be made to definitions that are in the 2009 Safety Regulations:

- *foreign company* - would insert a definition of ‘foreign company’ which would have the meaning given by section 9 of the *Corporations Act 2001* (Corporations Act).
- *identity card* – would be deleted as it would no longer be required due to other amendments.
- *new GHG facility* – would insert a signpost definition of new Greenhouse Gas facility (GHG facility). This signpost definition would point to the meaning of ‘new GHG facility’ in section 2.4FB.
- *new production facility* – would insert a signpost definition of ‘new production facility’. This signpost definition would point to the meaning of ‘new production facility’ in section 2.4FA.
- *NOPSEMA waters* – would insert a definition of ‘NOPSEMA waters’. This would be a signpost definition that would provide for ‘NOPSEMA waters’ to have the meaning given by section 643 of the OPGGS Act. The reason for the insertion of this definition into the instrument would be to support the amendment to paragraph 2.24(5)(a) which would 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* – would be deleted as an ‘OHS Inspector’ is no longer a category of inspector under the OPGGS Act. All references to ‘OHS Inspector’ would be replaced with references to ‘NOPSEMA Inspector’.
- *proposed operator* – would insert a signpost definition of ‘proposed operator’. This signpost definition would provide that a ‘proposed operator’ (in relation to a facility or proposed facility) would have the meaning given by subsection 2.4A(1).
- *Sexually harass* – would insert a signpost definition of ‘sexually harass’, which would have 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”) would have a corresponding meaning (see section 18A of the *Acts Interpretation Act 1901*, as that section applies because of paragraph 13(1)(a) of the *Legislation Act 2003*).
- *significantly altered* – would insert a signpost definition pointing to the meaning of ‘significantly altered’ in subsections 2.4FA(2) and 2.4FB(2) for the Design Notification Scheme (DNS) to apply to an existing vessel or structure that has been significantly

altered such that it would have 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 would 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 applies, and the instrument would 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 would 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 a ‘facility’ has the meaning 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 would provide 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 would provide that, for the purposes of paragraph 4(4)(d) of Schedule 3 to the 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 instrument not to be an associated offshore place.

Section 1.7 would provide that, for the purposes of paragraph (c) of the definition of associated offshore place in clause 3 of Schedule 3 of 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 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 would not cause a risk to the vessel or to people on the vessel.

The reference, in paragraph 1.6(1)(b), to location “at a site” would ensure 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 would be a facility (and a safety case would be 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

This section would be changed to remove references to the previous Schedule 3.1 to the 2009 Safety Regulations and the forms included in that Schedule would, for ease of access, now be published on the NOPSEMA website.

This section would require 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 would provide a simplified outline Chapter 2 of the instrument. While simplified outlines would be 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 would provide 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 would provide 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 would further prescribe the information to include in this notice and would require the person's consent to the nomination.

Section 2.3 – Acceptance or rejection of nomination of operator

Section 2.3 would provide 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 the Australian Securities and Investment Commission (ASIC) under the Corporations Act would be 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 occupational health and safety 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 would not be able to be commenced, and NOPSEMA could not ensure compliance through holding foreign-owned operators accountable for breaches of occupational health and safety requirements.

Subsection 2.3(3) would set 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 would require NOPSEMA to maintain a register of operators of facilities and publish certain specified details of the registered operator on NOPSEMA’s webpage. The section would also provide for the processes for removal of a person from the register.

Subsection 2.4(3) would provide 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 would as soon as practicable give NOPSEMA written notice of ceasing to be so registered.

Subsection 2.4(4) would provide 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) would set out a process for removal of an operator from the register. Subsection 2.4(5) would provide 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) would provide 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 would still believe 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 would 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 would provide 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(a) would specify the information that must be included in the notice.

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

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

Subsection 2.4B(3) would set out the criteria that NOPSEMA would be required to take into account in deciding whether to accept or reject 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 would provide that if NOPSEMA registers a person as the for the proposed operator of a facility or proposed facility the proposed operator to submit a safety case to NOPSEMA under section 2.24. If the proposed operator submits a safety case, NOPSEMA would 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 would, 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 would assist in a smooth transition between operators and avoids disruption of operations in that process, noting that a safety case would be required to 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 would provide 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 would cease to be in force on the day the new operator is registered as the operator of the facility or proposed facility.

Section 2.4E – Register of proposed operators

Section 2.4E would require NOPSEMA to maintain a register of proposed operators and to publish certain specified details of the proposed operator register on NOPSEMA's web page. The section would also provide for the processes for removal of a person from the register.

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

Subsection 2.4E(2) would provide that a facility owner, titleholder or proposed operator of a facility would 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 would then remove their name from the register.

Subsection 2.4E(3) would provide 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 would be under an obligation to notify NOPSEMA.

Subsection 2.4E(4) would provide 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 of the instrument, it would be 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) would 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 would 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 would not have day-to-day management and control of the facility, or has ceased to be registered with ASIC, NOPSEMA would 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 would provide 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 would apply to and in relation to a vessel or structure that is a new production facility or a new GHG facility (a vessel or structure would be 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 would set out the meaning of ***new production facility***. A vessel or structure would be 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 would 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, would be set out in subsection 2.4FA(2) and in relation to new GHG facilities would be set out in subsection 2.4FB(2).

Section 2.4FB – New GHG facilities

Section 2.4FB would set out the meaning of **new GHG facility**. A vessel or structure would be 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 would 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, would be set out in subsection 2.4FB(2) and in relation to new production facilities would be set out in subsection 2.4FA(2).

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

Section 2.4G would require that a design notification, complying with the requirements of section 2.4H, must be submitted to NOPSEMA.

The note to subsection 2.4G(1) would highlight that paragraph 2.26(1)(e) would require 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” would in this context 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

Section 2.4H would set out, for the purposes of subsection 2.4G(2), the requirements for the design notification to be submitted to NOPSEMA. It would be required to 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 would 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 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 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 would require NOPSEMA to assess the design notification submitted under section 2.4H and provide comments on the design notification within 90 days of receiving the application. NOPSEMA would be permitted to request additional written information and this would stop the clock on the 90 days until that information is received. The additional information provided would become part of the design notification.

NOPSEMA would 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 would be.

The comments from NOPSEMA would include details of any matters that NOPSEMA considers may affect the safety of the new production facility or GHG facility that may 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, would be required to be submitted as part of the safety case (see section 2.5).

Section 2.4K – Fee for assessing design notification

This section would require 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 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 regulations.

The amount of the fee would be the total of the expenses incurred by NOPSEMA in considering the proposal. Therefore, if a proposal is withdrawn before a decision is made to accept or refuse to accept the proposal, the fee would represent NOPSEMA's expenses in considering the proposal to whatever point is reached. The fee would be calculated by multiplying the hourly rate of each NOPSEMA staff member by the number of hours they worked on considering the proposal. Hourly rates are reviewed annually and are inclusive of fixed corporate overheads, which are also reviewed annually.

The fee would be due and payable in accordance with the terms of an invoice for the fee issued by NOPSEMA to the person who submitted the proposal. In practice, it is expected that NOPSEMA and the titleholder 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 would provide that this Part is made for the purposes of section 639 of the 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) would provide that a safety case for a facility would 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 that would be identified in subsection 2.5(2) would be 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) would provide that a safety case for the construction or installation phase of a facility would address the matters in subsections 2.5(1) to (4) in relation to the stage in the life of the facility and would also address (to the extent that it is practicable) the risks associated with operation of the facility.

Subsection 2.5(6) would provide that where a design notification was required to be submitted to NOPSEMA the safety case for the facility would 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) would be included.

Section 2.6 – Implementation and improvement of the safety management system

Section 2.6 would require the safety case for a facility to demonstrate that there are 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 would require 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 would 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 would specify would typically include a standard, code of practice or other equivalent expert guidance. For example, the standards that would 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) would require the safety case for a facility to specify and describe the normal (safe operation) and emergency command structures for the facility. ‘Emergency’ would be 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) would require the safety case for a facility to describe (in detail) how the operator of the facility would ensure (as far as reasonably practicable) that the offices or positions referred to in subsection 2.8(1) would be continuously occupied while the facility is in operation and how the operator would ensure that those filling the positions in subsection 2.8(1) would have the skills, training and ability to perform the functions of those positions.

The safety case would also describe how the operator would ensure (as far as reasonably practicable) that those persons occupying positions in paragraphs (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 would require the safety case for a facility to describe how personnel competency would be assured. The safety case must describe how the operator would 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 would require 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 would 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 would have the necessary qualifications to complete the work. This “permit to work” system would 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 would require an operator of a facility to provide written material to NOPSEMA that demonstrates and documents to the reasonable satisfaction of NOPSEMA that there would be 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) would define ***members of the facility’s workforce*** so that it would 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, at the facility.

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

Section 2.12 would provide that a safety case for a facility would 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 would also specify certain aspects that would 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 would provide that the safety case for a facility would be required to specify the medical and pharmaceutical supplies and services which would be maintained on, or in respect of, the facility. These supplies would need to be sufficient to cover an emergency situation.

Section 2.14 – Machinery and equipment

Section 2.14 would require 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 would include process equipment, machinery and electrical and instrumentation systems. The safety case would also be required to demonstrate that the equipment is fit for purpose, including for emergency use.

Section 2.15 – Drugs and intoxicants

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

Section 2.15A – Sexual harassment, bullying and harassment

Section 2.15A would provide that the safety case for a facility would 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 2009* and other Federal and State/Territory legislation that would be applicable and provide reports of incidents of sexual harassment, bullying and harassment to NOPSEMA.

Subdivision C—Emergencies

Section 2.16 – Evacuation, escape and rescue analysis

Section 2.16 would provide 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 would identify the types of emergencies that could arise, evacuation and escape routes, alternative routes, procedures for managing evacuation and 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 to be developed as a result of these evaluations would reduce the risks associated with emergencies to ALARP.

The safety case would be made available to all persons on a facility. As such, the safety case would 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 would provide 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 would 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 would be noted at section 2.16, the safety case would be made available to all persons on a facility. It would 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 would provide that the safety case for the facility must specify emergency communications systems that would 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 would be 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 would also be required to 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, mobile phones, handheld transceivers, very small aperture terminals, automatic identification systems, rugged computers, satellite communication networks, fibre-optic and microwave networks, cellular services, etc.

Section 2.19 – Control systems

Section 2.19 would provide 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 would not only refer to these systems in respect of an emergency but would make adequate provision for the facility in respect of these systems (for an emergency).

Section 2.20 – Emergency preparedness

Section 2.20 would provide that a safety case 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 2.30(3) and (4) would also 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) would provide that section 2.21 applies in respect of certain pipes connected to (or proposed to be connected to) a facility. The pipes would be pipes that convey (or will convey) petroleum or greenhouse gas substance to the facility.

Subsection 2.21(2) would require 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) would identify essential elements of these procedures.

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

Subsection 2.21(5) would provide 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 would require 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 would apply in respect of specified documents relating to a safety case (including the safety case itself). These documents would be 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 would deal with certain periods of incapacitation and notices/reports of accidents and dangerous occurrences).

This section would provide 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 would provide 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 would be 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 would provide 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 would 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 would be taken to become part of the safety case, and NOPSEMA would 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 would contain 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) would provide that where a design notification was submitted to NOPSEMA, that NOPSEMA must be satisfied that the comments provided in respect of that notification have been addressed.

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

NOPSEMA would be able 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 would provide 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 would be 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 would be required to 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) would be required to include any terms of the decision and the reasoning for these terms.

For certainty, subsection 2.27(2) would provide that a failure of by NOPSEMA to make a notification within 90 days would 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 would provide 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 would need to 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 would clarify 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 occupational health and safety duties of the operator or person under Part 2 of Schedule 3 to the OPGGSA Act. That is, acceptance of a safety case by NOPSEMA would not exempt a person or operator from their duties under Part 2 of Schedule 3 to the OPGGS Act, nor would 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 would specify 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 would have been identified as being critical to safety (under subsection 2.5(2)).

Paragraph 2.30(3)(b) would also provide 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 would also provide that the operator of a facility for which a safety case is in force must not submit the revised safety case before the operator and NOPSEMA agree on the scope of the validation for a revision due to modification or decommissioning of a facility.

Where there would be 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 it would be 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 would not be 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) would provide an exemption for the revision of a safety case a loss or removal of a safety critical technical or other control measure, where it is out of service for testing, 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 would be 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) would be 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).

It would be 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 would be 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 would be consistent with the principles outlined in *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers, September 2011* (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 would also be 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 would be 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 would also be 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 would be 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 would therefore need to be sufficiently significant to avoid being perceived as a 'cost of doing business'. The size of the penalty would also reflect the cost of court proceedings that may be necessary to enforce the penalty.

Imposing both a criminal and civil penalty would 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 would 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, and set at an appropriate level to reflect the OPGGS industry as a high-hazard industry, would encourage improved compliance with the instrument. This would 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 would provide 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 health and safety representative who is not satisfied with a decision under clause 37A of Schedule 3 of 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 would also provide 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 would be included where an operator does not comply with the request. The maximum penalty for a failure to comply with subsection 2.31(7) would be 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 would also be 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 would provide 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) would provide 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 provides 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 could result in a very

large number of smaller-scale, targeted, and often technical revisions coming up for unnecessary periodic reviews, posing a regulatory burden on industry.

This section would correct 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 would further clarify that a 5 yearly revision is required even if, within that period, the operator has submitted a revised safety case to NOPSEMA under sections 2.30 or 2.31.

The operator would be required to submit a revised safety case to NOPSEMA within 14 days before the end of the 5 year period. This requirement would provide a clear period of time for submission of a revised safety case under section 2.32, while ensuring that a revised safety case would be submitted close to the 5 year anniversary of the day the safety case was accepted. This requirement would also make 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 would also require 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 would be 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) would be 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 would also be 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) would be a continuing offence under section 4K of the Crimes Act. Subsection 5.9(1) would set 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, could be imposed for each day the revision is outstanding.

A contravention under subsection 2.32(5) could carry 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) would set out the maximum daily penalty that may be imposed for contravention of a civil penalty provision as 10% of the maximum penalty that could 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 would provide 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 a specified period of at least 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 would then be taken to become part of the safety case, and NOPSEMA would have regard to the information.

Section 2.34 – Acceptance or rejection of a revised safety case

Section 2.34 would set out provisions for NOPSEMA’s acceptance or rejection of a revised safety case, 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.

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 would further provide that where NOPSEMA proposes to reject a revised safety case because NOPSEMA is not satisfied of the matters in mentioned subsection 2.34(1), NOPSEMA must give the operator 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 would provide that NOPSEMA would 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 2.35(2) would provide 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 would provide that, unless and until NOPSEMA accepts a revised safety case, the safety case that is currently in force for the facility would remain 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 would provide 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 would also require that such a notice would state the reasons for the decision and the day on which the withdrawal takes effect.

Notice would only be given to an operator of a facility where the operator has not complied with occupational health and safety 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 Safety instrument.

Section 2.38 – Steps to be taken before withdrawing acceptance

Section 2.38 would set 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 would: provide the operator 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 would 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 would be allowed by the safety case that is in force.

A range of other compliance and enforcement provisions would also be 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 would provide 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 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 of 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 would not provide for NOPSEMA to exempt an operator of a facility from having a safety case. All operators would 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 would provide 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 would provide 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 would declare 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 would establish 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 would include 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) would provide 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 would be 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 would be 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) would deal with notices and reports that would be given to NOPSEMA, how the notice or report would be given, information that would be included in the notice or report, and when the notice or report would 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 would prescribe 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 would 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, 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 would 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 would be able to be contacted urgently in the event of an incident. Information on workers, hours, injuries and mental health issues would provide data to identify systemic issues and would assist in compliance planning.

Monthly reports would not be 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 would provide 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 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 would prescribe 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 would 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 would be 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 would 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 would be important to ensure that immediate notification is made to ensure that NOPSEMA can provide adequate assurance that best practice safety standards are occurring. This would be 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 would provide that this Part is made for the purposes of section 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) would provide 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) would provide 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) would be 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 would also be liable to a civil penalty of 1,000 penalty units if the person contravenes subsection 2.43(1), while a body corporate would be 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) would provide 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) would provide 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) would be 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 would also be 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) would provide 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. A facility activity would be defined in section 1.5 of the instrument.

Subsection 2.45(2) would provide 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) would be 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 would also be liable to a civil penalty of 1,000 penalty units if the person contravenes subsection 2.45(1), while a body corporate would be 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) would provide 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 would bear 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 would be reversed because the matter is likely to be exclusively within the knowledge of the defendant. This would be particularly the case given the remote nature of offshore operations. It would therefore be reasonable to require the defendant to adduce evidence in relation to this defence. This would be consistent with the Guide.

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

This section would provide 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 would be required to 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) would impose 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) would be 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 would also be liable to a civil penalty of 1,000 penalty units if the person contravenes subsection 2.46(1) or (2), while a body corporate would be 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 would provide 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 health and safety representatives, on the facility. This would be 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 would improve safety outcomes by removing access barriers and increasing transparency.

A “readily accessible place” would not be 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 it would be available (i.e., electronic or hard copy) which would enable those concerns to be managed on a case-by-case basis.

It would be 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) would be 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 would also be liable to a civil penalty of 300 penalty units if the person contravenes subsection 2.46A(1), while a body corporate would be 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). Under these proposed 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 would provide details of the information to be included in notices and reports of sexual harassment, bullying and harassment. An initial notice to NOPSEMA would be required as soon as practicable after an alleged incident has been notified to the operator. This would 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 would be deidentified.

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

It would be 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) would be 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 would also be 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) would be a continuing offence under section 4K of the Crimes Act. Subsection 5.9(1) would set out the maximum daily penalty that may be imposed for a continuing offence as 10% of the maximum penalty that could be imposed in respect of the relevant offence. A daily penalty of 3 penalty units, or 15 penalty units for a body corporate, could 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) would set out the maximum daily penalty that could be imposed for contravention of a civil penalty provision as 10% of the maximum penalty that could be imposed in respect of the contravention.

Section 2.47 – Maintaining records

Section 2.47 would establish 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) would be 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 would also be 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, could apply to subsection 2.47(2) due to the operation of subsection 5.4(1) of the instrument. Under these proposed provisions the Chief Executive of NOPSEMA or a NOPSEMA inspector could 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 would establish that it is an offence of strict liability for a person on a facility to fail to comply with a safety requirement of 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 would be 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) would establish 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 to be listed in subsection 2.49(2).

The maximum penalty for a failure to comply with subsection 2.49(1) would be 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 would provide 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) would provide 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) would operate 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* would be 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 would apply 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 would be an operator in respect of the facility (see section 2.43);
- there would be a safety case in force for the facility that provides for the activity (see section 2.44); and
- persons would carry out the activity in accordance with the safety case (see section 2.45).

The operator of the facility would be subject to a number of duties and obligations relating to occupational health and safety 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 would be 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 would be 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 would apply in relation to the direction so that:

- the person who is subject to the direction would be 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 would have, 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 would be 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 would continue to apply to that person as a titleholder. The amendments would 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 would mean 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 would set out a simplified outline Chapter 3 of the instrument. While simplified outlines would be 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 would provide 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 would provide that a person in control of work at a facility must not allow or require anyone under their control to work for continuous or successive continuous periods. The person would be required to develop and implement strategies to control any risk associated with fatigue to members of the workforce under their control. This proposed 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 pose a safety risk by causing or contributing to fatigue. This would 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) would be 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 would also be 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) would provide that it is an offence of strict liability to be in possession or have control of a controlled substance or an intoxicant, except in accordance with subsection 3.2(2).

Subsection 3.2(2) would provide 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 would bear 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) would be 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 would provide 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 occupational health and safety.

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 would be 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 proposed 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 proposed 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 would provide 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 would also be 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) would provide an exemption to the proposed 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

This section would provide 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 would also be 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) would provide an exemption to the proposed 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 would provide 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 would also be 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) would provide an exemption to the proposed 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) would provide that an operator, an employer or any other 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 would 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 health and safety representative 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 would provide 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) would provide 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) would also provide 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 would provide 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 would provide 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 would help 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 under section 3.10, section 3.11 would require 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 would provide 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 would provide 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 would set out the matters to be contained in a ballot-paper for a secret ballot. 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 would specify how the returning officer is to distribute the ballot-papers in a poll by secret ballot. The section would provide 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 would provide for procedures for voting in a poll by secret ballot and would make provisions for the process of voting including spoilt ballot papers. The voter would be

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 would then be 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 spoiled the voter can return the ballot paper to the returning officer and request a further ballot paper. The returning officer would be required to write the word spoiled on the returned paper and sign and date it. The spoiled ballot paper would be retained by the returning officer.

Division 4—The count

Section 3.17 – Envelopes given to returning officer

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

It would be 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) would be 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). Under these proposed 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 would provide 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 would provide 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 would provide 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) would provide for offences and penalties.

It would be 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) would be 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) would provide an exemption to the proposed 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 proposed 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 would set out the procedures to be followed by the returning officer in conducting the count. The successful candidate would be 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 would set out the circumstances in which a ballot-paper is informal.

Section 3.23 – Completion of the count

Section 3.23 would require 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 would allow 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 would provide that at any time prior to the notification of the result of the poll being given under section 3.27 on the returning officer's 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) would provide that in the case of a secret ballot the returning officer would have the same powers as the returning officer had in the count 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 would make 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) would provide 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) would require 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) would require 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 would provide for the taking 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 would provide 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 would provide 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 would 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 occupational health and safety 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) would prescribe in a table, the State laws that do not apply at offshore petroleum facilities because they are wholly or substantially laws related to occupational health and safety, 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 Northern Territory (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), would provide that substantive criminal laws relating to occupational health and safety under the *Crimes at Sea Act 2000* are also disapplied. For the purposes of section 3.32 subsection 3.32(5) would define ***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 would set out a simplified outline Chapter 4 of the instrument. While simplified outlines would be 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 would provide 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) would provide that any diving contractor intending to undertake offshore diving work subject to the OPGGS Act must have a diving safety management system (DSMS) that has been accepted by NOPSEMA. The DSMS would 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 – i.e.: 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 could consult the DSMS register, held by NOPSEMA (see section 4.9), to check on acceptance and currency.

It would be a strict liability offence if a person contravenes subsections (1), (2) or (3). The maximum penalty for a failure to comply with subsections 4.3A(1) (2) and (3) would be 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 would also be liable to a civil penalty of 1,000 penalty units if the person contravenes 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) would provide 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 subsections 4.3A (1) and (2) would be 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 would be 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 would be 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 proposed penalty would be 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 would provide 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 would provide 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 the start of a proposed diving project. 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.

Section 4.5A – NOPSEMA may request more information

NOPSEMA would be able to 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 would 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 would 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 would place 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 another period as agreed with the contractor, notifying the contractor of its decision as soon as practicable. NOPSEMA would be able request further information under section 4.6A which would 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 would be able to request the diving contractor to provide, in writing, further information and provide at least 30 days for the response. A request from NOPSEMA would 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 would become part of the DSMS. NOPSEMA would 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 would set 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 DSMSA as required by section 4.18.

Section 4.8 – Notice of reasons

Section 4.8 would place 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 would be set out in writing.

Section 4.9 – Register of DSMSs

Subsection 4.9(1) would require 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) would specify 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) would require that the DSMS must be revised every 5 years from the day it was accepted by NOPSEMA.

It would be a strict liability offence if a person does not revise a DSMS when required under subsections 4.10(1) or 4.10(4). The maximum penalty for a failure to comply with subsection 4.10(1) would be 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) would be punishable by 50 penalty units. The maximum penalty for a failure to comply with subsection 4.10(4) would be 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 would also be 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) would be a continuing offence under section 4K of the Crimes Act. Subsection 5.9(1) would set 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) would set 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 would provide 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 would 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) would provide 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 would be a strict liability offence if a person contravenes subsection 4.11(5) which would require the diving contractor to revise the DSMS. The maximum penalty for a failure to comply with subsection 4.11(5) would be 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 would also be 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) would be a continuing offence under section 4K of the Crimes Act. Subsection 5.9(1) would set 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) would set 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

Section 4.11A would set 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 would provide that before withdrawing the acceptance of a DSMS for a diving project NOPSEMA must provide the diving contractor, in writing, with at least 30 days’ notice of the intention to withdraw acceptance of a DSMS. NOPSEMA may give a copy of the notice to such other persons (if any) as NOPSEMA thinks fit. The notice would specify the 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, would 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 would apply 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 would 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 would ensure that the contents of the plan meet the requirements of section 4.16 before approving the plan. The operator would 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 would apply 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 would require the diving contractor to prepare a diving project plan and submit it to NOPSEMA for review and acceptance if it complies with section 4.16 and

subsection 4.18(2). NOPSEMA would also be required 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 proposed instrument that would not involve an operator or a facility as defined by clause 3 of Schedule 3 to the OPGGS Act. Examples may include:

- (a) a diving operation on a well that is in a non-producing state to retrieve debris, or
- (b) 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 would provide 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) would 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 would be incorporated into the latest revision of the plan under management-of-change procedures. Any revision would be done in conjunction with and be approved by the operator (or NOPSEMA, if there is no operator).

It would be a strict liability offence if a person contravenes subsections 4.15(1), (2), (3) and (4) which would require the diving contractor to keep the diving project plan updated. The maximum penalty for a failure to comply with the subsections would be 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 would also be 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 would specify 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 would 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 would 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 would provide 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 would be a strict liability offence if a person contravenes subsection 4.17(1) which would require that there be no diving without an approved diving project plan. The maximum penalty for a failure to comply with the subsections would be 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 would also be 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 would provide 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 would also provide 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.

When submitting a DSMS to NOPSEMA for acceptance the diving contractor would 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 would provide that the diving contractor has an ongoing responsibility to ensure that risks to divers and other members of the workforce are reduced to 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 would make 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 would be 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 would be 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 would also be 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) would provide 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 would be 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) would be 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 would be 50 penalty units or 250 penalty units. A civil penalty of 300 penalty units would also apply 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) would 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 (3) and (4) would 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 would be 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 would be 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 would also be 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) would provide 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 would be accredited under the Australian Diver Accreditation Scheme to undertake offshore diving operations. The supervisor would 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 would be 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 would be 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 would also be 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) would set out the duties of the diving supervisor and provide 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 would also require 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) would make 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 proposed provision would be 50 penalty units.

Subsection 4.23(3) would empower 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) would provide 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 proposed provision would be 50 penalty units.

Subsection 4.23(5) would provide 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 proposed provision would be 50 penalty units.

All persons involved in the diving operation would 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 would be appropriate to apply a fault based liability to the proposed 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 would be 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 proposed 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) would provide 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 would define 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 would provide 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 would 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 would be increased to at least 28 days before the day diving is to begin.

It would be 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 would be 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 would also be 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 would provide that NOPSEMA, within 28 days of receipt or such other time as agreed between NOPSEMA and the diving contractor, must 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 in the start-up notice are consistent with the relevant DSMS and diving project plan for the diving project to which the start-up-notice relates.

NOPSEMA would notify the operator, in writing, as soon as practicable after making a decision if it is accepted or rejected. If rejected, then the notice would 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 would be able to request, in writing, further information within 14 days of receiving the start-up notice. The request would 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 would stop the clock on section 4.24A and it would restart once the information is received by NOPSEMA.

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

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

Section 4.24C would provide 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 would set out reasons for the decision. This provision would be 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 would provide that NOPSEMA may by written notice to the operator of a facility in connection with a diving project, or 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 would set out the reasons for the decision.

This would provide 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, would ensure that diving on the diving project ceases.

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

This section would provide that where NOPSEMA has withdrawn acceptance of a start-up notice a 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 that the new or increased diving impact or risk to the diving activity has been rectified NOPSEMA may re-instate a diving start-up notice. NOPSEMA would 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 would place 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 would be 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 would be 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 would also be 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) would provide 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 proposed subsection would be 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) would require 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 would be 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 subsections would be 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 would also be 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) would provide 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 proposed subsection would be 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) would require that the diving contractor must not allow any diver to dive in the diving operation unless the diver has a valid medical certificate. A note would explain that *valid medical certificate* is defined in section 4.26.

It would be 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 the person does not have a valid medical certificate. The maximum penalty for a failure to comply with the subsections would be 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 would also be 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) would provide 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 proposed subsection would be 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) would provide an exemption to the proposed offences in subsections (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 would set out requirements for medical certificates for the purposes of Part 8. Divers would be 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 would specify that to be a valid medical certificate under this section, the medical examination would have to be undertaken in accordance with the relevant Australian/New Zealand Standards.

Part 10—Records

Section 4.27 – Diving operations record

Subsection 4.27(1) would provide that it is a strict liability offence for diving supervisors for diving operations 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) would 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 proposed subsections 4.27(2) and (3) would be 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) would make 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 would specify the information to be recorded for each dive. The maximum penalty for a failure to comply with proposed subsection 4.27(4) would be 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) would make 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 would 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 proposed subsection 4.27(5) would be 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) would require 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) would provide 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 proposed subsection would be 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 would also be 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 proposed subsections 4.27(1), (4), (5) and (7) due to the operation of subsection 5.4(1) of the instrument. Under these proposed 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) would provide 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 would 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 would be kept for at least 7 years after the date of the final entry.

The maximum penalty for a failure to comply with proposed subsection 4.28(1) would be 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) would require 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) would require 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 proposed subsection 4.28(1) due to the operation of subsection 5.4(1) of the instrument. Under these proposed 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 would set 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 would note 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 would inform the reader that the instrument is a *listed NOPSEMA law* as defined in section 601 of the OPGGS Act. This would mean that the OPGGS Act would make the instrument subject to monitoring under Part 2 of the Regulatory Powers Act,

and the proposed offences and civil penalty provisions of the instrument subject to investigation under Part 3 of the Regulatory Powers Act.

Section 5.2 – Purpose of this Chapter

This section would state 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 of that Act 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 instrument is enforceable under Part 6 (which deals with enforceable undertakings) and Part 7 (which deals with injunctions) of the Regulatory Powers Act. Section 790A of the OPGGS Act 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 proposed 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 would provide 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 would be 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 would apply Part 4 of the Regulatory Powers Act to enforce the proposed 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) would provide 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) would provide 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 would apply 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) would provide 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 would 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) would provide that the Chief Executive Officer of NOPSEMA and a NOPSEMA inspector are authorised officers who can issue infringement notices.

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

Part 4—Enforceable undertakings

Section 5.5 – Enforceable undertakings

This section would trigger the application of Part 6 of the Regulatory Powers Act to enforce the proposed 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) would provide 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) would provide for circumstances where an undertaking would not be accepted. These would be 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 would not apply if there were exceptional circumstance.

Subsection 5.5(5) would provide 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 would be able to 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 would require 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 would publish the undertaking on the NOPSEMA website.

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

Subsection 5.6(2) would require 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 1988*) that is contained in the undertaking is de-identified before the undertaking is published. This would be to ensure the protection of personal information and the right to privacy. Under subsection 5.6(3), information would be ‘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 could work together to ensure that undertakings are written in a manner that would avoid or reduce risks of prejudice to commercial interests when they are published.

Part 5—Injunctions

Section 5.7 – Injunctions

This section would trigger the application of Part 7 of the Regulatory Powers Act to enforce the proposed 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 would 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) would provide 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) would provide 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 would 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 would provide 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 would apply if a provision of the proposed 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 would support 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 would be liable to a penalty for a contravention or breach of another provision, which contains a conduct rule. For example, subsection 2.30(6) would state that a person would be liable to a civil penalty if the person contravenes subsection 2.30(1) or (2). Subsection 2.30(1) would provide that an operator must submit a revised safety case if there is a change in circumstances or operations. Subsection 2.30(2) would require 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) would therefore be the relevant conduct provisions.

Provisions in the proposed 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 proposed provision, as a result of the application of section 5.8 of the instrument, a person would 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 would 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 proposed offence provisions in the instrument (listed in subsection 5.9(1)) would be continuing offences under section 4K of the Crimes Act. Subsection 5.9(1) would set 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 proposed civil penalty provisions in the instrument (listed in subsection 5.9(2)) would be continuing civil penalty provisions under section 93 of the Regulatory Powers Act. Subsection 5.9(2) would set 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 would define *commencement day* of the new instrument, and would define *old regulations* as meaning the 2009 Safety Regulations.

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

This section would ensure 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 proposed new instrument.

Section 6.3 – Things started but not finished by NOPSEMA

This section would ensure 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 proposed new instrument.

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

This section would ensure 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 proposed new instrument.

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

This section would ensure that a function or duty may be performed, or a power exercised, under the proposed 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 would provide 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 NOPSEMA removes that person's name from the register under section 2.4 of the proposed instrument.

Section 6.7 – Existing safety cases remain in force

Subsection 6.7(1) would provide that a safety case that was in force immediately before the commencement day is taken to be a safety case for a 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) would specify 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) would 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 would ensure that damage to safety critical equipment would continue to be reported as a dangerous occurrence.

Section 6.8 – Existing DSMS remains in force

Section 6.8 would provide 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 2009 Safety Regulations.

Section 6.9 – Existing diving project plans remain in force

This section would provide 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 would provide 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 would continue to apply. This would 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 would provide 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 would define *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 would prescribe in a table 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 would prescribe in a table the permitted circumstances for using certain hazardous substances with carcinogenic properties. Table items 301 to 315 would 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)

